

KEYWORD: Guideline H

DIGEST: The Board need not agree with a Judge's decision in order to find it sustainable.
Favorable decision affirmed.

CASENO: 09-05893.a1

DATE: 09/14/2010

DATE: September 14, 2010

In Re:)
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)
 -----) ISCR Case No. 09-05893
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Department Counsel

FOR APPLICANT

Pro se

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On November 5, 2009, 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 June 4, 2010, after considering the record, Administrative Judge Martin H. Mogul granted Applicant's request for a security clearance. Department Counsel appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Department Counsel raised the following issues on appeal: whether the Judge's application of the pertinent mitigating conditions is unsupported by the record evidence and whether the Judge's whole-person analysis is unsupported by the record evidence. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor, seeking a security clearance in connection with his job. Applicant smoked marijuana with varying frequency from around 2003 to at least May 2009. He has not used marijuana since May 2009. His usage was on average once a year, with the greater frequency having occurred at the beginning. He has stated that he intends to abstain from the use of marijuana in the future, irrespective of whether he gets a security clearance. He also stated that his career is important to him and it is a sufficient reason to stop using marijuana.

In deciding the case in Applicant's favor, the Judge stated that Applicant's usage of marijuana was not frequent and that he had abstained from such usage for nearly a year at the time of the decision. He also stated that Applicant's excellent job evaluations lend credence to his intention not to use marijuana in the future.

The record evidence, viewed as a whole, is sufficient to support a favorable whole-person analysis. The Judge's ultimate decision is sustainable. The Board need not agree with a Judge's decision in order to find it sustainable. *See* ISCR Case No. 08-06856 at 2 (App. Bd. Jan. 21, 2010).

Order

The Judge's favorable security clearance decision is **AFFIRMED**.

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

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board