KEYWORD: Guideline F; Guideline H

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the record evidence. Hearing Office decisions are binding neither on the Appeal Board or on other Hearing Office Judges. Adverse decision affirmed.

CASE NO: 10-01355.a1

DATE: 08/24/2011

DATE: August 24, 2011

In Re:	)	
	)	
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	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
Caroline A. Jeffreys, Esq., Department Counsel

FOR APPLICANT
John N. Griffith, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 19, 2010, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision–security concerns raised under Guideline F (Financial Considerations) and Guideline H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 23, 2011, after the hearing, Administrative Judge Marc E. Curry 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 application of the pertinent mitigating conditions was erroneous and whether the Judge's whole-person analysis was

erroneous. Consistent with the following, we affirm the Judge's decision.

The Judge made the following pertinent findings of fact: Applicant works in a research laboratory as an optical microscopist. He has an associate's degree. Divorced, he has three children.

From 1987 to 1993, Applicant smoked marijuana approximately once every other week. In 1987, when he was 12 years old, Applicant was arrested and charged with possession of marijuana. In 1993, he was arrested and charged with possession of that drug, and, later that year, he was arrested and charged with planting and cultivating marijuana and with possession of a controlled substance. These two charges were subsequently dropped.

After his last arrest in 1993, he stopped smoking marijuana because he had tired of doing so and was not pleased with some of the people he and family members associated with. He refrained from using marijuana until late 2007, at which time he shared a marijuana cigarette with his previously estranged brother as a "peace offering." Decision at 3. Applicant was only vaguely concerned that marijuana use was illegal.

In November 2008, he used marijuana on two occasions by eating brownies laced with the drug. His sister had prepared the brownies and dared him to eat them. He has not used marijuana since that time.[1]

In the Analysis, the Judge noted Applicant's personal development over the years from high school dropout to molecular researcher. However, the Judge also noted that Applicant's most recent uses of the drug occurred within his close family, calling "into question Applicant's surrounding environment and [minimizing] the probative value of his reassurances that his marijuana use will not recur." Decision at 6.

Applicant contends that the Judge did not consider all of the record evidence, for example his years of abstinence and his having self-reported the recent uses. This was evidence the Judge was bound to consider, along with all of the other evidence in the record. However, the Judge reasonably explained why he concluded that Applicant had failed to meet his burden of persuasion as to mitigation. Applicant has not rebutted the presumption that the Judge considered all of the record evidence. Neither has he demonstrated that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 09-06691 at 3-4 (App. Bd. May 16, 2011). Applicant cites other cases, both by the Appeal Board and by the Hearing Office which, he argues, support his claim that the Judge erred. We give these cases due consideration. Hearing Office decisions are binding neither on other Hearing Office Judges nor on the Appeal Board. *See, e.g.*, ISCR Case No. 10-02660 at 2 (App. Bd. Jun. 6, 2011). In any event, the cases which Applicant cites contain significant factual differences from his own. These cases do not demonstrate error by the Judge.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found

[1]There is some conflict in the evidence concerning the dates of Applicant's uses of marijuana. However, the record contains substantial evidence that Applicant used marijuana on three occasions, in late 2007 and in late 2008.

and the choice made,'" both as to the mitigating conditions and the whole-person factors.[2] *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's adverse 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 Judge's adverse security clearance decision is AFFIRMED.

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin
Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

[2]In her reply brief, Department Counsel cites to some inconsistent statements by Applicant. For example, he did not mention his two uses of marijuana with his sister when interviewed by a security clearance investigator. Applicant told the investigator that the incident with his brother had been a one-time event and that "there have been no further occurrences." Government Exhibit 3 at 3. Subject signed a sworn statement to the effect that the interview summary was accurate and that he adopted it as his own. He also made inconsistent statements as to when in 2008 the uses of marijuana had occurred.