

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant is arguing for an alternative interpretation 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. Adverse decision affirmed.

CASENO: 15-06277.a1

DATE: 07/19/2017

DATE: July 19, 2017

In Re:	)	
	)	
-----	)	ISCR Case No. 15-06277
	)	
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 April 27, 2016, 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 hearing. On May 9, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone 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 favorable findings under Guideline E are not at issue in this appeal. Consistent with the following, we affirm.

### **The Judge's Findings of Fact**

40 years old, Applicant is married with two children. He holds a doctoral degree and has held his current job since 2013. He worked for a prior Defense contractor between 2005 and 2007 in a position in which he held a clearance. Applicant illegally used marijuana from 1994 to 2012, purchasing it for personal use. He used marijuana after having been granted a clearance in 2006. In his response to the SOR, Applicant stated that he came from a culture in which marijuana use was generally accepted. He also stated, *inter alia*, that he did not believe that marijuana use while holding a security clearance justifies an adverse clearance determination.

Applicant has exhibited technical leadership and has received several professional and academic awards. Each of his character witnesses testified that he is a valuable asset to the employer and that he is honest and reliable.

### **The Judge's Analysis**

The Judge cited to evidence that Applicant's drug use continued well into his adult years. He noted Applicant's statement that he came from a culture that accepted marijuana use. However, the Judge stated that the requirement that clearance holders abstain from such conduct is "not negotiable." Decision at 6. The Judge also cited to a document signed by Applicant abjuring further similar misconduct with automatic revocation of his clearance should he re-offend. However, he concluded that the benefit of this promise is diminished by evidence suggesting that Applicant has forsworn marijuana simply in the interests of his job. Given the entirety of the circumstances, the Judge concluded that Applicant's less than five years' abstention was not enough to mitigate the concerns alleged against him under Guideline H. In the whole-person analysis, the Judge noted Applicant's positive character evidence. However, he concluded that Applicant's lengthy history of illegal drug use, including such conduct after having received a clearance, precluded a favorable determination.

### **Discussion**

Applicant challenges the Judge's conclusion that his abstention was merely in order to preserve his job. He argues that he could obtain employment from any number of sources that would not require him to give up smoking marijuana and that he made a deliberate decision to give up marijuana in order to serve the U.S. Applicant is arguing for an alternative interpretation 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. 15-08842 at 3 (App. Bd. Feb. 14, 2017). The challenged conclusion is consistent with the record that was before the Judge.

Applicant argues that he had demonstrated mitigation due, in part, to his nearly five years of abstention. However, we have not drawn a bright-line rule regarding recency of misconduct. 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). Applicant’s drug use after having completed a clearance application and after having been granted a clearance is a significant factor in evaluating his judgment and reliability. *See, e.g.*, ISCR Case No. 14-03450 at 3 (App. Bd. Sep. 11, 2015). Under the facts of this case, we find no reason to disturb the Judge’s conclusion regarding the recency of Applicant’s security-significant conduct.

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, both as to the mitigating conditions and the whole-person factors. 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, Encl. 2 App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility 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: William S. Fields

William S. Fields  
Administrative Judge  
Member, Appeal Board