

KEYWORD: Guideline E; Guideline J

DIGEST: The Judge found that Applicant has held a security clearance 2005. In 2006 he used marijuana. After initially denying marijuana use he admitted a portion of his use subsequent to failing a a urinalysis. He failed to admit the full extent of his use to employer or the investigator. Adverse decision affirmed.

CASENO: 08-00881.a1

DATE: 04/24/2009

DATE: April 24, 2009

In Re:)
)
)
 -----) ISCR Case No. 08-00881
)
)
 Applicant for Security Clearance)
)
)

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Charles Jerome Ware, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On July 31, 2008, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline E (Personal Conduct) and Guideline J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 26, 2009, after the hearing, Administrative Judge Juan J. Rivera 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 erred in his application of the Guidelines E and J mitigating conditions. Finding no error, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a 26-year-old systems administrator for a corporation providing network security for federal agencies. He graduated from college in 2003 and, in early 2004, was hired by a government contractor. In August 2005 he was granted a security clearance. Subsequently, he began working for his current employer. He has held a security clearance continuously since August 2005.

Soon after having been hired by his current employer, in August or September of 2006, Applicant smoked marijuana while in a car traveling to a party at the home of a friend. At the same party he smoked marijuana again. Applicant testified that he had smoked marijuana “a couple of times” while in high school. Otherwise, he denied any illegal drug use other than the events of 2006. As part of the hiring process for his current employment, Applicant was required to submit another security clearance application (SCA). In response to Question 24, he answered “no” when asked if he had used illegal drugs since age 16 or within the previous seven years. Applicant knew that he was required to disclose his marijuana use. Also, as part of the hiring process, Applicant submitted a urine sample, which tested positive for marijuana. Although initially denying to his employer that he had used marijuana, he subsequently admitted that he had used it in a car while riding to a friend’s home. During a November 2006 interview with a security clearance investigator, Applicant stated that he had used marijuana once while at a party at a friend’s home. He neglected to admit the full extent of his marijuana use both to his employer and to the investigator.

After reviewing the record, the Board concludes that the Judge examined the relevant data and articulated a satisfactory explanation for the decision, “including a ‘rational connection between the facts found and the choice made.’” *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 that “it is not clearly consistent with the national interest to grant or continue eligibility for a security clearance for Applicant” is sustainable on this record. Decision at 9. *See also Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) (“The general standard is that a clearance may be granted only when ‘clearly consistent with the interests of the national security’”).

Order

The Judge's decision 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
William S. Fields
Administrative Judge
Member, Appeal Board

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