

KEYWORD: Guideline J; Guideline H

DIGEST: Applicant’s security concerns arose from his use and possession of methamphetamine. Applicant failed to demonstrate that the Judge erred in his findings of fact or in his application of the mitigating conditions. Adverse decision affirmed.

CASENO: 08-10008.a1

DATE: 12/29/2009

DATE: December 29, 2009

In Re:)	
)	
-----)	ISCR Case No. 08-10008
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Eric Borgstrom, Esq., Department Counsel

FOR APPLICANT

Kathleen E. Voelker, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On March 12, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct) and Guideline H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 25, 2009, after the hearing, Administrative Judge Juan J. Rivera 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 made harmful errors in his findings of fact; whether the Judge erred in his application of the Guidelines H and J mitigating conditions; and whether the Judge erred in his whole person analysis.¹ Finding no harmful error, we affirm.

The Judge made the following pertinent findings of fact: Applicant used methamphetamine ten times between May 2005 and January 2007. His use was knowing and deliberate. In 2007 he mailed \$200 to his brother in another state and asked him to mail Applicant some methamphetamine. His brother mailed him 1.9 grams of methamphetamine. The shipment was discovered by law enforcement personnel. Applicant was charged with a felony. Later that year he pled guilty to an amended charge of illegal possession methamphetamine. He was sentenced to 24 months probation with deferred judgment (in part). Applicant's wife discouraged his use of methamphetamine but he disregarded her advice because he believed he did not have a drug problem, would not get addicted and would not get caught.

On appeal, Applicant alleges errors in the Judge's findings of fact. None of the alleged errors are outcome determinative. Therefore, none of them would be harmful even if the Board agreed with Applicant's assertions.

The Judge's discussion of the mitigating conditions and the whole person concept reflect a reasonable analysis of the sustainable findings of security concern and the Board sees no reason to disturb them.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *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 national interest to grant or continue eligibility for a security clearance for Applicant" is sustainable on this record. Decision at 12. "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).

¹The Judge's finding in Applicant's favor under SOR allegation 1.b is not at issue in this appeal.

Order

The Judge's decision denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

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