

KEYWORD: Guideline E; Guideline H

DIGEST: Applicant used marijuana with varying frequency from about 2006 to early 2017 and used it after being granted a position of trust. Adverse decision affirmed.

CASENO: 17-03464.a1

DATE: 08/14/2018

DATE: August 14, 2018

In Re:

Applicant for Public Trust Position

ADP Case No. 17-03464

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 trustworthiness designation. On November 15, 2017, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness 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 May 29, 2018, after considering the record, Administrative Judge Roger C. Wesley denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. The Judge’s favorable finding on a falsification allegation has not been raised as an issue on appeal.

The SOR alleged that Applicant used marijuana with varying frequency from about 2006 to early 2017 and used it after being granted a position of trust. In his response to the SOR, Applicant admitted the two Guideline H allegations. He also stated that he no longer engaged in that behavior, intended to continue to abstain from marijuana use, and acknowledged that further use would be grounds for revocation of his position of trust. The Judge found against Applicant on the Guideline H allegations and against him on a Guideline E allegation that cross-alleged the Guideline H allegations.

Referencing Applicant’s response to the SOR, the Judge noted that Applicant no longer engages in any drug use and fully abstains from such behavior. The Judge also stated that Applicant expressed conflicting intentions about using marijuana in the future. Specifically, the Judge observed that, during a background interview in mid-2017, Applicant stated that he “reserved the possibility of continuing to use marijuana in the future.” Decision at 3, citing Item 5 of the File of Relevant Material (FORM).¹ The Judge concluded that, without more detailed information, Applicant’s conflicting statements about his future intentions could not be reconciled. In his analysis, the Judge stated that “potentially applicable mitigating conditions (MCs) covered in the drug involvement guideline are not available to Applicant under the developed facts of this case.” Decision at 6.

In his appeal brief, Applicant requested reversal of the Judge’s decision because he submitted a signed statement of intent² and attached a copy of his response to the SOR to his brief apparently to prove he submitted a statement of intent. To the extent he is arguing that the Judge did not consider all of the record, we do not find his argument persuasive. There is a rebuttable presumption

¹ In responding to DOHA interrogatories, Applicant indicated the summary of the background interview accurately reflected the information he provided the investigator, but he also added a comment: “With regards to drug use, I do not intent to use cannabis/marijuana in the future.” FORM Item 4.

² Directive, Encl. 2, App. A ¶ 26(b) states, “the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility[.]”

that the Judge has considered all of the evidence in a case unless the record clearly demonstrates otherwise; and the Judge is not required to discuss every piece of record evidence. *See, e.g.*, ISCR Case No. 08-01616 at 2 (App. Bd. Jul. 7, 2009). In his case, Applicant has failed to rebut that presumption. The Judge specifically discussed Applicant’s SOR response in the decision. Additionally, Applicant’s argument is not enough to show that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 16-01251 at 2 (App. Bd. Jun. 7, 2017).

The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on this record. The standard applicable to trustworthiness cases is that is that set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) regarding security clearances: such a determination “. . . may be granted only when ‘clearly consistent with the interests of the national security.’” *See, e.g.*, ADP Case No. 16-01251 at 2. *See also Kaplan v. Conyers*, 733 F.3d 1148 (Fed. Cir. 2013), *cert. denied*.

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