

KEYWORD: Guideline H; Guideline E

DIGEST: Reading the Judge's decision in light of the record as a whole, the Board finds no reason to disturb the Judge's adverse credibility determination. Adverse decision affirmed.

CASENO: 10-01168.a1

DATE: 04/22/2011

DATE: April 22, 2011

In Re:	)	
	)	
-----	)	ISCR Case No. 10-01168
	)	
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 August 17, 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 February 7, 2011, after the hearing, Administrative Judge Marc E. Curry 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 his credibility determination; whether the Judge mis-weighed the record evidence or failed to consider all of the record evidence; whether the Judge erred in his application of the mitigating conditions; and whether the Judge’s whole-person analysis was erroneous. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge made the following pertinent findings of fact: Applicant is a 26-year-old employee for a Defense contractor. A college graduate, he majored in electrical engineering and electronics technology.

Beginning in 2004, Applicant used marijuana approximately twice a week. He did so in order to self-medicate chronic anxiety and a consequent speech impediment. He began treatment by a physician in 2009, realizing that marijuana use was not a healthy way to deal with his problems.

In June 2006, he was arrested and charged with possession of marijuana. The charges were dropped after Applicant completed a drug diversion program. In June 2007, he was cited for possession of marijuana and drug paraphernalia. The court deferred prosecution for one year, conditioned on Applicant not committing additional offenses. At the end of the year, the charges were dropped. In October 2009, the police stopped him and noticed an open container of alcohol. On reaching for the container, the policeman discovered marijuana seeds on the floor of the car. Applicant was arrested for violation of the open container law and for possession of marijuana. The charge was later dismissed.<sup>1</sup>

In completing his security clearance application (SCA), Applicant was required to (1) list any arrests by any police officer, sheriff, marshal, or other law enforcement officer; (2) list any charges involving alcohol or drugs; and (3) describe the extent of his illegal drug use, if any. For the first two questions, Applicant neglected to list the 2009 incident. For the third he stated that he had used marijuana only between May and June of 2005.

Applicant contends that the Judge failed to consider record evidence favorable to him, for example his testimony as to why he failed to list the 2009 arrest and why he came to provide inaccurate dates for his marijuana use. However, a Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 09-01735 at 2 (App. Bd. Aug. 31, 2010). Applicant’s presentation on appeal is not sufficient to rebut this presumption. Neither is it sufficient

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<sup>1</sup>Applicant Exhibit B, Court Document, states that the prosecuting attorney declined to file charges because Applicant had already served one day in jail following his citation on this offense and would not face more time upon conviction.

to demonstrate that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law.

In the Analysis portion of the decision, the Judge had stated that Applicant's credibility as to when Applicant stopped using marijuana was undermined by his falsification of the SCA Decision at 5. Applicant challenged this conclusion, arguing that his falsification of the dates during which he used marijuana was clearly a mere error rather than an intentional falsification. However, reading the Judge's decision in light of the record as a whole, we find no reason to disturb his credibility determination. *See, e.g.*, ISCR Case No. 09-00395 at 3 (App. Bd. Jun. 8, 2010).

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,'" both as to the mitigating conditions and the whole-person factors. *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). *See also* Directive, Enclosure 2 ¶ 2(b): "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security."

### **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: James E. Moody  
James E. Moody  
Administrative Judge

Member, Appeal Board