

Date: August 11, 2022

In the matter of:)	
)	
)	
-----)	ISCR Case No. 19-03619
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B Norman, Esq., Chief Department Counsel

FOR APPLICANT

Brittany D. Forrester, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 18, 2020, 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 hearing. On June 9, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 erred in finding that he had deliberately omitted material information from his security clearance application (SCA) and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is in his early 40s. He is single and has no children. Applicant has worked for Federal contractors from 2000 to 2004 and from 2008 until the present. He received a secret clearance in 2015. He believed that he held a public trust position from 2000 until 2004.

In 1999, while a high school student, Applicant was stopped by the police, who searched his car. The police discovered drug use paraphernalia, which Applicant claimed belonged to a friend. Applicant was arrested, though the charges were dropped after he performed community service. Applicant began using marijuana in 1999 and continued doing so with varying frequency until October 2016. He used marijuana from 2002 to 2008 on an average of once a month. His use increased in 2012 during a period of stress occasioned by his mother's illness. Applicant's final use of marijuana, in October 2016, occurred after he had been granted a security clearance.

Applicant completed a SCA in 2011, in which he failed to disclose the full extent of his drug involvement up to that time. The Judge stated that she would consider this non-alleged misconduct only in performing a credibility determination, in evaluating Applicant's case for mitigation, and in performing a whole-person analysis.

Applicant completed another SCA in 2016 in which he failed to disclose the 1999 drug paraphernalia incident. In this same SCA he answered "no" to the question regarding drug use during the previous seven years. Applicant claimed that his failure to admit the 1999 charge was due to oversight. Regarding drug use, he admitted that his denial was not correct, claiming that he was "nervous" about the matter and that he believed "if he disclosed his drug use in his SCA that it would not portray him in a way that best represented him." Decision at 3. He stated that he intended to discuss his drug involvement during his subsequent clearance interview and that he had, in fact, done so, although the record contains no corroborative evidence. He denied that his omission of drug use was intentional, though he could not justify his act. The Judge noted that the last page of the SCA allowed for additional comments. Although Applicant did make comments about other questions, he said nothing about wanting to explain his drug use to an investigator.

The Judge found Applicant's explanation for not disclosing the 1999 arrest on his 2016 SCA to be plausible. However, she found Applicant's explanations for his failure to disclose his drug use to be lacking in credibility. She also found that Applicant's employment in drug-free workplaces should have placed him on notice that drug use is incompatible with Federal employment. Applicant provided a statement of intent to refrain from such conduct in the future, indicated he no longer lives close to persons with whom he had used drugs, and has shown he passed two drug tests.

The Judge's Analysis

The Judge resolved three of the four Guideline H allegations in Applicant's favor. However, she entered adverse findings on a single allegation that he had used marijuana while holding a clearance. She cited to evidence that Applicant was on notice that drug use was inconsistent with having access to classified information and that he had failed to abstain even after completing his most recent SCA. The Judge also found that Applicant's failure to have

disclosed his drug use on that SCA was deliberate, breaching his duty to ensure that the Government was aware of potential issues of security significance. She observed that answering lawful questions of security significance honestly is a requirement for those holding access to national secrets and concluded that none of the Guideline E mitigating conditions merited full applicability.

Discussion

Applicant argues that the Judge erred by finding that he had deliberately falsified his 2016 SCA. However, the record supports the Judge's findings on this matter. In addition, we give deference to a Judge's credibility determinations. Directive ¶ E3.1.32.1. The challenged findings are "supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." *Id.*

Applicant argues that the Judge failed to consider, or that she mis-weighed, pertinent evidence, such as his statement of intent to refrain from future drug use, his explanation for his false statement in his SCA, his expressions of remorse, and his having remained drug free since 2016. However, the Judge made findings about all this evidence, and her analysis explicitly addresses much of it. We note in particular that the Judge found in Applicant's favor regarding three of the Guideline H allegations due in large measure to the length of time that has elapsed since his last offense. Moreover, her explanation for reaching the opposite conclusion regarding marijuana use while holding a clearance is supportable. *See, e.g.*, ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019) (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). Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record, nor has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02872 at 3 (App. Bd. Jan. 15, 2020). An ability to argue for an alternative interpretation of the evidence is not enough to undermine a Judge's analysis. *See, e.g.*, ISCR Case No. 18-02581 at 4 (App. Bd. Jan. 14, 2020). Applicant cited some Hearing Office cases in support of his appeal. We give due consideration to these cases. However, each case must be decided upon its own merits. Directive, Enclosure 2 ¶ 2(b). Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Appeal Board. *See, e.g.*, ISCR Case No. 18-02074 at 2 (App. Bd. Aug. 27, 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