KEYWORD: Guideline H

DIGEST: In his answer to the SOR, Applicant stated that, if necessary, he would sign a statement not to use drugs again. However, he provided no such statement. The Judge also made a sustainable finding that, given the lack of evidence, it is impossible to know how many times Applicant used marijuana. Adverse decision affirmed.

CASENO: 14-00914.a1

DATE: 04/08/2015

DATE: April 8, 2015

In Re:	)	
	)	
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	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Peter Noone, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On June 13, 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 January 7, 2015 after considering the record, Defense Office of Hearings and

Appeals (DOHA) Administrative Judge Wilford H. Ross 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's adverse decision was arbitrary, capricious, and contrary to law.

The Judge's Findings of Fact

Applicant is 29 years old and holds a Master's degree. He seeks a clearance in connection with his employment by a Defense contractor. Applicant used marijuana between April 2005 and August 2013. Applicant states that it was recreational use only. In his Answer to the SOR, he stated that, if necessary, he would sign a statement of intent not to use drugs again, with revocation of clearance should there be future such misconduct. However, he provided no such statement. Neither did he provide evidence of his work performance, track record regarding safeguarding protected information, good character, etc.

The Judge's Analysis

The Judge stated that Applicant offered insufficient evidence in mitigation. He noted that Applicant had provided no statement of intent. He also stated that, given the lack of evidence, it is impossible to know how many times Applicant used marijuana. He also stated that there is not evidence of behavioral changes, etc.

Discussion

Applicant cites to a Hearing Office case that, he argues, is similar to his own and that demonstrates that he should have a clearance. We have given this case due consideration as persuasive authority. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 11-14723 at 3 (App. Bd. Oct. 3, 2014). Each case must be decided on its own merits. This case is not sufficient to undermine the Judge's adverse decision. The Judge's findings and conclusions about the lack of evidence are sustainable and support his overall adverse decision. The Applicant bears the burden of persuasion regarding mitigation. Directive ¶ E3.1.15.

Applicant has offered matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Applicant argues that the Judge did not consider all of the evidence in the record, citing to Applicant's Answer to the SOR about his willingness to sign a statement of intent. Applicant has not rebutted the presumption that the Judge considered all of the evidence, nor has he shown that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014).

We do not review a case *de novo*. The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. A paucity of record evidence on matters relevant and material to a clearance decision is something that a Judge can address in evaluating an applicant's case for mitigation. *See, e.g.*, ISCR Case No. 12-00270 at

2-3 (App. Bd. Jan. 17, 2014). "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 Ra'anan
Michael 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