

KEYWORD: Guideline E

DIGEST: Applicant argues that the whole-person analysis is flawed. The Judge’s adverse decision rested on his conclusion that Applicant failed to demonstrate the candor required of someone who holds a security clearance. This conclusion is consistent with the record viewed as a whole. The Judge’s whole person analysis complies with the requirements of Directive ¶ 6.3, in that he considered the totality of the evidence in reaching his decision. Adverse decision is affirmed.

CASE NO: 18-02925.a1

DATE: 01/15/2020

DATE: January 15, 2020

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In Re:)	
-----)	ISCR Case No. 18-02925
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 15, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 5, 2019, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s findings of fact contained errors and whether his adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge’s Findings of Fact

The Judge made the following findings pertinent to the issues raised on appeal: Applicant works for a Defense contractor. He is married and has no children. In 2014, Applicant submitted a security clearance application (SCA) in which he admitted that he had smoked marijuana three times between mid-2004 and early 2014. During the interview that was conducted later in 2014, he admitted his marijuana use, advising that he did so in 2002 and 2004 and again in 2014. He disclosed that, in 2014, a woman asked him if he knew anyone who sold marijuana, and Applicant replied that he did. They drove to the seller’s home, where Applicant made the purchase. Applicant stated that he smoked the marijuana to impress the woman but that it had no effect upon him.

Applicant submitted another SCA in mid-2017. In this one, he denied having illegally used any drugs or controlled substances, and he denied having been involved in the purchase of illegal drugs. During his 2018 interview, he stated that he was not sure the substance he purchased was marijuana because it was not tested in a lab. In subsequent interrogatories, Applicant contended that there was no reason to believe that he had purchased and used marijuana in 2014 because there are no police reports, drug test results, etc. He stated that he had naively believed the substance that he bought and used was marijuana, but, without confirmatory tests, he could not be sure.

At the hearing, Applicant testified that he had conducted research on government websites, which described the effects of marijuana. He submitted a treatise from the National Institute on Drug Abuse, published in June 2018, a fact sheet from the Drug Enforcement Administration, and an article from the FBI. He testified that he did not recall when he conducted his research but that it was before he completed his 2017 SCA. He stated that, during his 2018 interview, he did not mention his research because he was not asked about it.

Applicant submitted numerous letters from friends, associates, former teachers, university professors, a law enforcement official, a National Guard recruiter, and co-workers attesting to his good character, reliability, honesty, and trustworthiness.

The Judge’s Analysis

The Judge found that Applicant had “carefully crafted” his SCA answers as well as his statements to the investigator in order to overcome his prior disclosures of drug use. Decision at 7. He noted Applicant’s testimony that his doubts about the nature of the substance he used in 2014 were based on research he claimed to have conducted on Government websites. However, he stated that at least one of the purported documents that Applicant submitted at the hearing postdated the 2017 SCA. Moreover, Applicant never mentioned this research prior to the hearing, raising the implication that his testimony was a recent fabrication. In any event, the Judge stated that the exact nature of the substance in question was not crucial. Rather, the gravamen of Applicant’s case was his failure to be candid about his effort to purchase and use marijuana. The Judge found Applicant’s explanations for his denial of drug use in his 2017 SCA and during the subsequent interview lacked credibility. In the whole-person analysis, the Judge reiterated previous comments to the effect that Applicant’s omissions were deliberate. He found Applicant’s argument that there was no proof about the true nature of the substance that he used in 2014 to be beside the point.

Discussion

Applicant contends that the Judge’s findings of fact contain errors. He states that, contrary to the Judge’s finding, he has children, as evidenced by the contents of several of his character letters. He also argues that the Judge erred in finding that one of his documentary exhibits had been published in 2018. He states that it had been revised in 2018, which means that it had been published before then. The Judge’s finding about the children appears to have been based upon Government Exhibit 1, the 2017 SCA, which discloses no children among Applicant’s relatives. However, as Applicant notes in his Appeal Brief, several of his character references cite to his status as a father. *See, e.g.*, Letter from Wife, dated April 1, 2019, included in Applicant Exhibit II. The challenged finding appears to be erroneous. However, it did not likely exert an influence on the outcome of the case and, therefore, is harmless. *See, e.g.*, ISCR Case No. 18-02302 at 3 (App. Bd. Jun. 26, 2019). Concerning the other finding, the distinction between whether a document was published in 2018 or simply revised in that year is without significance in the case before us. Applicant testified that he had consulted documents from Government websites prior to his 2017 SCA. Obviously, he could not have consulted one of the documents that he submitted at the hearing, insofar as it bore a revision date of a year later. The Judge did not err in his finding about this matter, and even if he did, such error was also harmless. The Judge’s material findings of security concern are based upon substantial evidence. *See, e.g.* ISCR Case No. 17-01680 at 3 (App. Bd. Jul. 19, 2019).

Applicant argues that the whole-person analysis is flawed. The Judge’s adverse decision rested on his conclusion that Applicant failed to demonstrate the candor required of someone who holds a security clearance. This conclusion is consistent with the record viewed as a whole. The Judge’s whole person analysis complies with the requirements of Directive ¶ 6.3, in that he considered the totality of the evidence in reaching his decision. *See, e.g.*, ISCR Case No. 15-03592 at 2 (App. Bd. Jun. 14, 2017).

The Judge examined the relevant evidence 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 Y. Ra’anan

Michael Y. 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