

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant states that he agrees with the Judge’s findings of fact. However, he contends that the Judge erred in his mitigation and whole-person analysis. He asserts that he has stopped all use of illegal drugs; that he has matured as an individual, and that he has severed his relationships with drug users. These arguments amount to a challenge of the Judge’s weighing of the evidence and are insufficient to establish that he weighed it in a manner that was arbitrary, capricious, or contrary to law. Of particular note, Applicant has not directly challenged the Judge’s adverse falsification findings. Adverse decision affirmed.

CASE NO: 19-01204.a1

DATE: 12/20/2019

DATE: December 20, 2019

In Re:)	
)	
-----)	ISCR Case No. 19-01204
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Austin J. Lewis, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 24, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On September 26, 2019, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

Under Guideline H, the SOR alleged that Applicant used marijuana on various occasions from about 2011 to early 2017, including while granted access to classified information, that he purchased marijuana on various occasions from about 2012 to mid-2015; that he used cocaine on at least two occasions from about 2015 to early 2017, including while granted access to classified information; and that he used a prescription medication that was not prescribed to him on at least one occasion in about late 2016. Under Guideline E, the SOR alleged that Applicant falsified his responses to three illegal drug activity questions in a security clearance application in 2016. In responding to the SOR, Applicant admitted each allegation. The Judge found in favor of Applicant on one falsification allegation and against him on the remaining allegations.

In the appeal brief, Applicant states that he agrees with the Judge’s findings of fact. However, he contends that the Judge erred in his mitigation and whole-person analysis. In his arguments, he asserts, for example, that he has stopped all use of illegal drugs; that he has matured as an individual, and that he has severed his relationships with drug users. These arguments amount to a challenge of the Judge’s weighing of the evidence and are insufficient to establish that he weighed it in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08684 at 2 (App. Bd. Nov. 22, 2017). Of particular note, Applicant has not directly challenged the Judge’s adverse falsification findings.

Applicant also contends that, if he was provided a renewed opportunity, he would present a certified pledge to refrain from illegal drugs, character references, and other evidence. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. This prohibition extends to statements in an appeal brief about evidence that Applicant could, but failed to, present. Similarly, the Board does not have authority to remand a case for the purpose of taking in new evidence. *See, e.g.*, ISCR Case No. 12-10934 at 2 (App. Bd. Mar. 21, 2016).

Applicant further contends that denying a clearance to someone who eventually divulges the truth establishes a poor precedent because it would encourage others to keep their misconduct secret to maintain their security clearances or employment. Given the unchallenged falsification finding against Applicant, this argument lacks merit. Furthermore, each case is decided on its own merits

as opposed to how others may perceive it. Directive, Encl. 2, App A ¶ 2(b). Moreover, how others may perceive a case is not listed as a relevant factor in the adjudicative guidelines.

Applicant failed to establish that the Judge committed any harmful error. The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. “The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also* Directive, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

Signed: Michael Ra'anan
Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board