

KEYWORD: Guideline H

DIGEST: The Judge found that Applicant has used marijuana and or hashish from 1967 to the present The Judge's findings are sustainable. His adverse conclusions follow from his findings. Adverse decision affirmed.

CASENO: 08-04629.a1

DATE: 04/03/2009

DATE: April 3, 2009

In Re:)	
)	
-----)	ISCR Case No. 08-04629
)	
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 May 22, 2008, DOHA 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 decision on the written record. On February 18, 2009, after considering the record, Administrative Judge Joseph Testan denied Applicant’s request for a security clearance. Applicant filed an 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 is a 54 year old employee of a defense contractor. Applicant answered an interrogatory in which he vouched for the content of an investigative report. The report, in turn, says Applicant has smoked marijuana and or hashish from 1967 to the present. The Judge notes that some of Applicant’s drug use has occurred while Applicant was holding a security clearance. Applicant was convicted in a foreign country of marijuana possession. Applicant has given conflicting statements as to whether he has purchased marijuana. Applicant wrote in 2008 that he smokes marijuana every two or three months. Applicant challenges some of the Judges finding of fact on appeal. However, they are based on substantial record evidence, and are therefore, sustainable.

In analyzing the case, the Judge concluded that three disqualifying conditions apply and no mitigating conditions are applicable. Nonetheless, the Judge concluded that Applicant is not an unlawful user of marijuana for purposes of the statutory prohibition regarding the grant of security clearances to unlawful users of a controlled substance. The Judge’s whole person analysis focused on the length of Applicant’s marijuana use and recent statements indicating an intent to continue marijuana use.

On appeal Applicant offers new evidence which the Board may not consider. *See* Directive, ¶ E3.1.29.

The Board has considered Applicant’s brief, the Judge’s decision, and the record. The Judge properly concluded security concerns under Guidelines H are raised in Applicant’s case. Furthermore, the Judge drew a “rational connection between the facts found” and his conclusion that neither the Guideline H 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 consideration of the entire record. The record supports the Judge’s conclusion that Applicant has failed to meet his burden of persuasion that it is “clearly consistent with national security” for him to have a clearance. Decision at 5. *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: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board