



The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 11, 2015, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 26, 2016, 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 served in the military from 2004 through 2009 and in the reserves from 2009 until 2014. He achieved the grade of E-5. Applicant used marijuana with varying frequency from 1999 through mid-2013, which included use while holding a clearance. While in the military, Applicant was charged twice under Article 15, UCMJ, for underage consumption of alcohol. Later, he was fired from a civilian job due to wrongful behavior toward a client. This conduct involved Applicant pushing another person.

In 2013, while in the Reserves, Applicant was selected for a random urinalysis, which came back positive for marijuana. As a consequence, Applicant was administratively discharged from the Reserves, receiving a General Discharge. At the hearing, Applicant claimed, for the first time, that this positive urinalysis “must have” resulted from unknowing ingestion. Decision at 3. Applicant no longer associates with the person who hosted the party. While in the military, he received numerous medals and awards.

### **The Judge’s Analysis**

In holding against Applicant under all three Guidelines, the Judge stated that she found his claim of unknowing ingestion to be lacking credibility. She noted that he had provided no corroboration for this claim. She also stated that Applicant’s marijuana use while in the military was in contravention of official policy forbidding such conduct and that Applicant’s poor judgment was further demonstrated by drug use while holding a clearance. The Judge stated that Applicant had failed to acknowledge his misconduct and that he produced insufficient evidence that such behavior is unlikely to recur. Though citing to Applicant’s military service, she reiterated her conclusion that his claim of unknowing ingestion of marijuana was not believable.

### **Discussion**

Applicant challenges the Judge’s determination that his testimony about unknowing ingestion was lacking in credibility. We are required to give deference to a Judge’s credibility determination. Directive ¶ E3.1.32.1. In this case, the Judge’s conclusion was founded upon a lack

of corroboration and upon the apparent recency of Applicant’s claim. We also note that Applicant’s argument does not deny the accuracy of the drug test at issue here, implicitly conceding the presence of marijuana in his system. All in all, we find no reason to reject the Judge’s credibility determination.

Applicant cites to evidence that he has stopped associating with the person who threw the party where his marijuana ingestion apparently occurred. He also notes that he has held a clearance for many years without incident or concern and that he has had other urinalyses that were negative. The Judge made findings about Applicant’s evidence and discussed it in her analysis. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 14-05795 at 2 (App. Bd. Apr. 26, 2016).

Applicant notes that he was not represented at the hearing by a lawyer. He requests an opportunity to present witnesses and other evidence that he believes would be favorable to him. However, prior to the hearing, Applicant received detailed guidance from the Chief Administrative Judge that explained his rights at the hearing, including his right to counsel. Applicant also received a copy of the Directive along with the SOR. The Directive describes an applicant’s hearing rights as well. Applicant was provided with sufficient notice of his right to counsel. Moreover, we have no authority to remand a case for the purpose of taking in new evidence. *See, e.g.*, ISCR Case No. 14-00976 at 3 (App. Bd. Feb. 5, 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: James E. Moody  
James E. Moody  
Administrative Judge

Member, Appeal Board

Signed: James F. Duffy \_\_\_\_\_

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Administrative Judge  
Member, Appeal Board