

KEYWORD: Guideline D; Guideline E

DIGEST: There is no particular length of time that would place an applicant's drug use sufficiently in the past so as to mitigate concerns arising therefrom. That is a matter within the discretion of the Judge. The Judge's whole-person analysis complied with the requirements of the record. Adverse decision affirmed.

CASE NO: 14-02203.a1

DATE: 03/30/2015

DATE: March 30, 2015

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In Re:)	
-----)	ISCR Case No. 14-02203
)	
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 16, 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). Department Counsel requested a hearing. On December 1, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Carol G. Ricciardello 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 properly applied the whole-person concept and whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline E are not at issue in this case. Consistent with the following, we affirm the Judge's decision.

The Judge's Findings of Fact

Applicant graduated from college in 2000 and has worked for a Government contractor since 2006. He has held a security clearance since that time. Applicant used marijuana in 2005 while visiting a country in which such conduct was legal. However, he used marijuana again, twice in 2007 and once in 2009. These last three uses occurred while Applicant held a security clearance. He was in his thirties at the time of his misconduct. He has promised not to use marijuana again, contending that he has become more aware of the importance of his security clearance. He noted that it has been five years since his last use. He has an excellent work record.

The Judge's Analysis

The Judge resolved the Guideline E allegation in Applicant's favor. This allegation concerned Applicant's continued association with persons who used drugs. She found credible his evidence that he had advised his friends not to use marijuana in his presence. However, she concluded that he had not mitigated concerns arising from his having used marijuana on multiple occasions while holding a security clearance. She stated that, given his age at the time, his conduct could not be attributed to youthful indiscretions. She stated that the five years that have elapsed since his marijuana use are not enough to mitigate concerns about his lack of self-discipline. She stated that he did not recognize, or ignored, the importance of his obligations and that he had violated the trust that the Government had placed in him.

Discussion

Applicant cites to evidence of the length of time since his security-significant conduct and to other evidence that is favorable to him, for example that he has a family and has matured. He argues that he should not lose a clearance due to what he characterizes as "infrequent poor decisions." Appeal Brief at 2. We have never specified a particular length of time that would place an applicant's drug use sufficiently in the past so as to mitigate security concerns arising therefrom. *See, e.g.*, ISCR Case No. 11-09172 at 3 (App. Bd. Mar. 19, 2013). We have left that matter in the discretion of the Judge, to be evaluated along with all the other evidence in the record. In this case, the record includes evidence that Applicant did not merely use marijuana three times but that he did so while holding a clearance. Questions on his security clearance application (SCA), completed in late 2005, about any prior use while holding a clearance should have placed him on notice of the importance that the Government attached to such conduct and the deleterious effect it could exert on his effort to retain a clearance. Government Exhibit 3, SCA, dated September 9, 2005, at 35. *See* ISCR Case No. 12-06635 at 2 (App. Bd. Mar. 28, 2014). A reasonable person could find that Applicant's use of marijuana despite this notice casts doubt on his reliability and judgment. Under

the facts of this case, we are not able to say that the Judge mis-weighted the evidence or that her adverse conclusions were arbitrary, capricious, or contrary to law.

We conclude that the Judge considered Applicant's security-significant conduct in light of the entirety of the record evidence, thereby satisfying the Directive's requirement for a whole-person analysis. *See* ISCR Case No. 12-03077 at 2-3 (App. Bd. May 13, 2013). 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: Jeffrey D. Billett

Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: Jean E. Smallin

Jean E. Smallin
Administrative Judge
Member, Appeal Board

Signed: James E. Moody

James E. Moody
Administrative Judge
Member, Appeal Board