

KEYWORD: Guideline H; Guideline K

DIGEST: Applicant’s history of marijuana use and multiple security violations raised security concerns which he failed to mitigate. Mere disagreement with a Judge’s decision is not sufficient to show that it is erroneous. Adverse decision affirmed.

CASENO: 07-04161.a1

DATE: 10\01\2008

DATE: October 1, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-04161
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro Se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 1, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement), Guideline K (Handling Protected Information) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On June 26, 2008, after the hearing, Administrative Judge Edward W. Loughran denied Applicant’s

request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's conclusion that Applicant had failed to mitigate the security concerns in his case was error.¹

The Judge made the following pertinent findings of fact: Applicant is an engineer for a defense contractor. He has been working with his current employer since 1984. He first smoked marijuana in his teens and continued to use it "sporadically until about 1982." Decision at 2. He was interviewed for a background investigation in 1984 and, admitting his prior drug use, stated that he did not intend to use illegal substances again. He was granted a security clearance in 1985 and has held one since that date.

In about 1987, Applicant began smoking marijuana again. Subsequently, in 2001, he submitted a security clearance application (SCA), in which he said that he had smoked marijuana "less than 168" times between May 1985 and May 2001. Applicant stated in his SCA that his marijuana use was "spiritual or medical" in nature and that he no longer used it. *Id.* at 3. In 2003 he was interviewed as part of his background investigation. He stated to the interviewer that he no longer smoked marijuana and that he would not use it again unless he had a prescription from a physician. *Id.*

In 2004, Applicant resumed smoking marijuana. On April 18, 2006, he submitted another SCA, in which he stated that he had smoked marijuana 84 times since May 2001. Again, he stated that he no longer used marijuana. In 2008, Applicant was examined by a physician specializing in addiction medicine. The doctor diagnosed Applicant's condition as "cannabis abuse without physiological addiction." *Id.* He stated that Applicant likely could succeed in a recovery program.

Applicant works in a secured area. The area has four doors, each protected by two locks. One lock opens by means of a card swipe, the other by a combination. On three occasions in 2005, Applicant failed to secure the combination lock. On the last occasion, he "also failed to issue the last-one-out badge." *Id.* at 4. On none of these occasions was there a compromise of classified information. Following each occasion, Applicant received additional training on security procedures.

The Board has examined Applicant's appeal brief in light of the record evidence. Applicant states in his brief that, while "it is understandable that the Administrative Judge could reach" an adverse decision in this case, the Judge "could have also reached a different decision consistent with the directive." Brief at 2. However, "[a]n applicant's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. ISCR Case No. 07-10454 at 2 (App. Bd. Aug. 12, 2008). In light of the record as a whole, the Judge has drawn a rational connection between the facts found and his ultimate adverse security clearance decision. *See* ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun.

¹The Judge's favorable decision under Guideline E is not at issue in this appeal.

2, 2006). *See also Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge's decision that "it is not clearly consistent with the interest of national security to grant Applicant eligibility for a security clearance" is sustainable on this record. Decision at 11. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

The Judge's adverse security clearance 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