

KEYWORD: Guideline H; Guideline E

DIGEST: In light of Applicant's numerous false official statements over the years and the conclusion that Applicant made a not credible statement at the Hearing. The Board affirms the Judge's adverse conclusions under Guideline e and the whole-person concept. Adverse decision sustained.

CASENO: 08-09051.a1

DATE: 01/28/2011

DATE: January 28, 2011

|                                    |                        |
|------------------------------------|------------------------|
| _____ )                            |                        |
| In Re: )                           |                        |
| )                                  |                        |
| ----- )                            | ISCR Case No. 08-09051 |
| )                                  |                        |
| )                                  |                        |
| Applicant for Security Clearance ) |                        |
| _____ )                            |                        |

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

James B. Norman, Esq., Chief Department Counsel

**FOR APPLICANT**

John N. Griffith, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On April 13, 2010, DOHA 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). Applicant requested a hearing. On November 15, 2010, after the hearing, Administrative Judge Jennifer I. Goldstein 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 erred in her application of the mitigating conditions and whether the Judge erred in applying the whole person concept. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is an employee of a Defense contractor. He is married.

Applicant used marijuana 10-15 times until his graduation from college in 2002. Applicant and his wife used marijuana on two consecutive days on a trip to Amsterdam in 2007.

In 2003 Applicant failed to disclose his drug use on a security clearance application (SCA) and in a follow-up interview four months later. In 2008 Applicant filled out another SCA . This time he reported the 2007 use but not the earlier use. Applicant was interviewed in August 2008 and discussed the 2007 use, but again he denied any other drug use in the last seven years. In 2009 Applicant disclosed his earlier drug use.

Applicant enjoys a good reputation among friends and colleagues.

In the Analysis portion of her decision, the Judge discussed Applicant’s multiple falsifications and found one of his explanations offered at the hearing for one of his falsifications not credible. The Judge found the falsifications unmitigated although she discussed some mitigating conditions. She noted that his most recent marijuana use was while holding a security clearance. Nonetheless, she found the marijuana use partly mitigated.

In light of Applicant’s numerous false official statements over several years and the Judge’s sustainable conclusion that one of Applicant’s statements at the hearing was not credible, the Board affirms the adverse conclusions under Guideline E and under the whole-person concept. Those adverse conclusions influence any analysis of Applicant’s drug history. Therefore, while the Board need not agree with the Judge’s adverse conclusions under Guideline H, we conclude they are not erroneous.

The record supports a conclusion 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 adverse 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).

**Order**

The Judge’s adverse security clearance decision is AFFIRMED.

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

Signed: Jean E. Smallin  
Jean E. Smallin  
Administrative Judge  
Member, Appeal Board

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