KEYWORD: Guideline H

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

CASENO: 12-06635.a1

DATE: 03/28/2014

DATE: March 28, 2014

In Re:	)	
---	)	ISCR Case No. 12-06635
Applicant for Security Clearance	)	

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 July 24, 2013, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision–security concerns raised under Guideline H (Drug Involvement) of Department of Defense

Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On January 21, 2014, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Richard A. Cefola 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 decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant was granted a clearance following the submission of a security clearance application (SCA) in June 2011. After that, Applicant used marijuana twice.

The Judge's Analysis

The Judge concluded that Applicant's having smoked marijuana twice while holding a security clearance raised concerns under Guideline H that she had not mitigated. Noting that she had declined to submit a reply to the File of Relevant Material (FORM), he stated that the evidence left him with doubts about her suitability for a clearance. He stated that there was nothing unusual about the circumstances of Applicant's use that would mitigate its seriousness.

Discussion

Applicant argues that her two instances of experimentation with marijuana do not constitute drug abuse. However, the Directive defines drug abuse as "the illegal use of a drug," and does not distinguish between experimentation and more frequent or habitual uses. Directive, Enclosure 2 ¶ 24(b). Moreover, Applicant's first SCA explicitly states that "use of a controlled substance includes . . . experimenting with . . . any controlled substance." Item 4 at 26. Although frequency of use is relevant in evaluating the security significance of such conduct, the Judge did not err in concluding that Applicant's circumstances raised concerns under Guideline H.

Applicant states that she was not aware that she had been given a "full" clearance at the time she smoked marijuana. However, in her 2012 SCA and her reply to the SOR, she admitted to having held a clearance at the time of her misconduct, although she stated that she believed it to have been an interim clearance. We find no error in the Judge's finding on this matter. At the very least, Applicant's having completed and submitted an SCA was sufficient to have placed her on notice that any illegal use of drugs was inconsistent with holding a clearance. *See* ISCR Case No. 09-00233 at 2 (App. Bd. Nov. 13, 2009) (The applicant's security significant conduct included two uses of marijuana after having submitted an SCA).

Applicant cites to evidence that over two years have elapsed since her last use of marijuana, as well as evidence of her youth at the time and that she has never been involved with the law. A Judge is presumed to have considered all of the evidence in the record, and Applicant's argument

on appeal is not sufficient to rebut that presumption. *See, e.g.*, ISCR Case No. 09-07472 at 2 (App. Bd. Feb. 24, 2011). Given the record before him, and considering that Applicant provided no response to the FORM, we cannot say that the Judge's treatment of the evidence, including evidence favorable to Applicant, was erroneous.

Applicant challenges the Judge's whole-person analysis, contending that he did not properly weigh all of the factors listed in Directive, Enclosure 2 ¶ 2(a). We conclude that the Judge considered the totality of the evidence in reaching his decision, which is the hallmark of a whole-person analysis. *See, e.g.*, ISCR Case No. 13-00311 at 4 (App. Bd. Jan. 24, 2014). Applicant bears the burden of persuasion as to mitigation, and a paucity of evidence on matters relevant and material to a clearance decision is a proper matter for the Judge to consider in deciding whether she has met her burden. *See, e.g.*, ISCR Case No. 12-00270 at 2-3 (App. Bd. Jan. 17, 2014).

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 Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed; William S. Fields
William S. Fields
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody
Administrative Judge
Member, Appeal Board