

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant denied drug use on his security clearance application and during a subsequent interview. The Judge concluded that these denials were deliberate. Given record evidence as to the extent of Applicant’s drug use, this conclusion is sustainable. Adverse decision affirmed.

CASE NO: 08-11194.a1

DATE: 08/06/2009

DATE: August 6, 2009

In Re:  -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 08-11194
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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 March 6, 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 June 23, 2009, after the hearing,

Administrative Judge Mark Harvey denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

We construe Applicant's brief as raising the following issue on appeal: whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law.<sup>1</sup> Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a 27 year-old systems administrator for a government contractor. He previously held defense-related employment, receiving a security clearance in 2003. Applicant began using marijuana at the age of 16 and continued to do so, on a monthly basis, until October 2008. He used cocaine in 2006 or 2007. On the security clearance application (SCA) which Applicant filled out in March 2008, he was asked if he had engaged in illegal drug use during the previous seven years and whether he had ever engaged in illegal drug use while holding a security clearance. The following August, Applicant was interviewed by an Office of Personnel Management (OPM) official who was conducting his background investigation. Applicant told the investigator that he had never illegally used controlled substances during the previous seven years and that he had never illegally used controlled substances while holding a security clearance. Applicant's answers on the SCA and to the OPM investigator were not true.

In the Analysis portion of the decision, the Judge concluded that Applicant's omissions were deliberate, based upon the totality of the record evidence. *See* ISCR Case No. 07-03307 at 5 (App. Bd. Sep. 26, 2008). Given record evidence as to the extent of Applicant's drug use and the clarity of the questions at issue here, the Judge's conclusion is sustainable.

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 decision that "it is not clearly consistent with national security to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 16. *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.'").

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<sup>1</sup>The Judge's favorable findings under SOR subparagraphs 1(b-c) and 2(b-c) and (e) 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  
Chairman, 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