

KEYWORD: Guideline H; Guideline E

DIGEST: The effect that an unfavorable decision may have is not relevant or material to a security clearance determination. Adverse decision affirmed.

CASENO: 11-12730.a1

DATE: 09/04/2013

DATE: September 4, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-12730
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On January 22, 2013, DoD 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 decision on the written record. On June 28, 2013, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Tuider 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 decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant served in the U.S. military from 2004 until 2008, when he was discharged. In January 2009 he entered the Reserves. In July 2010 he failed a urinalysis, testing positive for marijuana. Applicant held a security clearance at the time of the urinalysis. He does not dispute the validity of the test. However, he attributes his positive result to his having attended a party prior to the urinalysis. He stated that it was possible that he had smoked marijuana at the party but, having consumed alcohol, had no recollection of the event.

He stated that he is living in a spouse-like relationship. His partner had used marijuana during the 2010 vacation but the partner has neither used nor possessed drugs since living with Applicant. Applicant enjoys a good reputation for the quality of his work performance, his integrity, and devotion to quality.

The Judge's Analysis

The Judge concluded that Applicant's conduct raised concerns under both Guidelines alleged in the SOR. He cleared Applicant under Guideline E, noting that Applicant had admitted his urinalysis results to his employer. The Judge concluded that it was unlikely that Applicant could be subject to coercion under the circumstances and that the concerns arising from his urinalysis were adequately addressed under Guideline H. Regarding that Guideline, the Judge found that Applicant had not demonstrated mitigation. The Judge stated that Applicant's explanation for the positive result was not credible, undercutting his case for mitigation.

Discussion

Applicant cites to evidence that he had passed a subsequent urinalysis, that several years had elapsed since the incident, and that he was a good worker. This was evidence the Judge was required to consider, along with all the other evidence in the record. However, Applicant has not rebutted the presumption that the Judge considered all of the evidence. *See, e.g.*, ISCR Case No. 10-04413 at 2 (App. Bd. Feb. 16, 2012).

Applicant contends that the processing of his case took too long. We have no jurisdiction to rule on this matter. *See, e.g.*, ISCR Case No. 11-08063 at 3 (App. Bd. Jul. 19, 2013). Applicant states that his loss of clearance has resulted in his having to resign his position, disrupting his life

and the lives of others. The effect that an unfavorable decision may have on an applicant is not relevant or material to a security clearance determination. *See, e.g.*, ISCR Case No. 10-11083 at 2 (App. Bd. Dec. 17, 2012).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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 Decision is **AFFIRMED**.

Signed: Jean E. Smallin
Jean E. Smallin
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