

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant argues that she never used marijuana while holding an active security clearance. However, the Judge’s findings about this are consistent with the record that was before him. He acknowledged Applicant’s evidence that her clearance was inactive at the time of her marijuana use. However, he noted that Applicant did not demonstrate that her clearance had actually been terminated. In any event, his findings that she had used marijuana after having been granted a clearance and while working for a Defense contractor are consistent with the evidence. Adverse decision affirmed.

CASE NO: 15-01905.a1

DATE: 04/19/2017

DATE: April 19, 2017

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In Re:)	
)	
-----)	ISCR Case No. 15-01905
)	
Applicant for Security Clearance)	
)	

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 October 17, 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 decision on the written record. On January 31, 2017, after considering the

record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom 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 erred by finding that Applicant had used marijuana while holding a security clearance 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 has been employed by a Defense contractor since 2004. She first submitted a security clearance application (SCA) in 2008 and was granted a clearance the following year. She submitted another one in 2014. Applicant used marijuana on several occasions between 2005 and early 2014 and continues to associate with users of illegal drugs. Applicant's security officer advised that her clearance was "inactive" from late 2012 until mid-2014. Applicant provided no information as to whether she was merely not actively using her clearance or whether it had actually been terminated.

The Judge's Analysis

The Judge cleared Applicant of an allegation of falsification of her SCA. However, he entered adverse findings regarding her marijuana use and her continued association with drug users. Though noting the ambiguity regarding the inactive status of Applicant's clearance, he stated that having used marijuana after having been granted a clearance was a matter of security concern. He also noted that her drug use occurred while she was employed by a Defense contractor, which violated DoD policy and constituted a breach of trust. The Judge stated that Applicant had not expressed an intent to cease contact with drug-using acquaintances and that she had not explained her decision to engage in the more recent instances of marijuana use after an apparent period of abstinence. The Judge also stated that there is insufficient evidence about Applicant's association with drug users—whether they use in her presence, whether she has reduced her contacts with them, etc.—to demonstrate rehabilitation. In the whole-person analysis, the Judge reiterated that Applicant's marijuana use occurred while she was employed by a Defense contractor and after she had been granted access to classified information, irrespective of the purported inactive status of her clearance at the time of her misconduct.

Discussion

Applicant argues that she never used marijuana while holding an active security clearance. However, the Judge's findings about this are consistent with the record that was before him. He acknowledged Applicant's evidence that her clearance was inactive at the time of her marijuana use. However, he noted that Applicant did not demonstrate that her clearance had actually been terminated. In any event, his findings that she had used marijuana after having been granted a clearance and while working for a Defense contractor are consistent with the evidence. *See, e.g.*, ISCR Case No. 14-03450 at 3 (App. Bd. Sep. 11, 2015) (An applicant's use of illegal drugs after having completed a security clearance application raises questions about his or her judgment, reliability, and willingness to comply with laws, rules, and regulations).

Applicant challenges the Judge's findings about her association with those who use drugs. She argues that she does not have consistent contact with them. Applicant admitted this allegation in her Response to the SOR, with an explanation that her contact with drug-using associates is infrequent. This Response, however, does not undermine the Judge's finding. In fact, the Judge cited to Applicant's claim of infrequent contact in the Analysis portion of the Decision. Applicant has cited to no harmful error in the Judge's findings. The Judge's material findings are based upon substantial evidence or constitute reasonable inferences from the evidence. *See, e.g.*, ISCR Case No. 14-04435 at 4 (App. Bd. Mar. 13, 2017).

Applicant cites to Hearing Office cases that she believes support her effort for a favorable result. We give these cases due consideration. However, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 15-01416 at 3 (App. Bd. Nov. Feb. 15, 2017). In any event, the cases that Applicant has cited have significant differences from her own. Applicant cites to various pieces of record evidence, such as her statement in the Response to the SOR that she does not have consistent contact with drug using associates, the length of time that has elapsed since her last use of marijuana, and her contention that she had not used marijuana while holding a clearance. Applicant has not rebutted the presumption that the Judge considered all of the evidence, nor has she shown that the Judge mis-weighed the evidence. *See, e.g.*, ISCR Case No. 13-00502 at 3 (App. Bd. Mar. 7, 2017).

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: William S. Fields
William S. Fields

Administrative Judge
Member, Appeal Board