

KEYWORD: Guideline H; Guideline E

DIGEST: It is proper for a Judge to consider previously mitigated conduct in light of more recent security concerns. Adverse decision affirmed.

CASENO: 11-07094.a1

DATE: 09/05/2014

DATE: September 5, 2014

In Re:)	
)	
-----)	ISCR Case No. 11-07094
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 20, 2012, DoD 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 June 10, 2014, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Nichole L. Noel denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant raised the following issue on appeal: whether the Judge's adverse decision was arbitrary, capricious, or contrary to law. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant was originally granted a clearance in 2001. During a 2011 reinvestigation, he revealed illegal drug use, including one instance in 2010 while he held a clearance. He first used marijuana in high school. In 2000, he attended college on a basketball scholarship. He was dismissed from the team and stripped of his scholarship following a positive urinalysis for marijuana. Because of this, his parents kicked him out of the house. Applicant joined the Air Force, serving for eight years. After his discharge, he worked for a retail chain. In 2009, he used marijuana twice. Later that year, he embarked upon his current employment. In 2010, while holding a clearance, Applicant used marijuana at a party thrown by his sister-in-law in celebration of his marriage.

In completing his security clearance application (SCA), Applicant sought advice from his supervisor. He heeded his supervisor's advice to admit the misconduct. Applicant received an evaluation from a certified drug counselor, who opined that he was at low risk of substance abuse. Applicant states that, on each occasion in which he used marijuana, his judgment was impaired by alcohol. He promises to refrain from drug use in the future.

The Judge's Analysis

Applicant's drug use was cross-alleged under Guidelines H and E. In concluding that Applicant had not mitigated the security concerns under either Guideline, the Judge cited to his six uses between 1998 and 2010, which she stated could not be characterized as isolated. She stated that there was no evidence to show that Applicant had been under duress and that he provided no evidence that would lend credence to his promise of future abstention. The Judge described Applicant's testimony as inconsistent, offering a "whitewashed" version of events that was not corrected until cross-examination. Decision at 5 She noted evidence that Applicant had used marijuana after the "devastating consequence" of having lost his scholarship on account of drug use. The Judge characterized his history of marijuana use as a pattern of behavior that impugns his willingness to follow rules and regulations. *Id.* She noted Applicant's argument that his honorable service, good duty performance, and self-reporting demonstrate trustworthiness. However, she stated that his eventual self reporting did not lessen the significance of his underlying conduct. By using marijuana, Applicant had voluntarily disregarded the fiduciary relationship with the Government that was conferred by his access to classified information. The Judge concluded that,

after considering all of the evidence, she had lingering doubts about Applicant's judgment and trustworthiness.

Discussion

Applicant cites to favorable evidence, such as his having held a clearance for several years without incident or concern, his service in the military and as a Defense contractor, and his candor in admitting his past drug use. These are matters that the Judge was required to consider, along with all the other evidence in the record. The Judge made findings about Applicant's having first received a clearance in 2001, his eight years of honorable military service, and his admission of wrongdoing. Moreover, she discussed his admission in some detail in her Analysis. Applicant's argument on appeal is not sufficient to rebut the presumption that the Judge considered all of the evidence in the record. *See, e.g.*, ISCR Case No. 10-04641 at 3-4 (App. Bd. Sep. 24, 2013). Applicant contends that his earlier drug use had already been considered during his previous clearance adjudication and should not weigh heavily in evaluating his current trustworthiness. However, the Government is not precluded from making an adverse clearance decision even though there were prior favorable adjudications. *See, e.g.*, ISCR Case No. 07-17383 at 2 (App. Bd. Feb. 12, 2009). A Judge must evaluate the record evidence as a whole, and it is proper for a Judge to consider previously mitigated conduct in light of more recent security concerns. Applicant's argument is not sufficient to show that the Judge mis-weighed the record evidence. *See, e.g.*, ISCR Case No. 09-01970 at 3 (App. Bd. Oct. 29, 2010). Neither is it sufficient to impugn the Judge's whole-person analysis, as Applicant contends. *See* ISCR Case No. 08-02464 at 3 (App. Bd. Jul. 16, 2009).

The Judge examined the relevant data and articulated a satisfactory explanation for the decision. The 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 Decision is **AFFIRMED**.

Signed: Michael Ra'anan _____
Michael 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