

KEYWORD: Guideline J; Guideline H; Guideline E

DIGEST: The Judge made sustainable findings that Applicant had 1. Two 1999 criminal convictions (one for marijuana possession and one for tampering with evidence) 2. A bench warrant for his arrest in 2005, and 3 falsified a 2006 security clearance application. Adverse decision affirmed.

CASENO: 07-07219.a1

DATE: 05/16/2008

DATE: May 16, 2008

In Re:)
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-----) ISCR Case No. 07-07219
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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 Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On September 18, 2007, DOHA issued a statement of reasons (SOR) advising Applicant

of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), Guideline H (Drug Involvement) and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested that the case be decided on the written record. On February 11, 2008, after considering the record, Administrative Judge Richard A. Cefola denied Applicant’s request for a security clearance.¹ Applicant timely appealed pursuant to the Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge’s failure to mitigate the Guideline J and E security concerns is arbitrary, capricious, or contrary to law.² Finding no error, we affirm.

The Judge made the following sustainable findings: In 1999, Applicant pleaded guilty to a charge of tampering with evidence, and paid a fine and court cost of approximately \$300. In 1999, he was found guilty of possession of marijuana and drug paraphernalia and fined \$500. In 2005 a bench warrant for Applicant’s arrest was issued due to his failure to pay that \$500 fine. In 2006, Applicant falsified a Questionnaire for National Security Positions when he stated that he had used marijuana once in August of 1999, when he had in fact used marijuana on a weekly basis from 1993 to 2001 and on a monthly basis from 2001 to 2002.

The Board has examined the Judge’s decision in light of the record as a whole and concludes that the Judge has drawn “a rational connection between the facts found” under Guidelines J and E and his adverse decision. *Motor Vehicle Mfrs. Ass’n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)(quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). “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). Accordingly, the Judge’s adverse decision is neither arbitrary, capricious, nor contrary to law.

Order

The decision of the Judge denying Applicant a security clearance is AFFIRMED.

Signed: Michael Y. Ra’anan
Michael Y. Ra’anan
Administrative Judge
Chairman, Appeal Board

Signed: William S. Fields

¹The Judge found in favor of Applicant under Guideline H. That favorable finding is not at issue on appeal.

²As part of his appeal, Applicant offers new evidence in the form of additional explanations about his conduct and circumstances. The Board cannot consider this new evidence on appeal. *See* Directive ¶ E3.1.29.

William S. Fields
Administrative Judge
Member, Appeal Board

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