

KEYWORD: Guideline H

DIGEST: The finding that Applicant enjoys marijuana is a reasonable characterization or inference that could be drawn from the record. Adverse decision affirmed.

CASENO: 10-07312.a1

DATE: 11/03/2011

DATE: November 3, 2011

In Re:)
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-----) ISCR Case No. 10-07312
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)
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 March 22, 2011, DOHA issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On August 22, 2011, after the hearing, Administrative Judge Mary E. Henry 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 one of the Judge’s findings of fact was supported by substantial record evidence, and whether the Judge’s adverse security clearance decision was arbitrary, capricious, or contrary to law. Consistent with the following discussion, we affirm the decision of the Judge.

The Judge found that Applicant is 58 years old, married and has a masters degree. Applicant has smoked marijuana intermittently and with varying frequencies since high school. He did not smoke marijuana for four years in the 1980s when he held a security clearance with a Federal agency. Since 2007, Applicant has smoked marijuana once, in 2009. Applicant has never failed a drug test. His wife and brother-in-law are aware of his marijuana use; but his employers, neighbors and adult children are not.

In the Analysis portion of the decision, the Judge noted positive aspects of Applicant’s record, to include his letter of intent not to use marijuana again and his prior abstinence when he held a security clearance. However, the Judge concluded that Applicant’s lengthy history of marijuana use outweighed the evidence in mitigation. Accordingly, she concluded that Applicant had not met his burden of persuasion.

Applicant contends that the Judge erred in her finding that Applicant enjoys marijuana. The challenged finding constitutes a reasonable characterization or inference that could be drawn from the record. *See, e.g.*, ISCR Case No 08-09918 at 2 (App. Bd. Oct. 28, 2009).

Applicant argues that the Judge did not properly weigh record evidence concerning his abstention from marijuana when he previously had a security clearance. In fact, the Judge noted Applicant’s prior abstinence, but she concluded it did not outweigh Applicant lengthy history of marijuana use. A party’s disagreement with the Judge’s weighing of the evidence is not sufficient to demonstrate that the Judge weighed the evidence in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 10-07080 at 2 (App. Bd. Oct. 12, 2011).

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 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). The Judge’s decision not to grant Applicant a security clearance is sustainable on this record.

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