

KEYWORD: Guideline H; Guideline E

DIGEST: Applicant’s ability to argue for an alternative interpretation of the evidence was not sufficient to establish error. The Appeal Board cannot consider new evidence on appeal. Adverse decision affirmed.

CASE NO: 11-08714.a1

DATE: 03/21/2013

DATE: March 21, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-08714
)	
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 October 15, 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 January 28, 2013, after the hearing, Defense Office of Hearings and Appeals (DOHA) 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 issue on appeal: whether the Judge's adverse Decision was arbitrary, capricious, or contrary to law. The Judge's favorable findings under Guideline H are not at issue in this appeal. Consistent with the following, we affirm.

The Judge's Findings of Fact

Applicant is employed as a Government contractor. She served in the Reserves of a branch of the U.S. armed forces from 1998 to 2006. She was first awarded a clearance in 2002 and held secret and top secret clearances until 2010.

Applicant began using marijuana while in high school. She used marijuana about three times a week, from 1994 until 2007. She used marijuana while holding a clearance and while holding eligibility for sensitive compartmented information (SCI). In addition, she used ecstasy twice, in 2002 or 2003.

In 2002, Applicant completed a security clearance application (SCA). She failed to list her marijuana use from 1994 until the date of completion. This was a deliberate falsification. In 2004, she completed another SCA. She failed to disclose her marijuana use and her use of ecstasy, which were deliberate falsifications.

In 2007, she completed yet another SCA. She failed to disclose her uses of marijuana and ecstasy. She also failed to disclose that she had used illegal drugs while possessing a security clearance. These were deliberate falsifications.

In 2010, Applicant was interviewed by investigators from another Governmental agency concerning her use of illegal drugs while holding a clearance. In the first of these interviews, Applicant did not acknowledge her drug involvement. In a subsequent interview, she stated that she had used marijuana from 1994 until 2003 and that marijuana was the only drug she had used. In yet another interview, she admitted having used ecstasy once. After further questioning, she admitted having used ecstasy twice and having used marijuana until 2007.

In the Analysis, the Judge cleared Applicant of the Guideline H security concerns. However, she concluded that Applicant's false statements and omissions to her SCAs raised security concerns that she had failed to mitigate. She noted that these false statements were uncovered by skillful interrogators, without whom Applicant might never have disclosed her misconduct. The Judge stated that, due in part to Applicant's false statements, the Government was induced to grant her access to classified information, which might not have been the case had the true circumstances been known. In addition, Applicant's falsifications made her vulnerable to exploitation. Although Applicant has shown remorse, the Judge concluded that there had been insufficient time for her to demonstrate trustworthiness, given the serious and protracted nature of her security significant conduct.

Discussion

Applicant cites to evidence that she no longer uses illegal drugs, arguing that, as a consequence, she no longer has a motive to provide false information. She also argues that the lapse of time since her last incident of misconduct shows that she can abide by rules and regulations. However, her ability to argue for a different interpretation of the evidence is not sufficient to demonstrate error. *See, e.g.*, ISCR Case No. 10-07127 at 3 (App. Bd. Dec. 19, 2012). Applicant's SOR admissions and the evidence adduced at the hearing, including the circumstances of the 2010 interviews, support the Judge's finding that Applicant's false statements were both serious and extensive. This evidence supports the Judge's conclusion that too little time has elapsed to demonstrate rehabilitation.

Attached to Applicant's brief is a document dated after the Judge's Decision. We cannot consider new evidence on appeal. Directive ¶ E3.1.29.

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 Y. Ra'anan
Michael Y. Ra'anan
Administrative Judge
Chairperson, Appeal Board

Signed: Jeffrey D. Billett
Jeffrey D. Billett
Administrative Judge
Member, Appeal Board

Signed: James E. Moody
James E. Moody

Administrative Judge
Member, Appeal Board