

KEYWORD: Guideline E

DIGEST: Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record and failed to establish the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Adverse decision affirmed.

CASENO: 14-06283.a1

DATE: 03/20/2018

DATE: March 20, 2018

In Re:	)	
	)	
-----	)	ISCR Case No. 14-06283
	)	
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 8, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under 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 November 30, 2017, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Pamela C. Benson 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. Consistent with the following, we affirm.

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

The Judge made the following pertinent findings of fact:

Applicant submitted a security clearance application (SCA) in 2011. In response to a question about his prior use of drugs, he failed to list his use, purchase, and arrests or citations involving marijuana between 1999 and 2008. He submitted another SCA in 2014. In response to similar questions, he again failed to list his use, purchase, and arrests or citations involving marijuana. During his 2011 clearance interview, he admitted to use and the purchase of marijuana, as well as the arrests or citations involving marijuana. Applicant claimed that the discrepancies in his answers about marijuana involvement were not due to an intent to deceive but due to a faulty memory.

Applicant did not voluntarily provide information about his Driving Under the Influence (DUI) arrest. He only offered information about the DUI when specifically asked by the DoD investigator. He then gave multiple reasons for the omission of the DUI.

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

The Judge stated that Applicant's failure to disclose the relevant adverse information on either his 2011 or 2014 SCAs was concerning and that his contradictory statements undermined his credibility, thereby diminishing the impact of his statements in his Answer about it being a misunderstanding whether he had to disclose the information on his SCAs. The Judge found that Applicant's conflicting answers raised questions about his judgment, reliability, and trustworthiness. In the whole-person analysis, the Judge noted evidence of Applicant's age, 36 years old, his stable employment since 2012, his awareness of the alcohol-related arrest, and three drug related offenses, as well as Applicant's awareness he had used and purchased marijuana from 1999 until early 2008. She went on to conclude that any the favorable evidence Applicant submitted was not sufficient to mitigate the concerns raised by his conduct.

## Discussion

In his brief, Applicant contends that the Judge erred in finding that he had deliberately falsified his SCA. He contends the evidence was faulty and coerced, that his explanations in his Answer were sufficient, and that his omissions were simply due to him being bad with dates. He states he was not certain about the dates regarding the number of times he had used marijuana. To the extent that he is arguing the Judge did not consider record evidence or mis-weighted the evidence, Applicant failed to rebut the presumption that the Judge considered all of the evidence in the record and failed to establish the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 17-00264 at 2 (App. Bd. Feb. 5, 2018). To the extent that he is arguing the Judge erred in her findings of fact, any such error was harmless, *i.e.*, an error not likely to affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013). In analyzing an applicant's *mens rea*, a Judge must consider the applicant's answers in light of the entire record. *See, e.g.*, ISCR Case No. 10-07104 at 3 (App. Bd. Feb. 25, 2013). The Judge's finding about Applicant's intent was consistent with the record that was before her.

Applicant contends that the Judge failed to consider his explanations for his inconsistent statements. He also argues that the Judge failed to consider other favorable evidence, such as his promotion, that he does not “lollylag” anymore, and that being a father to an infant and maintaining steady employment demonstrate his loyalty and trustworthiness. A Judge's task includes resolving conflicts in the evidence. *See, e.g.*, ISCR Case No. 11-00180 at 3 (App. Bd. Jun. 19, 2012). Under the facts of this case, the Judge's conclusion that Applicant's inconsistent statements undermined his credibility is supportable. We are required to give deference to a Judge's credibility determination. Directive ¶ E3.1.32.1.

Applicant contends that the investigation of his case was faulty and that he never should have been issued an SOR. DOHA has no authority to adjudicate the adequacy of a background investigation. *See, e.g.*, ISCR Case No. 02-07191 at 3 (App. Bd. Mar. 25, 2004).

Applicant has not identified any harmful error in the Judge's 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: William S. Fields  
William S. Fields  
Administrative Judge  
Member, Appeal Board

Signed: Charles C. Hale  
Charles C. Hale  
Administrative Judge  
Member, Appeal Board