

KEYWORD: Guideline H

DIGEST: The Judge concluded that Applicant’s favorable evidence was not sufficient to overcome security concerns arising out of Applicant’s use of marijuana while in his late 30's and at the time he held a security clearance. The Judge’s conclusions are supported by the record. Adverse decision affirmed.

CASENO: 14-01551.a1

DATE: 12/15/2014

DATE: December 15, 2014

In Re:)	
)	
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)	ISCR Case No. 14-01551
)	
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 June 5, 2014, DoD 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 September 8, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

A high school graduate, Applicant has worked for a Government contractor since 2006 and has held a security clearance since 2007.

In 2013, Applicant attended a party at the apartment of a friend, who occasionally used marijuana. Applicant drank eight to ten beers at the party. Someone passed a marijuana cigarette to Applicant, and he took a puff, because "it was there." Decision at 2. Applicant was immediately remorseful for his actions. When he told his wife what he had done, she became angry.

When he returned to work, his supervisor told him that he had been selected to take a random urinalysis. He submitted the required sample, and a few days later his supervisor told him that it had tested positive for marijuana. Applicant's employer directed him to attend a substance-abuse class and suspended his authorization to operate a Government vehicle. Applicant completed the class, which included both group sessions and one-on-one counseling. After this, his Government vehicle driving privileges were restored.

Applicant acknowledged that the use of marijuana while holding a security clearance was prohibited. At the hearing, he testified that he informed his supervisor of his use before submitting his urine sample. This was not consistent with his statement to the clearance investigator that he had so informed his supervisor after having been apprised of the results of the urinalysis. Applicant acknowledged that he did not inform his supervisor immediately upon returning to work, because he was concerned about what his employer would do.

Applicant claims that this is the only time he has used marijuana in his entire life. He continues to associate with the friend who held the party. Applicant does not intend to use drugs in the future. He has submitted to other drug tests and the results were negative.

Applicant is considered to be both dependable and qualified at his job, excelling at problem solving. He is willing to work extra hours to ensure mission accomplishment.

The Judge's Analysis

The Judge stated that Applicant's use of marijuana on the day in question was in violation of the trust placed in him by virtue of his clearance. She noted evidence that he did not immediately report his conduct upon returning to work following the drug use and that he continues to associate with the friend who held the party and who uses marijuana. In the whole-person analysis, the Judge again cited to evidence of Applicant's dilatory reporting of his misconduct. She also noted his promise not to use drugs in the future. The Judge stated that Applicant was "beyond the age of youthful indiscretion" when he used marijuana as "an adult, a father, and a trusted employee." *Id.* at 6. She concluded that Applicant had failed to mitigate the security concerns arising from his use of marijuana.

Discussion

Applicant cites to his favorable evidence, such as his good work record, his successful completion of substance abuse counseling, and his advice to his son and to others about the dangers of drug use. Applicant's argument is not sufficient to rebut the presumption that the Judge considered all of the evidence. Neither is it sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00251 at 4 (App. Bd. Oct. 10, 2014).

In arguing his appeal Applicant asserts matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. 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: Michael Ra'anan
Michael 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