

KEYWORD: Guideline H; Guideline E

DIGEST: A judge is presumed to have considered all the evidence. Adverse decision affirmed.

CASENO: 14-04031.a1

DATE: 08/28/2015

DATE: August 28, 2015

In Re:)	
)	
-----)	ISCR Case No. 14-04031
)	
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 October 16, 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 hearing. On June 18, 2015, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant graduated from a U.S. military academy, afterward serving on active duty until 2008. He is currently employed by a Government contractor. Applicant used marijuana in the early 2000s. He held a security clearance at this time. In 2005, he deliberately failed to disclose his drug use on a security clearance application (SCA). The marijuana use took place at a hotel party. Applicant stated that, although he was aware of DoD policy regarding the use of illegal substances, he tried it out of curiosity. Applicant did not report his drug use to anyone in the chain of command. He no longer associates with anyone from this party who still uses marijuana.

Applicant has since used ecstasy on two occasions, in 2009 and again a year later. At the time, Applicant was married and had a child. He was no longer in the military. Applicant was not aware whether or not his employer had a policy against using illegal drugs, although he did note that his conduct was against the law. Applicant used an illegal drug once again, in 2011. He did so at a party, consuming tetrahydrocannabinol (THC), the active component in marijuana, that had been infused into a drink.

While on active duty, Applicant earned several medals. Command authorities included Applicant's name on a list of persons who had displayed meritorious service. He has completed a number of training courses.

The Judge's Analysis

The Judge noted that Applicant had signed a statement of intent not to use illegal substances again. She also noted his promise that he no longer associates with those who use drugs. However, she stated that she was not persuaded by this mitigating evidence, in light of Applicant's age at the time of his misconduct. The Judge cited to evidence that eight years had elapsed between Applicant's use of marijuana and his subsequent uses of ecstasy. She concluded that, under the circumstances, the three years that have elapsed since his 2011 use of THC did not constitute an appropriate period of abstinence. She also stated that Applicant's omission from his SCA was done for the purpose of concealing actions that were illegal as well as in contravention of military policies. She noted that, in his most recent SCA, Applicant acknowledged his prior omission. However, she concluded that this was neither prompt nor timely.

In the whole-person analysis, she again cited to evidence of the length of time that had elapsed since Applicant's final act of misconduct, as well as to his having disclosed his omission on his recent SCA. She went on to state, however, that at the time of all his security-significant conduct, Applicant was a mature adult who exercised a high degree of responsibility.

Discussion

Applicant cites to his favorable evidence, such as what he characterizes as the experimental nature of his first use of marijuana, the time that has elapsed since his last use of THC, and his voluntary disclosure of his conduct on his most recent SCA. He argues that this evidence, taken together, is sufficient to meet his burden of persuasion as to mitigation. A Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-07393 at 2 (App. Bd. Jun. 26, 2015). In the case before us, the Judge made findings about the things that Applicant has referenced, and she discussed them in the Analysis. Applicant's argument is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. Applicant's argument consists, in essence, of an alternative interpretation of the record. However, after considering the evidence as a whole, we conclude that the Judge's weighing of the evidence was not arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-02950 at 4 (App. Bd. May 14, 2015).

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 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