

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant's use of illegal drugs continued after she had submitted her security clearance application. Adverse decision affirmed.

CASENO: 09-00233.a1

DATE: 11/13/2009

DATE: November 13, 2009

In Re:)	
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Applicant for Security Clearance)	
)	
)	
)	ISCR Case No. 09-00233

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 April 14, 2009, 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 August 31, 2009, after the hearing, Administrative Judge Claude R. Heiny 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 did not properly weigh her mitigating evidence and whether the Judge's adverse security clearance decision is arbitrary, capricious, or contrary to law. Finding no error, we affirm.

The Judge found that Applicant is a 22-year-old student at an art institute, working part time for a Defense contractor. She is succeeding academically, ranking in the top 10 % of her class.

In 2007 Applicant first tried marijuana. She subsequently used marijuana as often as three or four times a week, though her use eventually declined in frequency. She no longer associates with individuals who use drugs. Her last two uses of marijuana occurred after she had submitted her security clearance application. In addition to marijuana, Applicant has used ecstasy once, Oxycodone once and Clonazepam three times (each of these uses was without a prescription), and cocaine three times. During a security clearance interview, Applicant stated that she might use marijuana socially if it were present. In response to subsequent interrogatories, Applicant stated that she had no intention to use marijuana in the future.

Although Applicant contends that the Judge did not give proper weight to her evidence in mitigation, a Judge is presumed to have considered all the evidence in the record. *See, e.g.*, ISCR Case No. 07-00196 at 3 (App. Bd. Feb. 20, 2009); ISCR Case No. 07-00553 at 2 (App. Bd. May 23, 2008). Applicant has not demonstrated that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Viewing the record in its entirety and considering the *Egan* standard, the Judge's adverse security clearance decision is sustainable. *See 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 adverse security clearance decision is AFFIRMED.

Signed: Michael D. Hipple
Michael D. Hipple
Administrative Judge
Member, 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