

Date: July 19, 2022

In the matter of:)
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 Applicant for Security Clearance)
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ISCR Case No. 20-01481

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Patrick J. McLain, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 11, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis of that decision—a security concern raised under Guideline H (Drug Involvement and Substance Misuse) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a hearing. In July 2021, the Defense Office of Hearings and Appeals (DOHA) amended the SOR, adding a security concern raised under Guideline E (Personal Conduct). On May 2, 2022, after the hearing, DOHA Administrative Judge Edward W. Loughran denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline E, the SOR alleged that Applicant falsified a 2013 security clearance application (SCA) in that he failed to disclose ongoing marijuana use. Under Guideline H, the SOR alleged that Applicant used marijuana from about 1999 to about 2016; that he used marijuana from about 2013 to about 2016 while granted access to classified information; that he failed a urinalysis test in about 2008, testing positive for marijuana; and that he was arrested in about 2006

for a drug-related incident. The Judge found adversely to Applicant on the Guideline E allegation that he falsified his 2013 SCA and on the Guideline H allegation that he used marijuana from 2013 to 2016 after being granted access to classified information. He found favorably on the remaining Guideline H allegations, finding that all drug use and incidents prior to 2013 were mitigated by the passage of time.

On appeal, Applicant argues that the Government failed to meet its burden of proof and that the Judge misapplied the mitigating conditions and the whole person concept. Consistent with the following, we affirm.

Judge's Findings of Fact and Analysis

Applicant is a 39-year-old employee of a defense contractor. He has worked for his current employer since 2011. He earned a bachelor's degree in 2005 and two master's degrees in 2011.

In August 2013, Applicant submitted a SCA, in which he reported his 2006 arrest for smoking a marijuana cigarette and disclosed marijuana use from about 1999 to about 2007. He described his use as recreational and moderate and stated his intent not to use in the future. He intentionally failed to report the full extent of his marijuana use, as he was still periodically using marijuana. In September 2013, Applicant was interviewed for his background investigation and gave answers consistent with his SCA, again stating that he had not used marijuana since late 2007 and did not intend to use in the future. Shortly thereafter, Applicant was granted a secret security clearance, but continued to periodically smoke marijuana through December 2016.

In April 2019, Applicant completed another SCA and fully disclosed his marijuana use. There is no evidence of any illegal drug use after December 2016.

Applicant lied about his marijuana use on his 2013 SF 86, and then continued to use marijuana while holding the security clearance he obtained through those lies. His conduct continues to cast doubt on his current reliability, trustworthiness, good judgment, and willingness to comply with laws, rules, and regulations. The [Guideline H] mitigating conditions, individually or collectively, are insufficient to alleviate those concerns.

. . .

He is credited with finally coming clean in April 2019, but that is insufficient to overcome the lie that enabled him to obtain a security clearance. Personal conduct security concerns are not mitigated. [Decision at 6–7.]

Discussion

Turning first to Applicant's bare assertion that the Government failed to meet its burden of proof, we are not persuaded. Applicant admitted using marijuana as alleged in the SOR, including while granted access to classified information. SOR Answer at 1; Government Exhibit 2 at 62 and 64; Tr. at 13, 28, and 32. An Applicant's admission provides an Administrative Judge with a

legally sufficient basis to find that the applicant engaged in the conduct covered by the applicant's admission. *See, e.g.*, ISCR Case No. 02-21087 at 4 (App. Bd. Aug. 19, 2005).

We turn next to Applicant's argument that the Judge failed to give appropriate weight to his mitigating evidence. In particular, Applicant argues that the Judge did not properly weigh his candor on his 2019 SCA. "The [Judge] determined that because Applicant was not truthful in 2013 he should be punished for his honesty in 2019 Applicant could very easily have repeated his same responses from 2013 and no one would ever have been the wiser." Appeal Brief at 5. Of note, Applicants are required to provide full, frank, and truthful answers to relevant and material questions needed to reach a clearance decision. As the Judge noted, Applicant's candor in his 2019 SCA weighs in his favor, but it is not dispositive. The fact that Applicant provided full and truthful answers on his 2019 SCA does not preclude the Judge from evaluating the security significance of Applicant's falsification on his 2013 SCA and his post-clearance marijuana use. *See, e.g.*, ISCR Case No. 99-0519 at 14 (App. Bd. Feb. 23, 2001).

The remainder of Applicant's brief is fundamentally an argument that the Judge misweighed the evidence. None of Applicant's arguments, however, are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Moreover, the Judge complied with the requirements of the Directive in his whole-person analysis by considering all evidence of record in reaching her decision. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020).

Applicant incorrectly notes the Judge found against him on the SOR allegation pertaining to a failed urinalysis test in 2008 and makes arguments regarding that allegation. We need not address those arguments as the Judge found in favor on Applicant on that allegation.

Applicant failed to establish that the Judge committed any harmful error or that he should be granted any relief on appeal. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. "The general standard is that a clearance may be granted only when 'clearly consistent with 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 national security." The Judge's adverse findings under Guideline H are affirmed.

Order

The decision is **AFFIRMED**.

Signed: James F. Duffy

James F. Duffy
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Member, Appeal Board