

KEYWORD: Guideline H; Guideline F

DIGEST: Applicant used various illegal drugs at least from 2008 until 2012 and falsified a security clearance application. Adverse decision affirmed.

CASENO: 12-04875.a1

DATE: 12/10/2014

DATE: December 10, 2014

In Re:)
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-----) ISCR Case No. 12-04875
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Applicant for Security Clearance)
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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 March 21, 2014, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that

decision—security concerns raised under Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 22, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issues on appeal: whether the Judge’s findings of fact contained errors and 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 has worked for his current employer, a Defense contractor, since 2011. He has received numerous awards for the quality of his duty performance. He previously worked off and on for the same contractor, experiencing periodic layoffs due to lack of work. In January 2011, his employer recalled him, though to a position requiring a security clearance.

Applicant worked for another company from 2008 until 2010 in a job that did not require a clearance. Both that company and Applicant’s current employer required drug screening tests for new hires or recalled employees.

During periods of unemployment, Applicant found work with a moving company. Some of his fellow workers at the moving company used illegal drugs, such as cocaine and crack cocaine. During one of his layoffs, he began using these drugs himself on a weekly or bi-weekly basis. When he started working for the other company in 2008, he stopped using drugs because he knew he would have to take a drug test. About two months after leaving employment with this company he resumed his drug use.

When Applicant’s current employer recalled him, in January 2011, he submitted a security clearance application (SCA). In June of that year he was tested for drugs. Applicant failed the drug test but was allowed to continue with his employment contingent upon successful completion of a drug counseling and rehabilitation program. He met this requirement. In addition, he is required to attend Alcoholics Anonymous meetings and submit to random drug screening by his employer.

After Applicant failed the pre-employment drug test, he continued to use cocaine until the following August. He stated that he felt despondent over the results of the test and believed he had nothing to lose by using drugs. In completing his SCA, Applicant denied the use of illegal drugs in the prior seven years. He stated that he was ashamed about his drug use and that he was concerned that he would lose his job due to lack of a security clearance.

He submitted an affidavit stating his intention never to use illegal drugs in the future. He also provided character witnesses who attested to his excellent work habits, his outstanding qualities

as a father, and his honesty and reliability. None of the witnesses knew that he continued to use cocaine after he submitted his SCA or after he failed the drug test.

The Judge's Analysis

The Judge noted that Applicant has successfully completed a drug rehabilitation program and that he is subject to periodic testing, which gives him a reason to avoid using drugs. However, he stated that Applicant did not stop using cocaine after being recalled by his current employer, due to the mistaken belief that he would not have to submit to a drug test. The Judge stated that this evidence shows that Applicant can be “calculating” in his use or avoidance of drugs. Decision at 6. He stated that it is not clear from the evidence that Applicant’s illegal drug use is behind him.

Regarding his false answer on the SCA, the Judge stated that this was not a minor infraction, insofar as it bears upon Applicant’s willingness to put the Government’s interests ahead of his own. He noted that Applicant had not been forthcoming with his own character witnesses about his continued use of cocaine even after having failed the drug test, which, the Judge concluded, impugned Applicant’s willingness to be candid about security-significant information.

Discussion

Applicant challenges a number of the Judge’s findings of fact, in particular that Applicant had continued to use cocaine while working for his current employer. He states that he was recalled in January 2011 but that he did not actually resume working until the following October, after he had completed his drug rehabilitation program. In making this argument he cites to matters from outside the record, which we cannot consider. Directive ¶ E3.1.29. Even if the Judge erred in this matter, it did not likely affect the outcome of the case, in view of evidence that Applicant used cocaine after having completed his SCA and after having taken, and failed, a pre-employment drug screening. After considering the totality of Applicant’s argument, we conclude that the Judge’s material findings of security concern are supported by substantial evidence. *See, e.g.*, ISCR Case No. 12-03420 at 3 (App. Bd. Jul. 25, 2014).

Applicant’s arguments on appeal amount to a disagreement with the Judge’s weighing of the evidence. The presence of some mitigating evidence does not alone compel a Judge to make a favorable security clearance decision. 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 undermine a Judge’s decision. Applicant’s arguments are not sufficient to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 14-00173 at 3 (App. Bd. Aug. 8, 2014).

Applicant’s citation to favorable evidence, such as his three years of abstinence from illegal drugs and his character references, is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 11-10255 at 4 (App. Bd. Jul. 28, 2014). A Judge is not required to address all of the evidence in a record, which would be a

practical impossibility. In the case before us, the Judge's findings fairly embraced the substance of Applicant's mitigating evidence.

The Judge examined the relevant data 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, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information 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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Billett

James E. Moody
Administrative Judge
Member, Appeal Board