

KEYWORD: Guideline E

DIGEST: Applicant argues that his 2016 omission was not deliberate. He also contends that the Judge did not properly weigh his evidence in mitigation, which he asserts shows that he made good faith efforts to correct his omissions. He states that his use of marijuana in 2013 was a rare occurrence and that he is not subject to blackmail due to his infractions. The Judge’s finding about the deliberate nature of Applicant’s 2016 omission constitutes a reasonable inference from the evidence. Applicant’s arguments are not enough to show that the Judge mis-weighed the evidence or that she failed to consider all of the evidence in the record. Adverse decision affirmed.

CASENO: 17-00777.a1

DATE: 05/25/2018

DATE: May 25, 2018

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In Re:)	
-----)	ISCR Case No. 17-00777
)	
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 May 11, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 21, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Jennifer I. Goldstein 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 experimented with marijuana between 2005 and 2008, while he was in college. He completed a security clearance application (SCA) in 2009, in which he did not disclose his marijuana use. Applicant was granted a clearance. In December 2013, while holding a clearance, Applicant smoked marijuana. When he completed an SCA in 2016, he again failed to disclose his marijuana use, including his use while holding a clearance. He testified that he did not recall this use when he completed his 2016 SCA. Applicant has not used marijuana since December 2013, and he no longer associates with users of illegal drugs. He is considered reliable and trustworthy. Applicant has received awards for the quality of his duty performance.

The Judge found that Applicant’s efforts to correct his omissions were neither prompt nor done in good faith. She found that they were deliberate efforts to conceal material information from the Government. She stated that false statements during the clearance adjudication process raise serious concerns. She also stated that use of marijuana while holding a clearance raises questions about Applicant’s judgment and reliability that his evidence was not sufficient to mitigate.

Discussion

Applicant argues that his 2016 omission was not deliberate. He also contends that the Judge did not properly weigh his evidence in mitigation, which he asserts shows that he made good faith efforts to correct his omissions. He states that his use of marijuana in 2013 was a rare occurrence and that he is not subject to blackmail due to his infractions. The Judge’s finding about the deliberate nature of Applicant’s 2016 omission constitutes a reasonable inference from the evidence. *See, e.g.*, ISCR Case No. 14-04724 at 3 (App. Bd. Aug. 18, 2017). Applicant’s arguments are not enough to show that the Judge mis-weighed the evidence or that she failed to consider all of the evidence in the record. *See, e.g.*, ISCR Case No. 17-00257 at 3 (App. Bd. Dec. 7, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. Failure to provide truthful answers during the clearance process will normally result in an adverse determination. Directive, Encl. 2, App. A. ¶ 15. 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