

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant has used marijuana off and on from about 1976 to about 2013. The Judge estimated the total number of uses during this period to be between 250 and 300. Applicant first obtained a clearance in about 2005 and held it until 2007. Applicant used marijuana while holding a clearance. Adverse decision affirmed.

CASENO: 15-08688.a1

DATE: 11/6/2017

DATE: November 6, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-08688
)	
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 June 15, 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 July 11, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Wilford H. Ross 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’s findings of fact

contained errors 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 used marijuana off and on from about 1976 to about 2013. The Judge estimated the total number of uses during this period to be between 250 and 300. Applicant first obtained a clearance in about 2005 and held it until 2007. Applicant used marijuana while holding a clearance. When he completed a security clearance application (SCA) in 2005, Applicant denied drug use within the previous seven years. This was a false answer. Applicant testified that his decision to answer incorrectly was an "error in judgment." Decision at 3. Applicant filled out another SCA in 2013. Again he was asked if he had used drugs within the previous seven years and again he answered "no." At the hearing, Applicant admitted that this answer was false, another "error in judgment." *Id.*

In the 2013 SCA Applicant was also asked if he had ever used drugs while holding a security clearance, and he replied "no." This too was a false answer. Applicant subsequently submitted to a clearance interview. The summary of that interview was admitted into the record. Applicant had certified in writing that the summary was accurate. The interviewer asked if Applicant had used marijuana in the last seven years and if he had used it while holding a clearance. Applicant told the interviewer that he had not. The interviewer then stated that, when confronted with evidence of his drug use, Applicant contended that his conduct was private and personal rather than of professional significance. He also stated that he did not disclose it on his SCA because it was illegal and he did not want to admit such conduct. Finally he admitted the misconduct in order "to be open and honest." *Id.* at 4. At the hearing, Applicant acknowledged that he lied to the investigator. Later in the hearing he denied that he had done so. The Judge characterized Applicant's testimony as "disjointed and rather confusing[.]" The Judge found that Applicant had "actively lie[d]" during his clearance interview. *Id.*

Applicant is well-known in his field of expertise and enjoys significant respect. He submitted letters of recommendation which were laudatory, although they did not indicate that the writers actually knew about the SOR allegations.

The Judge's Analysis

The Judge noted the extent of Applicant's marijuana use, stating that Applicant knew at the times of his misconduct that such drug use was not legal. Given the circumstances of the case, the Judge concluded that the three years that had elapsed between Applicant's last use and the SOR was insufficient to show that his security-significant conduct was behind him. The Judge stated that Applicant had, on multiple occasions, been an untrustworthy reporter of his own conduct and that none of the Guideline E mitigating conditions applied. The Judge stated that the record left him with "substantial doubt" as to Applicant's eligibility for a clearance. *Id.* at 8.

Discussion

Applicant challenges the Judge's finding that he deliberately made false statements during

his clearance interview. The Judge’s findings are based upon “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” Directive ¶E3.1.32.1. Applicant cites to his favorable evidence, such as his character references, his work history, etc. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Neither has he shown that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-08711 at 3 (App. Bd. Aug. 24, 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, 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: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board