

KEYWORD: Guideline E; Guideline H

DIGEST: Applicant’s citation to the ADR is out of place. The Appeal Board and DOHA Judges decide cases in accordance with the Directive and Adjudicative Guidelines, not the ADR. Indeed, the ADR, itself, notes that it is not U.S. Government policy and may not be cited as authority for denials or revocations. Adverse decision affirmed.

CASENO: 17-02779.a1

DATE: 11/07/2018

DATE: November 7, 2018

In Re: ----- Applicant for Security Clearance)))))))	ISCR Case No. 17-02779
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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 October 11, 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 hearing. On September 4, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Marc E. Curry 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 27-year-old employee of a defense contractor. She graduated from college in 2014 and began working for her employer in 2016. From 2013 to September 2017, she used marijuana with varying frequency. She attributed that conduct to peer pressure and a relationship with a manipulative boyfriend. She vowed on her security clearance application (SCA) to not use it again, but failed to comply with that pledge by using it after submitting her SCA and before her background interview. During the interview, she promised again to not use it in the future. She has not associated with people who are bad influences since October 2017.

Applicant’s marijuana use continued for three years after she graduated from college and after she submitting her SCA in which she promised to stop using it. She has not established a pattern of abstinence. Her history of marijuana use is disqualifying under Guidelines H and E.

Discussion

In the appeal brief, Applicant contends that the Judge erred in concluding that she failed to establish a pattern of abstinence. She argues that she has not used illegal substances for ten months before the hearing and, in support of her arguments, cites to provisions of the *Adjudicative Desk Reference* (ADR).¹ We have never established a “bright line” rule as to the recency of misconduct, such as drug use. The extent to which security concerns have become mitigated through the passage of time is a question that must be resolved based on the evidence as a whole. *See, e.g.*, ISCR Case No. 14-01847 at 3 (App. Bd. Apr. 9, 2015). Applicant’s 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. 15-01717 at 4 (App. Bd. Jul. 3, 2017). Applicant’s citation to the ADR is out of place. The Appeal Board and DOHA Judges decide cases in accordance with the Directive and

¹ Applicant also argues that she has not used marijuana since the hearing. Such information is not contained in the record and constitutes new evidence that the Appeal Board is prohibited from considering. Directive ¶ E3.1.29.

Adjudicative Guidelines, not the ADR. Indeed, the ADR, itself, notes that it is not U.S. Government policy and may not be cited as authority for denials or revocations. ADR at 2. *See also* ISCR Case No. 11-01888 at 5 (App. Bd. Jun. 1, 2012).

Applicant has failed to establish that the Judge committed any harmful error. 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 F. Duffy
James F. Duffy
Administrative Judge
Member, Appeal Board

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