KEYWORD: Guideline H; Guideline E

DIGEST: Applicant contends the record contains no evidence to support the Judge's statement that Applicant's employer "presumably had a drug-free workplace policy." We note the Drug-Free Workplace Act requires Federal contractors with a contact over $100,000 to establish certain drug-free workplace policies. Since Applicant works for a major defense contractor, we find no error in the Judge's statement that her employer presumably has such policies. Adverse decision affirmed.

CASENO: 16-00578.a1

DATE: 09/26/2017

DATE: September 26, 2017

In Re:	)	
	)	
----------	)	ISCR Case No. 16-00578
	)	
	)	
Applicant for Security Clearance	)	

APPEAL BOARD DECISION

APPEARANCES

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

FOR APPLICANT
Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 30, 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 Substance Misuse) 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 July 6, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Michael H. Leonard 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 and Analysis

Applicant is a 36-year-old employee of a Federal contractor. In 2003, she was granted a security clearance after disclosing in her security clearance application (SCA) that she used marijuana three times in 1999.

In her SCA submitted in 2015, Applicant stated that her security clearance lapsed after ten years because her job did not require it and disclosed that she used marijuana three times during 2014 and 2015. This use of marijuana occurred in social setting with close friends. Her last use occurred about five months before she completed the SCA. In her Answer to the SOR, she stated that she had no desire to use marijuana in the future and that she avoided environments where marijuana is present. She denied having a continuing association with people who use illegal drugs and explained the person with whom she used marijuana no longer uses it.

Applicant used marijuana in 2014-2015 when she was a mature, working adult in a responsible position. Although she did not have a security clearance during that period, she previously held one, was employed in the defense industry, and should have known marijuana was off limits. Her recent use of marijuana raises serious doubts about her reliability, trustworthiness, and good judgment. While she receives credit for self-reporting her marijuana use, she presented little in the way of mitigation. She has not provided sufficient evidence to establish that she has unquestionably ruled out future marijuana use.

Discussion

Applicant contends the record contains no evidence to support the Judge's statement that Applicant's employer "presumably had a drug-free workplace policy." Appeal Brief at 4-5, citing Decision at 5. We note the Drug-Free Workplace Act requires Federal contractors with a contact over $100,000 to establish certain drug-free workplace policies.[1] Since Applicant works for a major defense contractor, we find no error in the Judge's statement that her employer presumably has such policies.

Applicant also argues that the Judge did not weigh and consider all relevant evidence. She cites to such matters as the amount of time that has passed since her last use of marijuana, her disassociation with drug-using individuals, and her honesty throughout the security clearance process. The Judge, however, made findings about those matters. Her arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or

[1] *See,* 41 U.S. Code § 8101-8106. *See also*, the Federal Acquisition Regulation, 48 C.F.R § 52.223-6, Drug -Free Workplace.

contrary to law. *See, e.g.*, ISCR Case No. 14-03747 at 3 (App. Bd. Nov. 13, 2015). We give due consideration to the Hearing Office case that Applicant has cited, but it is neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.* Additionally, the Judge complied with the requirements of the Directive in his whole-persons analysis by considering the totality of the evidence in reaching his decision.

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