KEYWORD: Guideline E; Guideline H

DIGEST: Applicant was granted a security clearance in 2015. In 2016, he experienced symptoms of depression, which he believed were not being adequately treated by his medication and other medical treatments. He decided to use marijuana with his friend. Soon thereafter, he purchased marijuana, took it with him on a business trip, and used it two mornings before business meetings. He also purchased drug paraphernalia on that trip. Adverse decision affirmed.

CASENO: 17-02236.a1

DATE: 07/02/2018

DATE: July 2, 2018

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**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**
James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**
Anthony L Ciuca, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On October 19, 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 Abuse) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On March 26, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom 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**

Applicant is a 26-year-old employee of a defense contractor. He was granted a security clearance in 2015. In 2016, he experienced symptoms of depression, which he believed were not being adequately treated by his medication and other medical treatments. A close friend recommended that he use marijuana to self-medicate. After reviewing scientific studies, he decided to use marijuana with his friend. Soon thereafter, he purchased marijuana, took it with him on a business trip, and used it two mornings before business meetings. He also purchased drug paraphernalia on that trip. Hotel personnel confronted him about his marijuana use. Concerned that hotel personnel would notify his employer about such conduct, he preemptively informed his supervisor. He was immediately sent home, indefinitely suspended, subjected to random drug tests, and required to attend counseling. He failed three drug tests in a three-month period in mid-2016. He subsequently successfully passed several random drug tests over the next 12 months. He estimated that he used marijuana five times over a two-month period in 2016. When he used marijuana, Applicant knew his conduct was illegal and would negatively impact his security clearance eligibility. He is still in contact with his friend with whom he used marijuana. His supervisor has a high opinion of his work performance.

**The Judge's Analysis**

The circumstances and recency of Applicant's drug use while granted a security clearance cast doubt on his reliability, good judgment, and ability to safeguard classified information. His 18-month abstinence and statement of intent to abstain from future marijuana use do not mitigate the security concerns arising from his repeated marijuana use while holding a security clearance.

**Discussion**

In the appeal brief, Applicant contends that the Judge erred in failing to apply the factors in Enclosure 2, Appendix A ¶ 2(f) of the Directive, *i.e.*, factors that an adjudicator should consider when security concerns become known about an individual who is eligible to access classified information. We do not find this argument persuasive. First, we note that the Judge made findings

about most of the facts that Applicant has identified as supporting application of those factors. Second, as we have previously stated, a Judge is not required to discuss all of the analytical factors set forth in the Directive. *See, e.g.*, ISCR Case No. 14-06135 at 2, n.1 (App. Bd. June 15, 2016).

Applicant also contends that the Judge erred in concluding that Applicant failed to mitigate the security concerns. In doing so, he notes the Judge failed to mention Applicant's volunteer work and argues that the Judge essentially dismissed his period of abstinence and statement of intent. These arguments essentially amount to a disagreement with the Judge's weighing of the evidence and are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to establish that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 15-06494 at 3 (App. Bd. Oct. 5, 2017).

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

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board