KEYWORD: Guideline E; Guideline H

DIGEST: Applicant contends that the Judge erred in finding "he used marijuana from August 1983 until at least June 2014, throughout a period of 31 years." In this case, the sentences following the challenged finding show that the Judge appropriately considered the nature and scope of Applicant's marijuana use as it is reflected in the record. We resolve this issue adversely to Applicant. Adverse decision affirmed.

CASENO: 16-03429.a1

DATE: 03/15/2018

DATE: March 15, 2018

In Re:	)	
	)	
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	)	
	)	
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 December 8, 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 Substance Abuse) and 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 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

Applicant, who is 48 years old, has been working for his current employer, a defense contractor, since 2010. He was granted a security clearance in 2010. "Applicant admits that he used marijuana from August 1983 until at least June 2014, throughout a period of 31 years. He states that after receiving his security clearance in 2010, he has not purchased or possessed any illegal drug including marijuana. He did use marijuana in 2014 in a private setting with close friends while on vacation from work. He further states that he does not use illegal drugs regularly, and never in a work environment, during his weekly work routine, or amongst strangers. His last use of marijuana occurred in 2014." Decision at 2.

In 2015, Applicant completed a security clearance application (SCA) in which he responded "No" to the question that asked whether he ever illegally used a controlled substance while possessing a security clearance. He stated that he forgot about his marijuana use in 2014 and did not intend to be deceptive.

The Judge's Analysis

Applicant used marijuana from 1983 to at least 2014 and used it while holding a security clearance. "There is no evidence in the record that Applicant has changed his association with friends that use drugs, his environments where the drugs are used, nor has he provided a signed statement of intent to abstain from illegal drug use in the future." Decision at 5.

Applicant states that he misread the SCA question about whether he ever used any illegal drug while possessing a security clearance. He obviously knew his marijuana use in 2014 was against the law and DoD policy when he deliberately falsified his SCA.

Discussion

Applicant contends that the Judge erred in finding "he used marijuana from August 1983 until at least June 2014, throughout a period of 31 years." *Id*. at 2. He argues the Judge's finding misrepresents his behavior and distorts the facts. He points out that he occasionally used marijuana before being granted a security clearance and used it only once since then. When reviewing a Judge's decision, the Board does not review individual sentences in isolation, but rather considers the Judge's decision in its entirety to determine what findings the Judge made and what conclusions the Judge reached. *See, e.g.*, ISCR Case No. 01-22311 at 4 (App. Bd. Apr. 4, 2003). In this case, the sentences following the challenged finding show that the Judge appropriately considered the nature and scope of Applicant's marijuana use as it is reflected in the record. We resolve this issue adversely to Applicant.

Applicant contends the Judge erred in making her finding about the amount of time that he has worked for his current employer. He claims that he has worked for his current employer since 1993, not 2010. Although the Judge erred in this finding, such an error was harmless, *i.e.*, an error that is not likely to affect the outcome of the case. *See, e.g.*, ISCR Case No. 11-15184 at 3 (App. Bd. Jul. 25, 2013).

Applicant takes issue with the Judge's conclusion that the record contains no evidence that he has disassociated from his drug-using friends, that he avoids the environment were drugs are used, or that he provided a signed statement of intent to abstain from illegal drug involvement. He states that he does not recall being asked to submit evidence on those matters. The Judge's conclusion relates to her analysis under mitigating condition 26(b)[1] and is supported by record evidence. The burden was on Applicant to present mitigating evidence (*see*, Directive ¶ E3.1.15), including any existing evidence that supported the favorable application of mitigating condition 26(b).[2] Although *pro se* applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights under the Directive. *See, e.g.*, ISCR Case No. 12-02371 at 3 (App. Bd. Jun. 30, 2014).

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[1] 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[.]

[2] During his personal subject interview, Applicant declined to provide the names of the individuals with whom he smoked marijuana in 2014. *See*, Item 4 of Department Counsel's File of Relevant Material.

Applicant contends that his omission of his marijuana use in 2014 from his SCA was not deliberate. He claims he overlooked that marijuana use, which occurred less than a year before he completed his SCA. He also challenges the Judge's conclusion that he has a long history of marijuana use, pointing out that he used marijuana once in the past seven years. Additionally, he argues that the Judge did not properly apply the whole-person factors. These arguments, however, amount to a disagreement with the Judge's weighing of the evidence, which is not enough to show the Judge's 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; William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

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

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