

KEYWORD: Guideline E; Guideline H

DIGEST: Applicant requests another chance to prove his security worthiness, noting he can provide character letters. An applicant is not entitled to receive a new hearing just so he or she can have another opportunity to present his or her case. Adverse decision affirmed.

CASENO: 16-03387.a1

DATE: 04/26/2018

DATE: April 26, 2018

In Re:

Applicant for Security Clearance

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) ISCR Case No. 16-03387
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)

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 March 3, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement)¹ 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 January 31, 2018, after considering the record, Administrative Judge Stephanie C. Hess denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge’s Findings and Conclusions

The SOR alleged that Applicant used marijuana on numerous occasions between 1995 and 2010; used ecstasy and psilocybin mushrooms in about 2002; used cocaine on at least two occasions between 2011 and 2013; and used marijuana and cocaine after being granted a security clearance in 2008. It also alleged he falsified his responses to questions about his use of illegal drugs in security clearance applications (SCAs) in 2000 and 2015 and in a DoD interrogatory in 2015.² In his Answer to the SOR, Applicant admitted each SOR allegation with explanations. The Judge found against him on all of the SOR allegations.

Discussion

In his appeal brief, Applicant notes the Judge concluded that he minimized the security significance of his conduct and apologizes for creating such an impression. He states that he was not attempting to minimize his indiscretions but was trying to fully disclose information about his conduct. He also states, “I clearly cannot take back or erase concerns which have risen from my poor judgement but I also have done and will continue to do all I can to mitigate those concerns.” Appeal Brief at 1. He requests another chance to prove his security worthiness, noting he can provide character letters. An applicant is not entitled to receive a new hearing just so he or she can have another opportunity to present his or her case. *See, e.g.*, ISCR Case No. 14-03347 at 3 (App. Bd. May 27, 2016). Moreover, the Appeal Board has no authority to remand a case for further proceedings unless it identifies an error below that needs correcting. Directive ¶ E3.1.33.2.

In his brief, Applicant also asks a number of questions about what he can do to obtain a security clearance. The Appeal Board has no authority to provide Applicant advice regarding such matters.³ He also asks if he could be granted a conditional security clearance. We note that failure to provide truthful and candid answers during the national security investigative process is a matter

¹ Under the new adjudicative guidelines that became effective on June 8, 2017, the title of Guideline H was changed to “Drug Involvement and Substance Misuse.”

² The Judge erred in stating the SOR alleged that Applicant falsified his SCA in 2000. The SOR actually alleged that that SCA was executed in 2008.

³ The Appeal Board only provides applicants information about the procedural requirements of the appeals process. Also, an applicant who is denied a clearance receives a letter with the adverse decision pointing out the provision of the Directive that govern reapplications.

of special interest (Directive, Encl. 2, App. A ¶ 15), and illegal drug use raises questions about individual reliability, trustworthiness, and ability or willingness to comply with laws, rules, and regulations (*Id.* at 24). A conditional security clearance is not merited in this case.

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: James E. Moody _____

James E. Moody
Administrative Judge
Member, Appeal Board

Signed: James F. Duffy _____

James F. Duffy
Administrative Judge
Member, Appeal Board