KEYWORD: Guideline H

DIGEST: We note that there is a variance between the Judge's finding ("less than ten times") and conclusion ("at least ten times") on this issue (marijuana use). This difference, however, constitutes a harmless error given Applicant's drug use occurred while holding a security clearance. Adverse decision affirmed.

CASENO: 16-02872.a1

DATE: 06/22/2018

DATE: June 22, 2018

In Re: ---------- Applicant for Security Clearance	ISCR Case No. 16-02872

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 October 31, 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).[1] Applicant requested a hearing. On March 30, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Caroline E. Heintzelman 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.

Background

The SOR alleged that Applicant used marijuana with varying frequency from 2007 to at least July 2015 and used it after being granted a security clearance in 2013. In his Answer to the SOR, he admitted both SOR allegations. The Judge found that Applicant knew his illegal drug use was inconsistent with the policies of his company and DoD.

The Judge also found that "Applicant testified that he used marijuana less than ten times in his life, and this use was always in social settings." Decision at 3. He regrets his past illegal drug use and promises not to use it in the future. He submitted a signed letter of intent to abstain. He also submitted reference letters, his recent performance evaluation, and certificates praising his performance.

The Judge concluded Applicant's illegal drug use was not infrequent. "Nor can his use, at least ten times between 2007 and 2015 be considered isolated incidents" Decision at 6. His promise to abstain in the future is undercut by his use of illegal drugs after being granted a security clearance in 2013 and submitting a security clearance application in 2015. His use of illegal drugs reflects negatively on his current security clearance worthiness.

Discussion

Applicant contends the Judge erred by overstating that his marijuana use occurred "'at least' ten times between 2007 and 2015." Appeal Brief at 1. He argues that he testified his marijuana use occurred "less than ten times in his life." *Id*. We note that there is a variance between the Judge's finding ("less than ten times") and conclusion ("at least ten times") on this issue. This difference, however, constitutes a harmless error given Applicant's drug use occurred while holding a security clearance. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013) (An error is harmless if it did not likely affect the outcome of the case).

[1] On June 8, 2017, the adjudicative guidelines were revised. Guideline H is now titled: Drug Involvement and Substance Abuse.

Applicant also contends that the Judge erred in her analysis of mitigating conditions 26(a)[2] and 26(b)[3] and in her analysis of the whole-person concept. In doing so, he argues, for example, that his marijuana use was infrequent and happened nearly three years ago; that he self-reported his drug use; that he submitted a signed statement of intent; and that he submitted character evidence. In referring to his character evidence, he states, "While the documents were acknowledged as being received, there is no indication they were actually read and considered in making the analysis." Appeal Brief at 1. He has failed to establish that the Judge committed any harmful error. His arguments are neither enough to rebut the presumption that the Judge considered all of the evidence in the record 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).

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 Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Charles C. Hale
Charles C. Hale

[2] Directive, Encl. 2, App. A ¶ 26(a) states, "the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment[.]"

[3] Directive, Encl. 2, App. A ¶ 26(b) states, "the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility[.]"

Administrative Judge
Member, Appeal Board

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board