

KEYWORD: Guideline H; Guideline J

DIGEST: Applicant was convicted of drug related offenses, seventeen years apart. The record supports the Judge's unfavorable conclusions. Adverse decision affirmed.

CASENO: 07-04390.a1

DATE: 07/08/2008

DATE: July 8, 2008

In Re:)	
)	
-----)	ISCR Case No. 07-04390
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

D. Michael Lyles, Esq., Department Counsel

FOR APPLICANT

E. Shane Hollaway, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On October 16, 2007, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement) and

Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 26, 2008, after the hearing, Administrative Judge Michael H. Leonard 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 erred in failing to conclude that Applicant had mitigated the security concerns in his case. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant was arrested, charged, and convicted of drug related offenses. The first, in 1988, arose when he was stopped by police at a drunk-driving checkpoint. When Applicant admitted to the police that he had been drinking, they searched his car and found a marijuana cigarette butt in the ashtray. The second, in 2005, occurred when Applicant was transporting county inmates back to jail after they had worked at a local community center on a work release program. Police stopped them and, upon searching Applicant's car, discovered drug use paraphernalia.¹ In the Analysis section of the decision, the Judge reported Applicant's explanation for these incidents. Applicant stated that, in both cases, the contraband was not his, but had been placed in his car by another person.

In analyzing the case, the Judge stated that Applicant's explanations were not credible. "It is simply too difficult to believe that Applicant, a security clearance holder since about 1983, had such bad luck, not once, but twice . . . [I]t is highly improbable that Applicant could be the victim of accidental circumstances on two occasions that resulted in drug-related charges and convictions." Decision at 5.

The Board has considered Applicant's brief, the Judge's decision, and the record. The Judge properly concluded that Applicant's case raised security concerns under Guidelines H and J. Furthermore, the Judge drew a "rational connection between the facts found" and his conclusion that neither the Guidelines H and J mitigating conditions nor the whole-person factors support a decision favorable to Applicant. *See 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 reflects that he considered the entire record, including the evidence favorable to Applicant. However, the presence of some mitigating evidence does not compel a favorable overall security clearance decision. *See, e. g.*, ISCR Case No. 05-03452 at 3 (App. Bd. Jul 3, 2007). The record supports the Judge's conclusion that Applicant has failed to meet

¹Government Exhibit 2 includes a summary of Applicant's Personal Subject Interview, Dec. 11, 2006. According to this document, at the time of the 2005 incident, Applicant was the president of a local community center. He had obtained the assistance of work-release inmates for work at the center. During the trip back to the county jail at the end of the day, one of the inmates requested that Applicant drive by the inmate's house to obtain some headache medicine. Applicant drove to the specified address and the inmate went to the house. Applicant stated that, while parked there, he realized that the house was actually an abandoned one. Neighbors observed the activity and alerted the police, who stopped Applicant's vehicle.

his burden of persuasion that it is “clearly consistent with the interests of the national security” for him to have a clearance. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

Order

The Judge’s adverse security clearance decision is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairman, Appeal Board

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, Appeal Board

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