

KEYWORD: Guideline H

DIGEST: Applicant used marijuana over 100 times between 1972 and 2007. He stated that he does not intend to use marijuana again but that he would if it was offered to him. The record supports the Judge's conclusion that Applicant is an unlawful user of marijuana. Adverse decision affirmed.

CASENO: 08-00177.a1

DATE: 11/21/2008

DATE: November 21, 2008

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In Re: )	
)	
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)	
)	
Applicant for Security Clearance )	
_____ )	

**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 June 25, 2008, DOHA 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 September 19, 2008, after considering the record, Administrative Judge Claude R. Heiny denied Applicant’s request for a security clearance. Applicant filed a timely appeal pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge erred in failing to conclude that Applicant had mitigated the security concerns in his case. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a fifty-four year old engineer who has worked for a defense contractor since 2006. He used marijuana over 100 times between 1972 and February 2007. Applicant has stated the he does not intend to use marijuana again but that he would if it was offered to him. Applicant denies using marijuana while holding a security clearance at any time other than a single incident in 1974

In analyzing the case, the Judge discussed the period of time since Applicant’s last use and the circumstances of that use. He noted that Applicant has used marijuana most of his adult life and concluded that Applicant is an unlawful user of marijuana and is covered by the statutory prohibition regarding the grant of security clearances to unlawful users of a controlled substance.

On appeal Applicant offer new evidence which the Board may not consider (*See* Directive, ¶ E3.1.29.)

The Board has considered Applicant’s brief, the Judge’s decision, and the record. The Judge properly concluded security concerns under Guidelines H are raised in Applicant’s case. Furthermore, the Judge drew a “rational connection between the facts found” and his conclusion that neither the Guidelines H and J mitigating conditions nor the whole-person factors support a decision favorable to Applicant. *See 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 Judge’s decision reflects consideration of the entire record, including the evidence favorable to Applicant. However, the presence of some mitigating evidence does not compel a favorable overall security clearance decision. *See, e. g.*, ISCR Case No. 05-03452 at 3 (App. Bd. Jul. 3, 2007). The record supports the Judge’s conclusion that Applicant has failed to meet his burden of persuasion that it is “clearly consistent with the interests of the national security” for him to have a clearance. *See Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

**Order**

The Judge's adverse security clearance decision is AFFIRMED.

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

Signed: Jeffrey D. Billett  
Jeffrey D. Billett  
Administrative Judge  
Member, Appeal Board

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