

KEYWORD: Guideline H

DIGEST: Given Applicant's return to drug use, the Judge's adverse conclusion is sustainable. The effect an adverse decision may have on Applicant is not relevant in evaluating his security eligibility. Adverse decision affirmed.

CASENO: 11-04395.a1

DATE: 10/05/2012

DATE: October 5, 2012

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In Re:)	
)	
-----)	ISCR Case No. 11-04395
)	
)	
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 May 4, 2012, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On July 31, 2012, after the hearing, Administrative Judge Michael H. Leonard 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 mis-weighed the record evidence and whether the Judge’s decision was arbitrary, capricious, or contrary to law.¹ Consistent with the following, we affirm the Judge’s decision.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor. He has a bachelor’s degree and has completed some work toward a master’s.

Applicant has a history of illegal drug use. He has admitted to using marijuana about 500 times during the 2000s, cocaine about ten times in the late 2000s, and psilocybin mushrooms during the late 2000s. He also misused prescription drugs on several occasions in the late 2000s. The majority of Applicant’s drug abuse ended in 2009. However, he purchased marijuana on two occasions in 2012, using the drug four days prior to the hearing. He also was in possession of marijuana at his residence.

In the Analysis portion of the Decision, the Judge stated that, had Applicant’s drug abuse ended in 2009, he might have been able to demonstrate mitigation. However, Applicant’s use and possession of marijuana just prior to the hearing in his case led the Judge to conclude that Applicant’s drug problems were ongoing. He concluded that it is too soon to tell if Applicant’s drug issues are safely in the past.

Applicant contends that he has demonstrated mitigation, stating that he has not smoked marijuana since July 2012. He argues that his abstinence between 2009 and 2012 shows that he possesses self-control. Applicant does not believe that his use in 2012 was a sufficient reason to deny him a clearance and that the evidence, properly weighed, shows that he has put his illegal drug use behind him.

After reviewing the Decision in light of the record as a whole, we conclude that the Judge based his decision on the entirety of Applicant’s security-significant conduct. Given Applicant’s return to drug use following a relatively lengthy period of abstinence, the Judge’s conclusion that

¹Applicant submitted his appeal brief within the time standards set by the Directive. However, he requests the Board grant him an extension of time before performing appellate review. He requests this so as to facilitate his effort to show that his most recent instance of drug use was isolated and that he has given up the use of illegal drugs. The record being closed, and noting the Directive’s prohibition against our consideration of new evidence on appeal (Directive ¶ E3.1.29), we find no reason to treat this case differently from that of any other applicant. Therefore, we deny Applicant’s request.

Applicant had not demonstrated that his problems are behind him is sustainable. Applicant has not demonstrated that the Judge extended too much weight to his 2012 marijuana use or that he otherwise weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 11-03623 at 3 (App. Bd. Jul. 25, 2012).

Applicant states that his continued employment depends upon his retaining a security clearance. However, the effect that an adverse decision may have upon an applicant is not a relevant or material consideration in evaluating his security eligibility. *See, e.g.,* ISCR Case No. 10-06943 at 4 (App. Bd. Feb. 17, 2012). Applicant’s brief cites to conduct that occurred after the close of the record. We cannot consider new evidence on appeal. Decision ¶ E3.1.29.

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 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). *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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge

Member, Appeal Board