KEYWORD: Guideline J; Guideline E

DIGEST: Applicant was convicted of offenses arising from his manufacturing of illegal drugs and explosive devices. Applicant failed to demonstrate that the Judge mis-weighed the evidence or that he failed to consider the record evidence as a whole. Adverse decision affirmed.

CASENO: 08-08380.a1

DATE: 06/04/2009

DATE: June 4, 2009

In Re:	)	
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Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 21, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision–security concerns raised under Guideline J (Criminal Activity) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 25, 2009, after the hearing, 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.

Applicant raised the following issue on appeal: whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is an employee of a defense contractor. He attended college but has not yet earned a degree. In 2004 he was arrested and charged with numerous offenses involving illegal drugs and explosive devices. He pled guilty to one count of "controlled dangerous substance (CDS), manufacture and distribute;" and one count of "destructive device, manufacture, possession, and distribution." Decision at 2. He was sentenced to 20 years confinement and 5 years probation. All but 29 days of the confinement was suspended. His probation runs through July 2010. Once his probation is completed, the state has agreed not to oppose substituting Probation Before Judgement for the charges, which would remove the conviction from his record.

In support of his appeal Applicant has submitted new evidence not contained in the record, which the Board cannot consider. *See* Directive ¶ E3.1.29. ("No new evidence shall be received or considered by the Appeal Board"). *See also* ISCR Case No. 08-06518 at 2 (App. Bd. Mar. 3, 2009). Applicant appears to take issue with the Judge's weighing of the evidence. However, a party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Applicant stated that, at the time of his arrest, he was conducting scientific experiments at his home which involved over-the counter medications often used to produce illegal drugs. He stated that his purpose was to devise a cold medication that could not serve as a basis for the manufacture of illegal drugs. He also stated that he was attempting to develop a transponder to assist in the recovery of amateur-fired rockets as well as an "electromagnetic field resistant blasting cap." Decision at 3. As a consequence he had in his possession materials that could have been used to develop explosives. Applicant testified that he never intended to do anything wrong and that he pled guilty to the offenses in question due to the prohibitive expense of defending himself in a litigated trial. A review of the record demonstrates that the Judge took into account Applicant's testimony and other matters which he presented in his own behalf, including evidence of his good job performance. However, he also noted that, at the close of the record, Applicant had not advised his employer of his criminal convictions, with a consequence that he might be subject to coercion. Moreover, the Judge noted that Applicant admitted, *inter alia*, "that he may actually have manufactured methamphetamine." *Id* at 6-7. The entirety of the record evidence left the Judge with "questions and doubts" as to Applicant's suitability for a security clearance. *Id.* at 9.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 decision that "it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 10. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security'").

Order

The Judge's adverse security clearance decision is AFFIRMED.

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

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

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