

KEYWORD: Guideline H; Guideline G; Guideline E

DIGEST: The Hearing Office cases cited by Applicant differ from her case in significant ways. Moreover, Hearing Office are not binding on the Board nor on Hearing Office Judges (including prior decisions by the same judge). Adverse decision affirmed.

CASENO: 08-09698.a1

DATE: 05/10/2010

DATE: May 10, 2010

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**

Dan Cron, Esq.

The Defense Office of Hearings and Appeals (DOHA) declined to grant Applicant a security clearance. On May 11, 2009, DOHA issued a statement of reasons (SOR) advising Applicant of the

basis for that decision—security concerns raised under Guideline H (Drug Involvement), Guideline G (Alcohol Consumption), and Guideline E (Personal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On February 18, 2010, after the hearing, Administrative Judge Noreen Lynch 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’s application of the pertinent mitigating conditions was in error; whether the Judge’s whole-person analysis was in error; and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law.<sup>1</sup> Finding no harmful error, we affirm.

Applicant contends that the Judge erred in finding that she had used crack cocaine from 1987 until November 1988. However, these dates were alleged in the SOR, and Applicant admitted to the allegation. Accordingly, there is no error in the Judge’s finding. Applicant has not otherwise challenged the Judge’s findings. The following paragraph, taken from the Analysis portion of the decision, summarizes the Judge’s material findings of security concern:

Applicant used crack cocaine with a coworker in 1987 and 1988. This led to involvement with an embezzling scheme to defraud her employer. She cooperated with the authorities but was convicted of conspiracy to defraud. She decided to use marijuana in 2000 with her boyfriend who grew the illegal substance. She used marijuana at least once a week for a period of seven years. She was arrested in May 2007 for possession of marijuana. She has not received any drug treatment for her marijuana use. Her poor judgment placed her at risk and she had a misdemeanor level conviction for possession of marijuana and drug paraphernalia. Decision at 10.

The Judge also found that, from June 1990 until at least April 1991, Applicant was treated by a psychologist for cocaine addiction.

The Judge decided the case adversely to Applicant, given the nature and extent of Applicant’s illegal drug use. Applicant contends on appeal that she has abstained from using drugs since her 2007 arrest for marijuana possession, which she argues demonstrates that she has rehabilitated herself. However, the Judge noted that Applicant began using marijuana in 2000 despite many years abstinence following her treatment for cocaine addiction. Under the facts of this case, the Judge’s conclusion that Applicant has failed to demonstrate rehabilitation or any other mitigating circumstance is sustainable.

In support of her appeal, Applicant has cited to other decisions by Hearing Office Judges, including the Judge in this case, which she argues support her efforts to obtain a security clearance. We give due consideration to them. However, each case “must be decided upon its own merits.” Directive ¶ E2.2.3. The decisions which Applicant cites differ from her own in significant ways.

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<sup>1</sup>The Judge’s favorable findings under Guidelines G and E are not at issue in this appeal.

Moreover, Hearing Office decisions are binding neither on other Hearing Office Judges (including prior decisions by the same Judge) nor on the Board. *See* ISCR Case No. 08-04604 at 3 (App. Bd. Feb. 17, 2010).

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

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