

KEYWORD: Guideline H

DIGEST: As the Judge stated, there is no “bright line” rule on the question of recency. The extent to which security concerns have become mitigated through the passage of time is a question that must be resolved based on the evidence as a whole. Adverse decision affirmed.

CASENO: 15-03924.a1

DATE: 06/16/2017

DATE: June 16, 2017

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In Re:)	
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)	ISCR Case No. 15-03924
)	
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 November 23, 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 28, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Juan J. Rivera 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 has been employed by Defense contractors since 2003. He has no record of security violations. Applicant holds a master's degree from an esteemed university. Applicant used marijuana about 20 to 25 times from March 2013 to February 2014. He claimed that he had never used marijuana before. He stated that he did so as a sleep aid and to relax. He also stated that he used marijuana for recreational purposes. Applicant obtained the drug by means of a medical marijuana prescription, which was authorized under the law of the state in which he lived at the time. Applicant did not retain a copy of the prescription.

At the time that he used marijuana, Applicant held a security clearance. Applicant was aware at the time that use and possession of marijuana violated Federal law. In addition, Applicant's employer had a drug-free workplace policy, and Applicant was tested for drug use three or four times. Each test yielded negative results. Applicant stopped using marijuana when he moved to a new state to begin his current job. He stated that he does not need marijuana any more and that he does not intend to use it in the future.

Applicant's performance evaluations commend his duty performance. His supervisor states that he often exceeds expectations, learns quickly, and displays initiative.

The Judge's Analysis

The Judge noted record evidence that Applicant had stopped using marijuana in February 2014 and that he has vowed not to use it in the future. However, he concluded that the three years that had elapsed since Applicant's last use were not sufficient to show that his misconduct was behind him. The Judge noted that the prescription that Applicant used to obtain marijuana was not recognized under Federal law. In the whole-person analysis, the Judge cited to evidence that Applicant used marijuana 20 to 25 times while holding a security clearance and in violation of his employer's policies. He concluded that insufficient time had passed to demonstrate rehabilitation.

Discussion

Applicant cites to such things as the three years that have elapsed since his last use of marijuana; the reasons underlying that use, such as an aid to sleep; his candor in admitting his misconduct; and his having moved from the location in which his marijuana use occurred. In addition, he attaches to his brief a signed statement of intent not to use marijuana in the future with automatic revocation of his clearance should he reoffend. This document is new evidence, which we cannot consider. Directive ¶ E3.1.29. However, the Judge noted Applicant's testimony that he did not intend to use marijuana in the future and took that into account in analyzing the case. As the Judge stated, there is no "bright line" rule on the question of recency. Decision at 5. The extent to which security concerns have become mitigated through the passage of time is a question that must be resolved based on the evidence as a whole. *See, e.g.*, ISCR Case No. 14-01847 at 3 (App. Bd. Apr. 9, 2015). An applicant's illegal drug use after having completed a security clearance

application is a matter that significantly impugns the applicant's judgment. *See, e.g.*, ISCR Case No. 14-03450 at 3 (App. Bd. Sep. 11, 2015). Under the facts of this case, evidence that Applicant used marijuana numerous times while holding a clearance and while aware that such conduct violated Federal law raises significant questions about his willingness to abide by rules and regulations. On this record, the Judge's conclusion that this misconduct was not attenuated by time is sustainable. Viewed in its entirety, Applicant's brief constitutes an alternative interpretation of the record 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. 12-09900 at 3 (App. Bd. Dec. 7, 2016).

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 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
James F. Duffy
Administrative Judge
Member, Appeal Board