

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant challenges five passages of the Judge’s decision regarding his marijuana use. The challenged language is reasonably consistent with Applicant’s admissions regarding his marijuana use and is a reasonable characterization of the record evidence. Adverse decision affirmed.

CASENO: 10-02475.a1

DATE: 08/15/2011

DATE: August 15, 2011

In Re:	)	
	)	
-----	)	ISCR Case No. 10-02475
	)	
Applicant for Security Clearance	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

J. A. Nagel, Esq., Department Counsel

**FOR APPLICANT**

*Pro se*

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 27, 2010, 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 E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the administrative record. On April 29, 2011, after the considering the record, 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 issue on appeal: whether the Judge erred in his findings of fact. Consistent with the following discussion, we affirm.

Applicant does not challenge the Judge’s adverse findings and conclusions regarding Applicant’s 2008 falsification of a security clearance application. He does challenge five passages from the Judge’s decision regarding his marijuana use.

Three of the five challenged passages are from the synopsis at the beginning of the decision. It is well settled that, absent unusual circumstances, any errors in the synopsis are unlikely to be harmful. *See, e.g.*, ADP Case No. 07-01610 at 2 (App. Bd. Mar. 7, 2008), ISCR Case No. 06-23384 at 2 (App. Bd. Nov 23, 2007) and ISCR Case No. 06-03606 at 2 (App. Bd. May 23, 2007). Furthermore, in this case, the challenged language is reasonably consistent with Applicant’s admissions regarding his marijuana use in his response to the SOR.

One of the remaining challenges relies on new evidence which Applicant submits on appeal. The Board cannot consider new evidence. Directive ¶ E3.1.29.

The final passage that is challenged is a reasonable characterization of the record evidence regarding Applicant’s history of marijuana use. Applicant has failed to demonstrate error by the Judge.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for his 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 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). Therefore, the Judge’s unfavorable security clearance decision is sustainable.

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

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