

Date: July 8, 2022

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In the matter of:)
)
-----) ISCR Case No. 21-00265
)
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 April 30, 2021, 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), Guideline E (Personal Conduct), and Guideline F (Financial Considerations) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 9, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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. The Judge’s favorable findings under Guideline E and F are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact and Analysis

Applicant is in her early 30s. She has worked for her current employer, a DoD contractor, since early 2020. She has earned a master's degree and has held a security clearance since 2011. The record contains no evidence of security violations by Applicant.

Applicant used methamphetamine in 2018 and again in 2019. She did so at a "low point" in her life while under the influence of a toxic relationship. In early 2020, Applicant traveled to a different state from her place of residence, one in which the recreational use of marijuana is lawful. She used marijuana on one occasion while in that state. At the time of her illegal drug use, Applicant held a security clearance. She disclosed her methamphetamine use during the course of an Enhanced Subject Interview (ESI). She did not disclose the marijuana incident during the ESI; rather, she acknowledged it in response to subsequent DOHA interrogatories. She has expressed a willingness to refrain from the use of illegal drugs in the future.

The Judge concluded that Applicant's use of illegal drugs raised concerns under Guideline H. He further concluded that Applicant's evidence did not mitigate those concerns. He noted that she failed to inform the ESI interviewer about her use of marijuana and that she tested positive for methamphetamine in a drug test performed as a condition of probation for unrelated offenses. He stated that he would consider these two non-alleged matters in evaluating Applicant's case for mitigation, citing to ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006). He emphasized that Applicant knew she held a clearance at the time of her offenses, and concluded that such knowledge enhanced the seriousness of Applicant's conduct. Noting Applicant's evidence that she used the drugs under the influence of others, he stated that such influence could re-emerge in future and that more time must elapse before Applicant can be held to have shown that her drug misuse is truly behind her.

Discussion

Applicant takes issue with the Judge's analysis of the mitigating conditions. She argues that her drug use was infrequent, that she has moved away from those who had influenced her behavior in the past, that she has passed a drug evaluation during a period of probation, and that her character references show her to be trustworthy. This argument is, in effect, a disagreement with the Judge's weighing of the evidence. However, a Judge must evaluate the record evidence as a totality, and the presence of some mitigating evidence does not compel a favorable decision. *See, e.g.*, ISCR Case No. 20-02990 at 5 (App. Bd. Jan. 19, 2022). We note, for example, Applicant's testimony that she underwent a sort of drug evaluation during the course of her probation. "I got permission [to move to a different state] from both probation officers after repeated positive drug tests, and also . . . I spoke to, I guess, a counselor. She, basically, gave me an assessment . . . mental-health-wise . . . and I was allowed to move up here[.]" Tr. at 27. While this was evidence that the Judge was bound to consider, it does not satisfy the criteria set forth in Directive, Encl. 2, App. A ¶ 26(d): "satisfactory completion of a prescribed drug treatment program . . . and a favorable prognosis by a duly qualified medical professional." All in all, Applicant's arguments do not persuade us that the Judge weighed the record evidence in a manner that was arbitrary, capricious, or contrary to law. Neither are these arguments sufficient to rebut

the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 18-02862 at 3 (App. Bd. Nov. 4, 2020).

The totality of Applicant’s arguments on appeal demonstrate no harmful error in the Judge’s findings or analysis. An applicant’s use of illegal drugs after having completed a security clearance application or after otherwise having been placed on notice of the incompatibility of drug abuse and clearance eligibility raises questions about his or her judgment, reliability, and willingness to comply with laws, rules, and regulations. *See, e.g.*, ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019). 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: 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