

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant appears to challenge the Judge's Guideline E conclusions, stating that Guideline H specifically addresses drug use. An SOR allegation may be included under more than one Guideline and may be given independent weight under each. In evaluating the Guideline H concerns, the Judge addressed Applicant's use of drugs while holding a clearance, a matter identified as disqualifying under that Guideline. His Guideline E analysis focused upon Applicant's decision to self-medicate with marijuana. Such conduct raises an issue of questionable judgment, placing it within the scope of Guideline E which addresses conduct that involves questionable judgment or unwillingness to abide by rules and regulations. We find no error in the manner in which the Judge evaluated Applicant's conduct under both guidelines. Adverse decision affirmed.

CASENO: 14-06135.a1

DATE: 06/15/2016

DATE: June 15, 2016

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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**  
Arran S. Treadway, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On May 21, 2015, 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 February 16, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola 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’s whole-person analysis was erroneous and 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 served in the U.S. military for over seven years. He was honorably discharged. Applicant was previously granted access to classified information in 1987, 1999, and 2009. In 2010, at age 44, he used cocaine for the first time. Later that year, he used it again at a New Year’s Eve party. He also used marijuana several times in 2010 and, in 2013, used it around 20 times in an effort to control pain, having found a prescription analgesic ineffective. He was arrested for possession of cocaine but claimed that he had not known that the drug was in his possession at the time. A friend had repaid him money, giving him \$20 in a bag that also contained cocaine. An affidavit from the friend corroborated this claim. Applicant contends that he has no intention of using drugs in the future.

**The Judge’s Analysis**

Applicant’s drug involvement was cross-alleged under both Guidelines. The Judge concluded that Applicant had mitigated the concerns under neither. He cited to evidence that Applicant had used cocaine twice and marijuana 24 times while holding a security clearance and had chosen to self-medicate with marijuana rather than try to obtain additional prescribed pain relief. The Judge stated that Applicant, a former military officer, understood the gravity of his conduct. The Judge cited to evidence that Applicant enjoys an excellent reputation among colleagues and friends. However, he concluded that the record left him with doubts about Applicant’s suitability for a clearance.

**Discussion**

Applicant cites to that portion of the Judge’s decision in which he states that any drug use after having been granted a clearance *may* be disqualifying. Decision at 4. Applicant argues that

the Judge's use of the word "may" implies that he has discretion in evaluating the security significance of Applicant's conduct. However, Applicant argues that the Judge proceeded as if he believed that any drug use was disqualifying as a matter of law. He attributes this purported error to the fact that the Judge did not extend favorable application to any of the mitigating conditions. After considering this argument in light of the record and the written decision, we find no reason to disturb the Judge's analysis. The Judge stated that he had considered the possible applicability of the mitigating conditions set forth in the Directive. That he did not explicitly discuss them in detail does not impair his analysis, in light of evidence that Applicant used cocaine and marijuana on multiple occasions despite having applied for clearances several times.<sup>1</sup> His prior experience with security clearance applications should have placed him on notice that drug use is incompatible with the standards expected of those with access to classified information. *See, e.g.*, ISCR Case No. 14-03450 at 3 (App. Bd. Sep. 11, 2015). The decision does not support a conclusion that the Judge believed that he had no choice but to deny Applicant a clearance.

Applicant appears to challenge the Judge's Guideline E conclusions, stating that Guideline H specifically addresses drug use. An SOR allegation may be included under more than one Guideline and may be given independent weight under each. *See, e.g.*, ISCR Case No. 11-10255 at 5 (App. Bd. Jul. 28, 2014). In evaluating the Guideline H concerns, the Judge addressed Applicant's use of drugs while holding a clearance, a matter identified as disqualifying under that Guideline. Directive, Enclosure 2 ¶ 25(g). His Guideline E analysis, on the other hand, focused, among other things, upon Applicant's decision to self-medicate with marijuana. Such conduct raises an issue of questionable judgment, placing it within the explicit scope of Guideline E. *See, e.g.*, Directive, Enclosure 2 ¶ 15, which provides that Guideline E addresses conduct that involves questionable judgment or unwillingness to abide by rules and regulations. We find no error in the manner in which the Judge evaluated Applicant's conduct under both Guidelines.

The Judge's whole-person analysis complies with the requirements of Directive ¶ 6.3, in that the Judge considered the totality of the evidence in reaching his decision. *See, e.g.*, ISCR Case No. 15-00424 at 2-3 (App. Bd. Apr. 20, 2016). Applicant contends that the Judge did not give sufficient weight to his character evidence. This argument 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. 14-06686 at 2 (App. Bd. Apr. 27, 2016).

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."

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<sup>1</sup>A Judge is not required explicitly to discuss all of the analytical factors set forth in the Directive. *See, e.g.*, ISCR Case No. 14-02447 at 5 (App. Bd. Feb. 26, 2015), to the effect that a Judge need not explicitly address all of the whole-person factors. This would apply to disqualifying and mitigating conditions as well.

**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: Catherine M. Engstrom  
Catherine M. Engstrom  
Administrative Judge  
Member, Appeal Board