

KEYWORD: Guideline H

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence. Hearing Office Cases are not binding on other Hearing Office Judges or on the Appeal Board.

CASE NO: 14-00246.a1

DATE: 11/10/2014

DATE: November 10, 2014

In Re:	)	
	)	
-----	)	ISCR Case No. 14-00246
	)	
Applicant for Security Clearance	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 21, 2014, DoD 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 August 26, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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 considered all of the evidence in the record and whether the Judge erred in her application of the mitigating conditions. Consistent with the following, we affirm.

## **The Judge's Findings of Fact**

Applicant has held a security clearance since around 2007. He completed his first security clearance application in that year. He enjoys an excellent reputation for the quality of his work performance, as well as his skills at communication and leadership.

Applicant consumed marijuana while he was in college. He did so on multiple occasions from 2003 until 2005. He bought marijuana during this period of time, and he used hallucinogenic mushrooms from 2003 to 2004. In addition, he used marijuana in 2011, while holding a security clearance. He states that this was a single lapse in judgment. He was a full-time employee of his current employer at the time. He states that he has used no illegal drugs since then and has no intention to do so in the future.

Applicant continues to socialize with people who use marijuana, although he states that, when the drug is offered to him, he declines. He contends that the facts contained in the File of Relevant Material (FORM), although correctly stated, have not been correctly interpreted. He states that he poses no risk to national security and that he has voluntarily disclosed his drug use.

He denies that his circumstances illustrate "drug abuse." He contends that his use of drugs was so long ago as to lack security significance. He has expressed a willingness to sign a statement of intent not to use drugs in the future. He cites to his having held a clearance since 2007. He contends that the evidence shows his commitment to the national interest.

## **The Judge's Analysis**

In concluding that Applicant had failed to mitigate the concerns in his case, the Judge cited to his history of drug use from 2003 until 2011. Although Applicant contended that the latest incident was isolated, the Judge noted that he had failed to describe the particular event that caused his lapse in judgment beyond that the marijuana use occurred at a music festival. She stated that Applicant understands the consequence of the use of illegal drugs. However, insofar as Applicant provided no information about the 2011 incident, the Judge stated that she could not make a firm conclusion that his drug use was behind him.

In the whole-person analysis, the Judge stated that, insofar as Applicant had chosen a decision on the written record, she had been unable to evaluate his demeanor, appearance, or credibility. She reiterated that Applicant had failed to provide evidence clarifying the 2011 incident. In light of the standard governing clearance adjudications, the Judge stated that Applicant had failed to mitigate the concerns in his case.

## **Discussion**

Applicant contends that the Judge did not take into account his excellent work record, his abstinence from drug use since 2011, and his willingness to sign a statement of intent. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-03970

at 3 (App. Bd. Sep. 30, 2014). In this case the Judge made specific findings about the matters that Applicant has cited in his appeal brief. Applicant's arguments are not sufficient to rebut the presumption that the Judge considered all of the evidence or that she mis-weighed the evidence. Applicant has cited to some hearing office cases that, he argues, support his case for a clearance. We have given these cases due consideration as persuasive authority. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *Id.* Applicant's citation to these case is not enough to show that the Judge's decision was arbitrary, capricious, or contrary to law.

We have considered Applicant's arguments about the Judge's application of the mitigating conditions. The Judge's conclusions about the paucity of mitigating evidence were consistent with the record that was before her and support her adverse decision. *See, e.g.*, ISCR Case No. 12-05607 at 3 (App. Bd. Sep. 5, 2014). The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. "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). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

### Order

The 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