

KEYWORD: Guideline B; Guideline E

DIGEST: Applicant contends her answers given to the interviewer and at the hearing were truthful as she understood them. She states that she had not prepared her statement of intent and that she did not recognize that it constituted an admission of drug use. She also stated that she now understands that any attempt to use marijuana, even if unsuccessful, is not permitted. The Judge’s finding that Applicant was deliberately deceptive on her SCA is supported by substantial evidence. Adverse decision affirmed.

CASENO: 17-00582.a1

DATE: 10/25/2018

DATE: October 25, 2018

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 17-00582
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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 6, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline B (Foreign Influence) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 16, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Gina L. Marine 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. The Judge’s favorable findings under Guideline B are not at issue in this appeal. Consistent with the following, we affirm.

The Judge’s Findings of Fact and Analysis

Applicant immigrated to the U.S. in 2009. She was granted access to sensitive information in 2013. The current adjudication is for her first application for a security clearance.

Applicant told the investigator that she tried marijuana one time, in the company of another person. She stated in her counter-intelligence (CI) screening that she did so out of curiosity. However, Applicant did not disclose this drug use in her security clearance application (SCA). She stated that she omitted this conduct because she thought that marijuana use was legal in the jurisdiction where the incident occurred. Later, Applicant signed a statement of intent never to use illegal drugs again. At the hearing, Applicant denied ever having used marijuana. She testified that the CI screening report misrepresented her answers and that she had been nervous during the interview. When asked at the hearing why she had signed a statement of intent never to use drugs again, thereby implying that she had used them in the past, she stated that she was not sure, although she may have associated merely smelling marijuana with its use.

Applicant has served with the U.S. overseas, where her work was highly regarded and where she served at great personal risk to her safety. She served as an instructor at a U.S. military college, where she was praised by her supervisor and by her students.

The Judge found that Applicant’s omission of her drug use was deliberate. She stated that she did not find Applicant’s hearing testimony to be credible. Given this finding and Applicant’s subsequent lack of candor, the Judge concluded that Applicant had not mitigated the concerns arising from her false statement.

Discussion

Applicant contends her answers given to the interviewer and at the hearing were truthful as she understood them. She states that she had not prepared her statement of intent and that she did not recognize that it constituted an admission of drug use. She also stated that she now understands that any attempt to use marijuana, even if unsuccessful, is not permitted. The Judge’s finding that Applicant was deliberately deceptive on her SCA is supported by substantial evidence. *See, e.g.,*

ISCR Case No. 17-02145 at 3 (App. Bd. Sep. 10, 2018). Applicant has not demonstrated that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *Id.* Failure to give truthful answers to lawful questions in connection with a clearance determination will normally result in an adverse decision. Directive ¶ 15.

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: 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