

KEYWORD: Guideline H; Guideline E

DIGEST: Para 6.4 of the Directive permits temporary suspension of a clearance under certain circumstances. However, clearance eligibility in DOHA proceedings is governed by the Guidelines and procedures set forth in Enclosures 2 and 3 of the Directive. Adverse decision affirmed.

CASE NO: 14-05238.a1

DATE: 01/13/2016

DATE: January 13, 2016

In Re:)	
)	
-----)	ISCR Case No. 14-05238
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Edward O. Lear, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 13, 2015, 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). Department Counsel requested a hearing. On October 14, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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

The Judge made the following findings pertinent to the issues raised on appeal: Applicant first used marijuana while in the seventh grade. He used it occasionally on weekends. He stated at the hearing that he had used marijuana 20 to 30 times in his life. He claimed that he had not used marijuana for long periods of time, including 1980 to 1985 and 2001 to 2006. He did not do so again until 2012. In 2005, Applicant completed a public trust questionnaire, in which he denied having used any controlled substance during the previous year. In 2009, he was asked a similar question on another such questionnaire, again answering in the negative. In his 2012 security clearance application (SCA), Applicant disclosed that his first use of marijuana had been in 1977. He stated that he smoked it only on weekends, about twice a month. In a subsequent clearance interview, Applicant stated that he had used marijuana from 1977 to 2012 on weekends, twice monthly. In addition to his marijuana use, Applicant was arrested for DUI in 2007.

The Judge's Analysis

The Judge concluded that Applicant had not demonstrated an appropriate period of abstinence from marijuana use. She stated that, based on his past conduct, she was not satisfied that the Guideline H concerns are behind him. Regarding the Guideline E allegations of falsification described above, the Judge stated that Applicant's testimony about limited marijuana use is not consistent with the statements in his SCA or that he made during the clearance interview. She stated that his answers to the 2005 and 2009 application questions had been dishonest, as had his hearing testimony. She also stated that, although not alleged, he had not fully disclosed alcohol-related convictions in his 2012 SCA. Although Applicant had not used marijuana since 2012, the Judge found that he had used marijuana while a mature adult and while knowing that such use was illegal. She entered adverse findings under both Guidelines.

Discussion

Applicant challenges the Judge's conclusion that his presentation lacked credibility. We give deference to a Judge's credibility determination. Directive ¶ E3.1.32.1. The record supports the Judge's finding that Applicant made inconsistent statements about the extent of his marijuana use. Inconsistent statements can impair a witness's or an applicant's credibility. *See, e.g.*, ISCR Case No. 14-01056 at 3 (App. Bd. Aug. 17, 2015).

Applicant contends that the evidence does not support a conclusion that he poses an imminent threat to national security, citing to Directive ¶ 6.4. However, that paragraph's temporary suspension process was not applied in this case by DOHA. DOHA proceedings to adjudicate an applicant's final clearance eligibility are conducted under the Guidelines and procedures set forth in Enclosures 2 and 3. *See, e.g.*, ISCR Case No. 93-0332 at 3 (App. Bd. Sep. 15, 1994) for the proposition that ¶ 6.4 is limited in scope and that as a general matter the Government does not have

to prove a “‘clear and present danger’ to national security” before it can deny an applicant a clearance.

Applicant challenges the Judge’s application of the mitigating conditions and whole-person factors. However, Applicant’s use of marijuana from 1977 to 2012, his false statements on the public trust questionnaires, and the Judge’s credibility determination support her adverse decision. The use of an illegal drug can raise questions about an applicant’s ability or willingness to comply with laws, rules, and regulations. Directive, Enclosure 2 ¶ 24. Refusal to provide full, frank, and truthful answers to lawful questions of investigators and other officials in connection with a security clearance or trustworthiness investigation “will normally result in an unfavorable clearance action[.]” Decision, Enclosure 2 ¶ 15.

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