

KEYWORD: Guideline B; Guideline H

DIGEST: There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. We have examined the Decision in light of the record as a whole and find nothing that would likely convince a reasonable person that the Judge lacked the requisite impartiality. Applicant has not met his heavy burden of persuasion on this issue. Adverse decision is affirmed.

CASE NO: 19-01666.a1

DATE: 04/22/2020

DATE: April 22, 2020

_____)	
In Re:)	
)	
-----)	ISCR Case No. 19-01666
)	
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 June 26, 2019, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On October 17, 2019, Department Counsel amended the SOR by adding an allegation under Guideline H (Drug Involvement and Substance Misuse). Applicant requested a hearing. On January 28, 2020, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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 was biased against him and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline B were not raised as an issue on appeal. Consistent with the following, we affirm.

The Judge found against Applicant on the Guideline H allegation that asserted he used marijuana with varying frequency from about February 2017 to February 2018 while being granted access to classified information. In his response to the SOR, he admitted that allegation. Although he was aware that marijuana use was prohibited under Federal law, he obtained a doctor’s prescription for its use after a knee injury. “He did not report his marijuana use on his [December 2017] security clearance application because he did not see it as an issue.” Decision at 3. He submitted a Statement of Intent to refrain from marijuana use in the future. His manager, coworkers, and friends attest to his good character and recommend him for a security clearance. The Judge concluded that none of the Guideline H mitigating conditions fully applied.

In his appeal brief, Applicant essentially contends that the Judge was biased against him. He argues that, while the Judge was overall very professional and courteous, she “demonstrated anger in her retorts and on the record interrupted the Applicant while attempting to speak on 7 separate occasions.” Appeal Brief at 2-3. He also noted the Judge was ready to close the hearing before providing him an opportunity to make a closing statement. There is a rebuttable presumption that a Judge is impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. *See, e.g.*, ISCR Case No. 18-02722 at 5 (App. Bd. Jan. 30, 2020). We have examined the Decision in light of the record as a whole and find nothing that would likely convince a reasonable person that the Judge lacked the requisite impartiality. Applicant has not met his heavy burden of persuasion on this issue.

Applicant also contends that the Judge did not consider or properly weigh all relevant evidence. For example, he argues that the Judge overlooked his character evidence, his special knowledge that is critical to the Government, and his Statement of Intent to refrain from using marijuana in the future. He also highlights evidence that supports favorable findings on whole-person factors. His arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-02488 at 3 (App. Bd. Aug. 30, 2018). Furthermore, the value of an applicant's expertise to a defense

contractor is not a relevant or material consideration in determining his or her suitability for a security clearance. *See, e.g.*, ISCR Case No. 99-9020 at 7 (App. Bd. Jun. 4, 2001). Applicant has failed to establish that the Judge committed harmful error in her analysis of the evidence, including her whole-person assessment.

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, Enclosure 2 ¶ 2(b): “Any doubt concerning personnel being considered for access to classified information 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