

KEYWORD: Guideline E; Guideline H

DIGEST: Applicant’s disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASE NO: 14-05328.a1

DATE: 07/07/2016

DATE: July 7, 2016

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 14-05328
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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 March 28, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and Guideline H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On January 12, 2016, after the hearing, Defense Office of Hearings

and Appeals (DOHA) Administrative Judge Mark Harvey 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 is a 29-year-old employee of a defense contractor. She received a bachelor's degree in 2008 and a master's degree in 2015. She enlisted in the military and has been accepted into an officer candidate program.

In a security clearance application submitted in 2009, Applicant disclosed she experimented with marijuana four times in four years (2004-2008). In an enlistment document (DD Form 1966) submitted in 2010, she also disclosed that she experimented with marijuana four times between 2004 and 2008 and indicated her last involvement with that drug was in July 2008. She certified that the information in the DD Form 1966 was true, complete, and correct to the best of her knowledge and belief, and she could be tried in a civilian or military court for knowingly providing false or incorrect information.

In a security clearance application submitted in 2013, Applicant answered "No" to the question that asked whether she used marijuana in the last seven years. During a background interview in 2014, she was confronted with her prior disclosures of marijuana use in her 2009 security clearance application and 2010 DD Form 1966 and stated she had no idea how information about marijuana use was entered on those documents. She stated that she never used marijuana, denied ever being in the presence of illegal drug use, and maintained she did not associate with anyone who used illegal drugs.

At the hearing, Applicant stated that she filled out her 2009 security clearance application in her recruiter's office. She claimed she told the recruiter that she did not use illegal drugs, but others used drugs in her vicinity. The recruiter advised her that it would be best to disclose the drug use. The recruiter checked "Yes" in the appropriate block and filled out the security clearance application for her. She acknowledged that it did not make sense for her recruiter to tell her to admit to marijuana use when she had not used it and attributed the comments about "experimenting" with marijuana to a miscommunication with the recruiter. She claimed she did not review the comment about experimental marijuana use before signing the 2009 security clearance application or 2010 DD Form 1966. She denied that she used marijuana and that she intentionally provided false information on her 2013 security clearance application.

From 2005-2014, Applicant worked in positions in which she was subjected to random urinalysis tests and there was no evidence that she ever tested positive for illegal drug use. She has spent thousands of hours volunteering for charitable organizations.

The Judge's Analysis

The Judge found that Applicant used marijuana four times from 2004-2008, but the security concerns arising from her drug involvement were mitigated. He found that she deliberately falsified her 2013 security clearance application when she did not disclose her marijuana use in the last seven years. He determined that her disclosures about her marijuana use in her 2009 security clearance application and 2010 DD Form 1966 were more credible than her denial of such conduct in her background interview, Answer to the SOR, and testimony at the hearing. In concluding that none of the Guideline E mitigating conditions applied, he noted that she attempted to blame her recruiter for her false statement and did not accept responsibility for that conduct despite being given multiple opportunities to do so.

Discussion

In the appeal brief, Applicant does not challenge any of the Judge's specific findings of fact. Her arguments amount to a disagreement with the Judge's weighing of the evidence. She contends that she did not falsify her 2013 security clearance application because she did not use illegal drugs. She stated that the inaccurate information about using marijuana in her 2009 security clearance application was based on the advice of her recruiter. She claimed the recruiter advised to "indicate prior use" in case anyone should say she used marijuana because she had been in close proximity to people using it on approximately four occasions. She agreed with the recruiter's advice, noting the recruiter completed filling out her security clearance application and she signed it. She concedes she apparently signed the DD Form 1966 but does not recall doing so. She argues that these were isolated incidents that happened over six years ago and are unlikely to recur. After highlighting her community involvement and work history, she claimed there was no logical reason for her to attempt to hide any prior drug use had it occurred because it would have likely had no bearing on her being granted a security clearance.

A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016). Applicant's admissions in her 2009 security clearance application and her 2010 DD Form 1966 were sufficient to establish that she used marijuana between 2004 and 2008. In concluding that she deliberately falsified her 2013 security clearance application by failing to disclose her marijuana use, the Judge examined the record as a whole and adequately addressed the contrary evidence in the record. *See, e.g.*, ISCR 11-14265 at 3 (App. Bd. Aug 28, 2013). After reviewing the record, the Board concludes that the Judge's material findings are based on substantial evidence and are sustainable. Applicant has not identified any harmful error likely to change the outcome of the case. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. "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." The decision is sustainable on this record.

Order

The Decision is **AFFIRMED**.

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

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board