KEYWORD: Guideline H; Guideline E

DIGEST: The Judge made findings about Applicant's evidence. Applicant's argument is not enough to rebut the presumption that the Judge considered all the evidence. Nor is Applicant's alternative interpretation of the evidence enough to show that the Judge weighed the evidence in an arbitrary and capricious manner. Adverse decision affirmed.

CASENO: 14-03450.a1

DATE: 09/11/2015

DATE: September 11, 2015

In Re:	)	
----------	)	ISCR Case No. 14-03450
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

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

FOR APPLICANT
Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 2, 2014, DoD 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 written record. On June 29, 2015, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Tuider 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant works for a Defense contractor. He has been so employed since 2004 and has held a clearance since late 2006. In his security clearance application (SCA), Applicant disclosed that he had taken a puff from a marijuana cigarette while at a friend's house, inhaling the smoke. Applicant stated that he is neither a regular nor a recreational user of marijuana, characterizing this incident as "more of a joke than anything." Decision at 2. At the time of this use, Applicant held a security clearance. There is no evidence that Applicant disclosed this infraction to his employer or that his employer was otherwise aware of it. In his SCA, he stated that he had smoked marijuana "only a handful of times since I first experimented in my teens."[1] *Id*.

Applicant had previously completed an SCA in 2005. In doing so, he disclosed having used marijuana three times between August and September of 1997. In his interview, he stated that he had used marijuana "a handful of times" since approximately 1996. *Id*. at 2-3. In his answer to the SOR, Applicant expressed remorse for his conduct, stating that he had no intention of using drugs in the future and recognizing the implications that such behavior has for his employment. Applicant emphasized the relative infrequency of his drug use, noting that his most recent instance occurred 21 months before his SOR answer. In his response to the FORM, Applicant submitted a signed statement of intent not to use drugs in the future, with automatic revocation of his clearance should he fail to keep this promise. There is no evidence of a current drug assessment.

Applicant's supervisor provided a statement. He advised that Applicant has received high ratings for the quality of his work, having been promoted three times in less than ten years. He stated that Applicant has received 23 awards for outstanding performance and is highly regarded by senior management. The Judge also noted evidence that Applicant had disclosed to his employer a 2005 incident of DUI, at a time when he did not hold a clearance. The Judge stated that he had not considered Applicant's DUI in arriving at his decision in this case.

[1] *See* Item 2, SCA, dated July 30, 2013, at 33.

The Judge's Analysis

In concluding that Applicant had not met mitigated the concerns raised by his marijuana use, the Judge stated that, at the time he did so in 2013, Applicant was aware of the Government's position on using drugs while holding a clearance. He concluded that this incident raised serious questions about Applicant's ability to exercise good judgment. He also stated that the record is unclear about Applicant's willingness to dissociate from those who use drugs.[2] The Judge noted that Applicant's use of marijuana in 2013 occurred after a ten-year abstention, thereby diminishing the mitigating effect of the 21 months that had elapsed since the 2013 use. Though acknowledging Applicant's good work record, he concluded that Applicant's presentation amounted essentially to statements of remorse, with little to corroborate his claims of rehabilitation.

Discussion

Applicant cites to his answer to the SOR and to other evidence in the record, such as his having disclosed his 2013 drug use on his own, the infrequency of his misconduct, his intent to dissociate from those who use drugs, his having disclosed his 2005 DUI, etc. He also argues that he has been honest and cooperative during the processing of his clearance application.

The Judge made findings about the evidence that Applicant had submitted, discussing much of it in the Analysis. Applicant's argument is not enough to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). Applicant has presented an alternative interpretation of the evidence, which is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00173 at 3 (App. Bd. Aug. 8, 2014).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. Drug use after completing an SCA raises a substantial question about an applicant's judgment and reliability. *See, e.g.*, ISCR Case No. 12-1110 at 3-4 (App. Bd. Jul. 12, 2013); ISCR Case No. 07-00852 at 3-4 (App. Bd. May 27, 2008). "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."

[2]In his SOR answer, Applicant stated the following: "Although I have zero intent to use any drug in the future, I realize this means *I should still dissociate with any friends, associates, or contacts* [who do so]." (emphasis added) The Judge appears to have interpreted this as a promise for future action rather than evidence of steps already undertaken.

Order

The Decision is **AFFIRMED**.

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

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

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board