

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 is a 59-year-old employee in the defense industry. He began experiencing back pain after a car accident. He received treatment and medication for that condition since at least 2012. He submitted a security clearance application in 2014. Shortly after his security clearance was granted in 2015, he began self-medicating with marijuana to relieve his back pain and to sleep. He used marijuana on a daily basis for about two months. There is no indication that he received a prescription for his marijuana use. He purchased the marijuana from an acquaintance with whom he has had no contact since March 2016.

In June 2015, Applicant injured his hand at work. Afterwards, he took a drug test, which tested positive for marijuana. He was suspended without pay for six weeks. He did not disclose his marijuana use before the drug test. He signed a rehabilitation agreement with his employer and "attended substance abuse counseling under threat of being fired." Decision at 3. An employee assistance program (EAP) counselor determined Applicant abused marijuana but did not have a substance abuse disorder. He was referred to a drug education program. He successfully completed the program and was subject to random drug testing for two years. The EAP counselor believes that Applicant has learned what he needs to refrain from future illicit substance abuse.

The Judge's Analysis

The Appeal Board has declined to adopt a "bright-line" as to recency. Decision at 6. Applicant's marijuana use is fairly recent, was not infrequent, and occurred while holding a security clearance. His daily use of marijuana continued until he tested positive for marijuana use after a workplace accident. He exercised poor judgment. Insufficient evidence was presented to conclude that his drug use occurred under circumstances that are unlikely to recur.

Discussion

Applicant argues that he presented proof of rehabilitation, abstinence, and disassociation with drug-using individuals. He also repeatedly cites to the favorable letter from the EAP counselor. His arguments, however, are neither enough to rebut the presumption that the Judge considered all of the record evidence nor sufficient 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. 15-01717 at 4 (App. Bd. Jul. 3, 2017). We give due consideration to the Hearing Office cases that Applicant has cited, but they are neither binding precedent on the Appeal Board nor sufficient to undermine the Judge's decision. *Id.* Additionally, we find no basis for concluding the Judge erred in his whole-person analysis.

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