

KEYWORD: Guideline E; Guideline H

DIGEST: Applicant was provided sufficient notice that the burden was on her to submit any information not contained in the FORM that she wanted the Judge to consider. Adverse decision affirmed.

CASENO: 17-02196.a1

DATE: 04/27/2018

DATE: April 27, 2018

In Re:)
)
)
 -----) ISCR Case No. 17-02196
)
)
 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 13, 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) 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 30, 2018, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert Robinson Gales 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 is a 61-year-old employee of a defense contractor. In 2006, she was granted a security clearance. In early 2016, she tested positive for marijuana and cocaine during a random urinalysis test. She offered no explanation for her decision to use those substances. Due to her positive drug test, she was suspended from work for one week, required to attend drug counseling through the company’s Employee Assistance Program (EAP), and required to undergo random urinalysis tests every five or six weeks until early 2018. She did not furnish any documentation regarding the EAP provider, its treatment program, or the professional qualifications of the individuals conducting that program. No prognosis by a qualified medical professional was provided.

In referring to the drug-involvement incident in her security clearance application, Applicant stated that she realized she made a huge mistake and promised it would not happen again. No evidence was presented that she self-reported the incident to her employer before the drug test. She lives in fear that her colleagues or family will become aware of the incident. Her manager considers her reliable, dependable, and to have the highest ethical standards. She has received a number of work awards.

Highlighting the paucity of mitigating evidence, the Judge concluded that Applicant’s alleged conduct continues to cast doubt on her current reliability, trustworthiness, and good judgment. He found against her on three of the four Guideline H allegations and the cross-alleged Guideline E allegation.¹

Discussion

¹ The Judge found in favor of Applicant on an SOR allegation that asserted she attended drug counseling on certain dates.

In her appeal brief, Applicant states she was under the impression that the name and qualifications of her drug counselor were provided during her security clearance investigation. She also thought that her drug counselor provided a description of her limited drug usage and her prognosis. In this regard, Applicant was provided a copy of Department Counsel's File of Relevant Material (FORM), and she was given 30 days from its receipt to make objections and submit additional matters. The cover letter forwarding the FORM specifically advised Applicant that, unless she submitted objections or additional matters, her case would be assigned to a Judge **“for a determination solely upon the enclosed FORM.”**² [Emphasis added.] Applicant was provided sufficient notice that the burden was on her to submit any information not contained in the FORM that she wanted the Judge to consider. *See also*, Directive ¶ E3.1.15. Many of the matters that Applicant addresses in her appeal brief are not contained in the record and constitute new evidence that the Appeal Board cannot consider. Directive ¶ E3.1.29. We also note that, while *pro se* applicants cannot be expected to act like lawyers, they are expected to take timely, reasonable steps to protect their rights under the Directive. *See, e.g.*, ISCR Case No. 12-02371 at 3 (App. Bd. Jun. 30, 2014). Applicant has not established any basis for challenging any of the Judge's material findings or conclusions.

Applicant also argues that she has mitigated the alleged security concerns. In her arguments, for example, she cites to her manager's letter of reference and claims she has a history of being a model citizen. These arguments amount to a disagreement with the Judge's weighing of the evidence. A party's disagreement with the Judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-06440 at 4 (App. Bd. Jan. 8, 2016).

Applicant has not identified any harmful error likely to change the outcome of the case. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. “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.” The decision is sustainable on this record.

² DOHA letter dated August 25, 2017.

Order

The Decision is **AFFIRMED**.

Signed: Michael Y. Ra'anan
Michael Y. 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