

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant has demonstrated error. The appropriate resolution is to return the case for the Judge remedy the error. Adverse decision remanded.

CASENO: 14-00509.a1

DATE: 01/13/2015

DATE: January 13, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-00509
)	
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 March 17, 2014, 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 September 30, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Shari Dam 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's findings of fact contained errors and whether the Judge's adverse 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 remand the case to the Judge.

The Judge's Findings of Fact

Applicant graduated from college in August 2012. He began a position with a Defense contractor in June 2012. In October 2013 he submitted a security clearance application (SCA). Applicant began using marijuana in September 2008, while he was in college. He continued using marijuana until April 2013, while he was working for a Defense contractor. He purchased marijuana from November 2010 until December 2011. He stated that, while in college, he used marijuana infrequently and for recreational purposes. He claims that he has not used marijuana for over a year. In his response to the File of Relevant Material, Applicant stated that he has continued to abstain from using marijuana and would agree to an automatic revocation of his clearance should he abuse illegal drugs in the future.

The Judge's Analysis

The Judge concluded that Applicant's drug use raised security concerns. In resolving the Guideline H concerns adversely to Applicant, she stated that he had used marijuana "for ten months (June 2012-April 2013) while employed as a Defense contractor." Decision at 5. She said that it is unclear whether his motivation to stop using was his completion of his SCA. She also noted that Applicant has not received substance abuse treatment, and the record contains no evidence regarding whether Applicant continues to frequent places where he used marijuana. In her whole-person analysis, the Judge stated that Applicant had used marijuana on multiple occasions between 2008 and 2013. "That period included six months while he was working for a [D]efense contractor." *Id.* at 6. She stated that his favorable evidence was not enough to outweigh evidence that he used marijuana for five years, purchased it for a year, continued using it after being employed by a Defense contractor, and did not stop using it until six months before completing his SCA. Applicant's drug use was also alleged under Guideline E, which the Judge resolved in his favor.

Discussion

The standard applicable in security clearance decisions "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). "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2

¶ 2(b). In deciding whether the Judge's rulings or conclusions are erroneous, the Board will review the Judge's decision to determine whether: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006). We examine a Judge's findings to see if they are supported by "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1.

Applicant contends that the Judge failed properly to examine the record evidence. Specifically, he alleges that she erred in finding that he had begun working for a Defense contractor in June 2012. He stated that he did not begin working for his employer until June 2013. We find this argument persuasive.

In this case, the only evidence of Applicant's start date for his current job is his SCA. Section 13A of this document states that he has worked for his employer from June 2013 to the present. Item 4 at 12. His start date is addressed nowhere else in the record.¹ The Judge's findings that Applicant had begun working in June 2012 and, consequently, that he used marijuana for several months while employed by a Defense contractor, are not supported by record evidence. Due to the emphasis that the Judge placed on these findings, we are not able to say that the errors are harmless.

Accordingly, we conclude that the best resolution is to remand the case to the Judge for a new decision. The other issues raised by Applicant are not ripe for consideration at this time.

Order

The Decision is **REMANDED**.

Signed: Michael Ra'anan

Michael Ra'anan
Administrative Judge
Chairperson, Appeal Board

¹Record evidence reflects that Applicant was not employed on or about June 2012. The SCA states that in June 2012 Applicant was attending college. Item 4 at 15. *See also* Item 5, Personal Subject Interview, at 1-2: [Applicant] "was a full-time student at [college] from 09/2010 through 06/2011 and 08/2011 through 09/2012 and was not employed."

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

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