

KEYWORD: Guideline H

DIGEST: Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. Adverse decision affirmed.

CASENO: 18-00166.a1

DATE: 11/29/2018

DATE: November 29, 2018

In Re:	)	
	)	
-----	)	ADP Case No. 18-00166
	)	
Applicant for Public Trust Position	)	
	)	

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

Zachary L. Taylor, Esq.

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On February 7, 2018, 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) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On September 17, 2018, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Robert J. Kilmartin denied Applicant’s request for a trustworthiness designation. 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, who is 55 years old, has worked for a Federal contractor since 2007. In her application for a position of trust, Applicant disclosed that she had consumed marijuana from about July 2016 to about August 2017, while holding a position of trust. She stated that, when she filled out her application for a position of trust, it became obvious to her that illegal drug use was a concern to the Federal Government. In her application she stated that she had no intention of using illegal drugs in the future. However, after she completed this application, she used marijuana again, when her boyfriend encouraged her to try a stronger cigarette than she had before. Applicant testified that she would not use marijuana again and she signed a statement of intent to refrain from such use, with automatic revocation of her trustworthiness designation should she re-offend. Applicant had never used marijuana before the incidents described above, and used it no more than five times.

The Judge concluded that Applicant was not a frequent user of marijuana and he noted her signed statement of intent. However, he stated that she had previously violated a promise to abstain that had been included in her application. He stated that she had not completely disassociated from companions who use illegal drugs and that there has not been enough time since her last offense to show that she is rehabilitated.

### **Discussion**

Applicant cites to various things that, she contends, the Judge failed to consider—for example, her statement of intent, her period of abstinence, and the infrequency of her drug use. She also states that she has been cooperative and candid in disclosing her security-significant conduct and that she has devoted eleven years to serving the national interest. Applicant has not rebutted the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ADP Case No. 15-06452 at 3 (App. Bd. Feb. 14, 2017). Applicant’s disagreement with the Judge’s weighing of the evidence is not enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ADP Case No. 17-00684 at 3 (App. Bd. Aug. 7, 2018). Despite Applicant’s argument to the contrary, we conclude that the Judge satisfied the requirements of Directive ¶ 6.3 in that he based his decision on the totality of the record evidence.

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. Use of illegal drugs after having been placed on notice of the adverse significance of such conduct raises questions about an applicant’s judgment, reliability, and willingness to comply with laws, rules, and regulations. *See, e.g.*, ISCR Case No. 16-03460 at 3 (App. Bd. May 24, 2018). The decision is sustainable on this record. The standard applicable to trustworthiness cases 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. 17-03252 at 3 (App. Bd. Aug. 13, 2018). *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: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

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