

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant’s admissions and the record evidence support the Judge’s material findings that the falsifications were willful. Adverse decision affirmed.

CASENO: 10-02330.a1

DATE: 11/25/2011

DATE: November 25, 2011

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| In Re:                           | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 10-02330 |
|                                  | ) |                        |
| 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 November 22, 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 decision on the written record. On September 9, 2011, after considering the record, Administrative Judge Joan Caton Anthony 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 findings of fact contained errors; whether the Judge failed to consider all of the record evidence; whether the Judge mis-weighed the evidence; and whether the Judge's adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge made the following pertinent findings of fact: Applicant is a senior field service technician for a Federal contractor. A divorced mother of one child, she served in the U.S. military from 2003 until 2008. From 2004 until 2005 she was stationed in an Asian country, and from 2007 to 2008 she was deployed overseas.

In December 2005, Applicant was awarded a security clearance. During the investigation of her application for a clearance, she signed a sworn statement admitting marijuana use from November 2000 until February 2003. In February and March 2008, after returning from an overseas deployment, Applicant again used marijuana.

Applicant's current security clearance application (SCA), completed on September 9, 2009, inquired if she had used any illegal drug, to include marijuana during the previous seven years. She answered "no."

The SCA also inquired if she had ever used any illegal drug while holding a security clearance. She answered this question "no" as well.

In November 2009, Applicant was interviewed by an investigator from the Office of Personnel Management (OPM). The investigator summarized her interview. He represented Applicant as stating that her use of marijuana in 2008 was her only use of that drug. She did not disclose her prior uses.

In 2010, Applicant provided answers to DOHA interrogatories. She signed a sworn and notarized statement that she had experimented with marijuana twice before going to boot camp and that she had not used marijuana since November 2003. She did not list her use in 2008.

In the Analysis, the Judge stated that Applicant's drug use, having taken place over a period of years, went beyond mere experimentation. Under the circumstances of this case, the Judge concluded that insufficient time had elapsed since Applicant's last use of marijuana to demonstrate that she will abstain in the future. Regarding her falsifications, the Judge noted that Applicant had admitted the allegations on the SOR and that she had provided no credible explanation for them. The Judge stated that Applicant had not provided a reply to the File of Relevant Material and that the record before the Judge was sparse. Accordingly, the Judge concluded that Applicant had failed to meet her burden of persuasion as to mitigation.

Applicant challenges the Judge's findings that her falsifications were willful. Her brief states that she "never deliberately failed to provide truthful responses to the questions." However, as the Judge found, Applicant admitted these allegations in her response to the SOR.<sup>1</sup> Therefore, the deliberate nature of her omissions was not controverted. *See, e.g.*, ISCR Case No. 08-06997 at 3 (App. Bd. Mar. 1, 2011). The Judge properly examined these omissions in the context of Applicant's burden of persuasion as to mitigation. Applicant's admissions, and the record evidence, support the Judge's material findings of security concern.

Applicant draws attention to evidence of her military service overseas. She states that her conduct has been exemplary, except for the use of marijuana in 2008. To the extent that she is contending that the Judge failed to consider evidence favorable to her, a Judge is presumed to have considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 04-12742 at 3 (App. Bd. Feb. 25, 2011). In this case, the Judge discussed Applicant's military service. Moreover, while there is no evidence of adverse action against Applicant, either in the military or during subsequent civilian employment, neither is there record evidence of any accolades, awards, or favorable performance evaluations, etc. The Judge plausibly explained why she concluded that Applicant had failed to meet her burden of persuasion, principally the paucity of evidence in mitigation or extenuation, as well as Applicant's deliberate failures to provide truthful answers on her SCA and during the ensuing investigation. Applicant has not rebutted the presumption that the Judge considered all of the evidence.

Applicant contends that the Judge did not properly characterize evidence concerning her use of marijuana. Specifically, she argues that her use was infrequent. However, the Judge's conclusion that Applicant's use of marijuana "occurred periodically" over eight years is a reasonable interpretation of the evidence. The only reference in the Decision to frequency of use was in the Judge's quotation of the SOR allegation itself, which Applicant had admitted.<sup>2</sup> Applicant has not demonstrated that the Judge mis-weighed the evidence.

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). *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."

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<sup>1</sup>Applicant admitted the Guideline H allegations as well.

<sup>2</sup>"The SOR alleges at ¶ 1(a) that Applicant used marijuana, with varying frequency, from November 2000 to March 2008." Decision at 3.

**Order**

The Judge's adverse security clearance decision is AFFIRMED.

Signed: Jean E. Smallin  
Jean E. Smallin  
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