

KEYWORD: Guideline H

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence. Hearing Office cases are not binding on other Hearing Office Judges or on the Appeal Board. The whole-person analysis included consideration of the entirety of the record. Adverse decision affirmed.

CASE NO: 15-06481.a1

DATE: 01/19/2017

DATE: January 19, 2017

In Re:)	
)	
-----)	ISCR Case No. 15-06481
)	
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 April 27, 2016, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On November 8, 2016, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Darlene D. Lokey Anderson 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

31 years old, Applicant is married with two children. He works for a Defense contractor. He has a history of using marijuana and cocaine. He began using marijuana in high school and continued until April 2014. Convinced that he had become addicted to marijuana, Applicant sought one-on-one counseling, which he successfully completed. He also used cocaine from 2005 until 2010 on about five separate occasions. He used marijuana and cocaine (at least once) while working for his current employer and holding a clearance.

Applicant has been clean and sober since April 2014. He is an active member of his church. Applicant enjoys an excellent reputation for reliability, trustworthiness, and responsibility. Applicant continued counseling after having completed his one-on-one program. His counselor states that he can be trusted with matters of security. Applicant's job appraisals show that he meets requirements in each category.

The Judge's Analysis

The Judge stated that Applicant had used marijuana until two years prior to the Decision. She stated that his use of drugs while holding a clearance was troubling. Applicant knew that his conduct was in contravention of the law, as well as of DoD policy and the policy of his employer. She stated that his drug use was still recent. Although she commended Applicant for his counseling, she concluded that more time is required to mitigate concerns arising from extensive drug use over a ten-year period.

Discussion

Applicant cites to favorable evidence, such as his character references, the opinion of his counselor, his statement of intent not to use drugs in the future, etc. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 15-02854 at 2 (App. Bd. Nov. 22, 2016). 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. 14-06686 at 2 (App. Bd. Apr. 27, 2016). Applicant challenges the Judge's finding that he had only been sober for 24 months. We find this argument persuasive, in that more time than that had elapsed between Applicant's last use of marijuana in April 2014 and the close of the record in late 2016. However, given the extent of Applicant's drug use, his admission that he was addicted to marijuana, and his use of marijuana and cocaine while holding a clearance, the Judge's conclusion that Applicant had not been abstinent long enough to show true rehabilitation is sustainable.

Applicant cites to some Hearing Office cases that he believes support his effort to obtain a favorable decision. We give these cases due consideration as persuasive authority. However,

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 2 (App. Bd. Nov. 22, 2016). Contrary to Applicant’s argument, the Judge’s whole-person analysis complies with the requirements of Directive ¶ 6.3, in that the Judge considered the totality of the evidence in reaching her decision. *See, e.g.*, ISCR Case No. 14-05762 at 3 (App. Bd. Dec. 15, 2016).

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, 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: William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board