KEYWORD: Guideline H

DIGEST: Applicant cites to the following statement by the Judge: "I find no countervailing mitigating condition that is applicable here. Applicant used an illegal substance on 10 to 15 occasions after having been granted a security clearance, the last time in June 2013, less than three years prior to his hearing." He argues that the Judge appeared to have already made up his mind before considering or analyzing the mitigating evidence. We do not read the Judge's analysis as reflecting an inflexible predisposition to rule against Applicant but, rather, that he had considered the mitigating conditions and found none to be applicable based upon the record before him. Applicant's argument is not enough to rebut the presumption that the Judge was unbiased. Adverse decision affirmed.

CASENO: 15-03403.a1

DATE: 12/20/2016

DATE: December 20, 2016

In Re:	)	
	)	
------	)	ISCR Case No. 15-03403
	)	
	)	
Applicant for Security Clearance	)	
	)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT
James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT
Ronald C. Sykstus, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 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 August 25, 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 issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law.

The Judge's Findings of Fact

Applicant is a 32 year-old Ph.D. He has held a clearance since 2004. He used marijuana about 10 to 15 times while holding a clearance and while knowing that such conduct was illegal. He used marijuana about three times a year from late 2007 to mid-2013. He signed a statement of intent to refrain from future use with automatic revocation of his clearance should he continue in this misconduct. Drug tests conducted in 2014 and 2016 were negative.

The Judge's Analysis

The Judge noted Applicant's multiple uses of marijuana while holding a clearance, the most recent occasions having been three years before the hearing. He concluded that none of the mitigating conditions were applicable. Though acknowledging the "unqualified support" that Applicant enjoys from those who know him, the Judge stated that Applicant's conduct left him with doubts that must be resolved in favor of national security.

Discussion

Applicant cites to the following statement by the Judge: "I find no countervailing mitigating condition that is applicable here. Applicant used an illegal substance on 10 to 15 occasions after having been granted a security clearance, the last time in June 2013, less than three years prior to his hearing." Appeal Brief at 5, quoting Decision at 4. He argues that the Judge appeared to have already made up his mind before considering or analyzing the mitigating evidence. We do not read the Judge's analysis as reflecting an inflexible predisposition to rule against Applicant but, rather, that he had considered the mitigating conditions and found none to be applicable based upon the record before him. Applicant's argument is not enough to rebut the presumption that the Judge was unbiased. *See, e.g.*, ISCR Case No. 12-10122 at 3 (App. Bd. Apr. 22, 2016).

Applicant cites to various pieces of record evidence that the Judge did not discuss but that he believes should have been. He also cites to the whole-person factors, arguing that the Judge did not properly weigh the evidence.

Although a Judge is expected, and presumed, to have considered the entire record, he is not required to discuss every piece of evidence, which would be a practical impossibility. *See, e.g.*, ISCR Case No. 14-02158 at 3 (App. Bd. Mar. 21, 2016). Applicant's argument is not enough to rebut the presumption that the Judge considered the entirety of the evidence. We note Applicant's argument that the written decision is less extensive than it could have been. However, given the record that was before him, the Judge captured the essential facts that a reasonable person would expect him to have addressed. *See, e.g.*, ISCR Case No. 14-02548 at 2 (App. Bd. Jul. 19, 2016).

Applicant's argument amounts to an alternative weighing of the evidence, which 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. 14-05359 at 3 (App. Bd. May 4, 2016). Use of an illegal drug, especially while holding a security clearance, raises questions about an applicant's ability or willingness to comply with laws, rules, and regulations. Directive, Enclosure 2 ¶ 24. *See also* ISCR Case No. 14-03450 at 3 (App. Bd. Sep. 11, 2015) concerning the security significance of illegal drug use after having completed a security clearance application.

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

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