

KEYWORD: Guideline H

DIGEST: Applicant challenges the manner in which the SOR was written, contending that it misstated the facts about his pre-employment drug test failure. However, the SOR was sufficient to have placed Applicant on notice of the concerns against him. Adverse decision affirmed.

CASENO: 16-03436.a1

DATE: 07/31/2018

DATE: July 31, 2018

In Re:)	
)	
-----)	ISCR Case No. 16-03436
)	
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 July 27, 2017, 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 Misuse) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On March 30, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raises 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 and Analysis

Applicant is 55 years old and works for a Federal contractor. He has been smoking marijuana with varying frequency, including daily, for 40 years. On one occasion, his use caused him to fail a pre-employment drug test. He stated that he did not care about passing the test because he did not want the job. He currently smokes marijuana every day, finding it enjoyable and believing that it confers spiritual benefits. Applicant’s use of marijuana, his “nonchalant attitude about failing a pre-employment drug screening,” and his expressed intent to continue using it renders him a security risk.

Discussion

Applicant’s brief refers to matters from outside the record, that we cannot consider. Directive ¶ E3.1.29. He challenges the manner in which the SOR was written, contending that it misstated the facts about his pre-employment drug failure. However, the SOR was sufficient to have placed Applicant on notice of the concerns against him. *See, e.g.*, ISCR Case No. 15-06623 at 3 (App. Bd. May 26, 2017). He also challenges the Judge’s weighing of the evidence. His arguments are not enough 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. 17-01181 at 4 (App. Bd. Apr. 30, 2018). To the extent that Applicant’s brief is a challenge to the Judge’s findings, we conclude that the Judge’s findings capture the essential facts contained in the record that was before him. *See* Directive ¶ E3.1.32.1 (setting the standard that we employ in evaluating a Judge’s findings). If Applicant believed that the record required additional facts, it was his job to submit them. Directive ¶ E3.1.15. Applicant has cited to no harmful error in the Decision.

The record supports a conclusion that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). The Judge’s adverse 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: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board

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

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