

KEYWORD: Guideline H

DIGEST: Applicant challenges some of the Judge’s findings of fact. However, these findings are generally consistent with the evidence in the record. They are based upon substantial evidence or constitute reasonable inferences therefrom. Adverse decision affirmed.

CASENO: 17-00334.a1

DATE: 07/31/2018

DATE: July 31, 2018

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| In Re: |) | |
| ----- |) | ISCR Case No. 17-00334 |
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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 March 21, 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 27, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nicole L. Noel 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 and Analysis

Applicant has worked for a Federal contractor since 2007. She has previously worked for other Federal contractors and was granted access to classified information in 1992, 2000, and 2006. Her most recent security clearance application (SCA) was signed in 2015. Applicant first used marijuana in her late 40s and resumed using it in her 50s and into her 60s. She does not believe that she has a substance abuse problem, having used marijuana only during times of stress. She does not believe that her use of marijuana impairs her ability protect classified information. Her six character letters recommend her for a clearance. She is a highly valued, productive, and effective employee. She has taken steps to deal with stress more effectively and has signed a statement of intent with automatic revocation of her clearance should she reoffend.

The Judge concluded that Applicant’s drug use was recent and that her conduct cannot be considered infrequent. She used marijuana at least twice between 2008 and 2015, with 2014 being the only year in which she did not use the drug at all. She has not demonstrated that she has attained the coping skills that would prevent her from reverting to marijuana use for stress relief. The majority of Applicant’s drug use occurred after she had been granted classified information, which is a breach of her fiduciary duty to the U.S.

Discussion

Applicant challenges some of the Judge’s findings of fact. However, these findings are generally consistent with the evidence in the record. They are based upon substantial evidence or constitute reasonable inferences therefrom. Applicant has cited to no harmful error in the Judge’s findings. *See, e.g.*, ISCR Case No. 17-01181 at 4 (App. Bd. Apr. 30, 2018). The balance of Applicant’s brief is a challenge to the Judge’s weighing of the evidence, which is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.*

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