

KEYWORD: Guideline H

DIGEST: Applicant has not rebutted the presumption that the Judge considered all the evidence. Adverse decision affirmed.

CASENO: 15-00802.a1

DATE: 05/17/2016

DATE: May 17, 2016

In Re:)	
)	
-----)	ISCR Case No. 15-00802
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 7, 2015, 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 hearing. On March 18, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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, who is 57 years old, works in the defense industry. He received a bachelor’s degree in 1982. On a security clearance application submitted in August 2012, he estimated that he used marijuana a couple of times a year from 1975 to March 2012, including while possessing a security clearance. He also stated that, because he completely stopped consuming alcohol after his last driving under the influence of alcohol arrest in 2003, he found occasional and moderate use of marijuana a viable substitute to the much more destructive, yet legal, consumption of alcohol. He stated that he intended to use marijuana in the future.

During a background interview in October 2012, Applicant provided further details of his marijuana involvement, including that he purchased it in the past. He stated that he did not associate with known drug dealers. He intended to maintain his then-current pattern of using marijuana once a month, but would stop using it if required for his security clearance.

At the hearing, Applicant stated that he regretted his use of marijuana and would not try to justify his usage. He submitted a signed statement of intent pledging not to use any illegal drug, including marijuana, while possessing a security clearance and agreeing to automatic revocation of his security clearance if he did so. He last used marijuana in August 2015, shortly before receiving the SOR. He conceded that his change in attitude about marijuana was due to the pending security clearance proceeding, but he thinks he most likely would have discontinued its use in any case.

The Judge found that Applicant was polite, respectful, and answered questions in a direct manner. He also noted that Applicant impressed him as an intelligent and capable individual.

The Judge’s Analysis

The Judge gave Applicant credit for disclosing his marijuana involvement. The Judge concluded that, even though Applicant should have known that his marijuana use was a security concern after his submission of the security clearance application and background interview in 2012, he continued to use marijuana until August 2015. The Judge noted that Applicant expressed an intent to continue using marijuana in his security clearance application and background interview. Although he later stated he had no intention to continue using marijuana, the Judge concluded

Applicant did not present sufficient evidence to demonstrate an intention to not use it in the future. The Judge found that Applicant's use of marijuana over a 40-year period showed an inability or unwillingness to comply with laws, rules, and regulations. The Judge determined that, while Applicant's recent period of abstinence was commendable, he did not meet his burden of proof to show a firm commitment to a drug-free lifestyle.

Discussion

Applicant contends that the Judge did not consider all of the evidence in the record. For example, he cites to his statement of intent to not use illegal drugs while possessing a security clearance and his abstinence from using marijuana since August 2015. The Judge made findings about the evidence that Applicant has cited and addressed it in his Analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 12-05959 at 2 (App. Bd. Apr. 6, 2016). Applicant also argues that the Judge should have found the security concerns mitigated. This argument amounts to a disagreement with the Judge's weighing of the evidence, which is not sufficient 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. 14-04719 at 2 (App. Bd. Apr. 6, 2016). We give due consideration to the Hearing Office case that Applicant has cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). The Judge's consideration of the totality of the evidence in reaching his decision complies with the whole-person analysis requirements. *See* Directive, Enclosure 2 ¶ 2 and ISCR Case No. 14-02806 at 4 (App. Bd. Sep. 9, 2015).

The Judge examined the relevant evidence 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 Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

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

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