

KEYWORD: Guideline E, Guideline H

DIGEST: Applicant repeatedly lied to the government over a period of 16 years. The favorable evidence cited by Applicant is not sufficient to demonstrate error. Adverse decision affirmed.

CASENO: 08-08814.a1

DATE: 09/14/2010

DATE: September 14, 2010

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In Re: )  
----- ) ISCR Case No. 08-08814  
 )  
Applicant for Security Clearance )

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## **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 June 23, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and

Guideline H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 23, 2010, after the hearing, Administrative Judge Wilford H. Ross denied Applicant's request for a security clearance. Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises the following issue on appeal: whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. For the following reasons, the Board affirms the Judge's unfavorable decision.

The Judge made the following findings: Applicant used marijuana from 1969 to 2001 and from 2004 to 2006, with a total usage of 30 to 40 times. Applicant used marijuana while holding a security clearance during various periods from 1980 until 2006. He terminated his employment in 2004. One of the reasons for his leaving was his refusal to participate in his company's drug testing program. Beginning in 1991 and continuing to 2008, Applicant has repeatedly misstated the extent of his illegal drug use in questionnaires provided to the government, and in interviews with authorized investigators. On one occasion, Applicant also falsified his answer to a question concerning leaving a job under unfavorable circumstances.

The Judge concluded that: Applicant repeatedly lied to the Government about the extent of his drug use over a period of 16 years on four questionnaires and in three interviews. Applicant argues that he is telling the truth now, that his drug use was not all that serious, and that he has been otherwise trustworthy. It is obvious that the Applicant is not a reliable or believable reporter of the facts concerning his own life. Applicant also used marijuana while holding a security clearance. None of this conduct is mitigated. Applicant's marijuana uses were the actions of a mature person. If Applicant's job did not require him to have a security clearance, it is likely that he would continue such use into the future. He is commended for finally being honest with the Defense Department about his drug use. However, insufficient time has passed to show that he truly intends to stop marijuana use.

Applicant contends that the matters alleged in the SOR are not typical of his nature. He states that he is hard working, reliable and knowledgeable and the adverse information in the clearance decision does not accurately reflect who he is as an individual. Applicant's arguments do not establish error on the part of the Judge.

As the trier of fact, the Judge has to weigh the evidence as a whole and decide whether the favorable evidence outweighs the unfavorable evidence, or *vice versa*. See, e.g., ISCR Case No. 06-10320 at 2 (App. Bd. Nov. 7, 2007). 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).

In this case, the Judge weighed the mitigating evidence offered by Applicant against the seriousness of the disqualifying conduct and considered the possible application of relevant conditions and

factors. He adequately discussed why the disqualifying conduct established under Guidelines E and H was not mitigated.

The Board does not review a case *de novo*. The favorable evidence cited by Applicant is not sufficient to demonstrate the Judge's decision is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-11172 at 3 (App. Bd. Sep. 4, 2007). 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 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). Therefore, the Judge's ultimate unfavorable security clearance decision is sustainable.

### **Order**

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan

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

Signed: Jeffrey D. Billett

Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

Signed: James E. Moody

James E. Moody  
Administrative Judge  
Member, Appeal Board