

KEYWORD: Guideline H; Guideline E

DIGEST: In his Security Clearance Application (SCA), Applicant stated that he had used marijuana from February 2014 until July 2015. Applicant's arguments are not enough to rebut the presumption that the Judge considered all the record evidence. Adverse decision affirmed.

CASENO: 16-02098.a1

DATE: 03/31/2017

DATE: March 31, 2017

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 16-02098
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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 September 1, 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). Department Counsel requested a hearing. On January 25, 2017, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Mark Harvey 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

Twenty-three years old, Applicant has worked for his current employer, a Defense contractor, since October 2015. Applicant used marijuana 10 to 12 times from August 2014 until July 2015, as alleged in his SOR. In his Security Clearance Application (SCA), he stated that he had used marijuana from February 2014 until July 2015, a longer period than that alleged in the SOR.

When he began his current job, he was aware of his employer’s prohibition against marijuana use. In December 2015, he purchased some marijuana and smoked it with a close friend. Applicant’s use of marijuana in December 2015 was not alleged in the SOR. Applicant was not aware that this was a crime, insofar as marijuana use is lawful in the state in which Applicant’s offense occurred. He and his friend ended their marijuana use in December 2015. Applicant did not want to disclose his marijuana use to his employer through fear of losing his job. He now understands that Federal law prohibits marijuana use, and he has promised not to do it again, with automatic revocation of his clearance should he re-offend.

The Judge stated that he would consider Applicant’s use of marijuana from February 2014 to July 2014 and in December 2015 only for those purposes set forth in ISCR Case No. 03-20327 at 4 (October 26, 2006) (To assess credibility, to evaluate Applicant’s case for mitigation, to evaluate the extent to which Applicant has shown rehabilitation, to conduct a whole-person analysis, etc.)

Applicant enjoys a good reputation for integrity, honesty, and his job performance. His manager recommends him for a clearance.

The Judge’s Analysis

The Judge noted evidence that Applicant has not used marijuana since December 2015. He concluded, however, that more time without any illegal drug use is necessary to show that Applicant’s security-significant conduct is behind him. He stated that each time Applicant used

marijuana it was a violation of Federal law, as well as in contravention of his employer's policy. The Judge noted that Applicant's last use of marijuana occurred after he had completed his SCA, in which he answered "no" to a question asking if he intended to engage in marijuana use in the future.

Discussion

Applicant cites to his testimony that he did not know that a state's legalization of marijuana had no effect on Federal law to the contrary. *See* Tr. at 27. He states that he is not addicted to marijuana and argues that he has demonstrated mitigation. In support of his argument, Applicant cites to a Hearing Office case which he believes is similar to his and in which the applicant received a favorable decision.

Applicant's arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record. Neither are they 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. 15-02040 at 2 (App. Bd. Feb. 16, 2017). We have given due consideration to the case that Applicant has cited. However, it has significant factual differences from Applicant's own. In any event, Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. *See, e.g.*, ISCR Case No. 15-04096 at 3 (App. Bd. Nov. 22, 2016).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. An applicant's use of illegal drugs after having completed a security clearance application raises questions about his or her judgment, reliability, and willingness to comply with laws, rules, and regulations. *See, e.g.*, ISCR Case No. 14-03450 at 3 (App. Bd. Sep. 11, 2015). "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