

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 22, 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). Applicant requested a hearing. On September 13, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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 failed to consider all of the evidence in the record and whether the Judge’s adverse decision was arbitrary, capricious, or contrary to law. The Judge’s favorable findings under Guideline H are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact

Applicant enlisted in the military, during which time he completed a tour of duty in a combat zone. In 2004, while in the military, Applicant submitted to a random drug test, which yielded a positive result for cocaine. Applicant held a clearance at the time of his cocaine use. He was discharged from the military with a General discharge. He used cocaine about three times after his discharge, the last time being in 2008. Applicant experimented with marijuana while in high school and used it once or twice after leaving the military. His last use of marijuana was in 2008, when he failed a pre-employment drug screening. Applicant attributes his use of cocaine to the stress of combat. While deployed, he was frequently subjected to enemy fire. In addition, he had difficulty adjusting to civilian life, experiencing nightmares and anxiety. He underwent counseling by his pastor, who was also a veteran.

In 2008, Applicant completed an application for a public trust position. He answered “no” to a question regarding any drug use during the previous year. In 2011, he completed an application for a security clearance (SCA). He disclosed one instance of marijuana use but did not disclose the other such episodes or his use of cocaine. During his 2012 clearance interview, Applicant told the investigator that he had been discharged from the military because MPs had detected alcohol on his breath as he was driving on post.

Applicant met with a psychologist in November 2015. This person testified at the hearing, providing his opinion that Applicant’s false statements were the result of post-traumatic stress disorder (PTSD). Specifically, he stated that Applicant had been in denial about his drug use, which was a “self-protect[ion] mechanism.” Decision at 3. He testified that Applicant revised history in order to eliminate trauma.¹ At the hearing, Applicant stated that he had answered the clearance investigator as he did because of stress caused by issues related to his breakup with his fiancée. He

¹ “[I]t’s a self-protect mechanism that some people are able to use and the mind simply revises history to eliminate traumas. So, you just don’t think about stuff that’s traumatic. You just don’t. You overlook it. It’s not there for you.” Tr. at 18.

stated that he had only disclosed one instance of marijuana use on his SCA because it was the one that resulted from a failed drug test. He also stated that, when he had completed his application for a position of trust, he did not know that the use of illegal drugs was inconsistent with policy.

The Judge's Analysis

The Judge cleared Applicant of allegations relating to his illegal drug use. However, he entered adverse findings regarding his various false answers. He stated that Applicant had failed to demonstrate a nexus between his PTSD and his omissions and that Applicant's omissions were selective, insofar as he disclosed the one instance of marijuana use that would most likely be discovered. He also found that Applicant's claim not to know that illegal drug use was inconsistent with holding a position of trust was not credible.

Discussion

Applicant contends that the Judge did not consider his evidence about the effect of PTSD on his omissions. He claims that he had indeed established a nexus between that diagnosis and his security-significant conduct. Applicant's argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record, nor is it enough to show that the Judge misweighed the evidence. *See, e.g.*, ISCR Case No. 14-05795 at 2-3 (App. Bd. Apr. 26, 2016). Applicant cites to a Hearing Office decision. We give this decision due consideration, but Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Failure to provide truthful answers during the security clearance process "will normally result in an unfavorable clearance action[.]" Directive, Enclosure 2 ¶ 15(b). *See, also* ISCR Case No. 14-03069 at 3 (App. Bd. Jul. 20, 2015). 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 Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: James E. Moody_____

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy_____

James F. Duffy
Administrative Judge
Member, Appeal Board