

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant failed to mitigate security concerns arising from his drug use and from his false statements during a security clearance interview. A Judge is presumed to have considered all of the evidence in the record, and Applicant failed to rebut that presumption. Adverse decision affirmed.

CASENO: 07-04182.a1

DATE: 04/01/2010

DATE: April 1, 2010

In Re:)	
)	
-----)	ISCR Case No. 07-04182
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Michael F. Fasanaro, Jr., Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 8, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On December 23, 2009, after the hearing, Administrative Judge LeRoy F. Foreman 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 failed to consider record evidence favorable to Applicant and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.¹ Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a welder employed by a federal contractor. He has held a security clearance since 2004.

Applicant was interviewed by security investigators in November 2006 and December 2007. During the interviews, he admitted testing positive for marijuana use in a random urinalysis conducted in March 2006. However, in the December interview, he attributed the positive result to passive inhalation of second-hand marijuana smoke. In a subsequent interview, and during the hearing, Applicant admitted that he had knowingly smoked marijuana prior to the urinalysis. He admitted that he did not correct the interview summary when he had the opportunity.

“Applicant was nervous and sometimes argumentative during the hearing . . . His tone and demeanor reflected dislike for being questioned. He testified he found the whole process embarrassing.” Decision at 4.

Applicant enjoys an excellent reputation for his work ethic, skill, responsibility, and dependability. His performance evaluations have been high, his most recent an overall rating of 5 points in all areas addressed, the highest rating possible.

Applicant contends on appeal that the Judge, in performing his whole-person evaluation, gave no indication of having considered the views of Applicant's employers. A Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). As stated above, the Judge made findings concerning the esteem Applicant enjoys for his work performance and related qualities. The Judge also mentioned this high regard in the whole-person analysis of the decision. However, the Judge plausibly explained why these matters were not enough to mitigate a security concern arising from Applicant's false statement regarding his marijuana use. “[Applicant's] reaction to repeated questioning raises doubt about his reliability and good judgment. Given the demanding and sensitive nature of his work, he can expect to be questioned in the future about his work and matters affecting national security. His reaction to repeated questioning about his marijuana use raises doubt about his willingness to provide full, frank, and truthful answers.” Decision at 9.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *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).

¹The Judge's favorable findings under Guideline H are not at issue in this appeal.

Order

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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