

KEYWORD: Guideline H; Guideline J

DIGEST: Applicant cited to no evidence that he would have submitted had he been represented by counsel. Applicant was not denied the due process afforded by the Directive. Applicant cites to evidence that his security-significant conduct ended in 2009. The Judge acknowledged the lapse of time. However, Applicant’s conduct, viewed cumulatively, and taking into account a weapons conviction, supports the Judge’s adverse conclusion. Adverse decision affirmed.

CASE NO: 11-09876.a1

DATE: 09/06/2013

DATE: September 6, 2013

In Re:)	
)	
-----)	ISCR Case No. 11-09876
)	
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 January 15, 2013, 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 J (Criminal Conduct) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On May 31, 2013, after the hearing, Defense Office of Hearings and

Appeals (DOHA) Administrative Judge Michael H. Leonard 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 Applicant was denied due process and 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 is an employee of a Federal contractor. He began working for his current employer in 2010, submitting his application for a security clearance in December of that year.

Applicant has a history of drug abuse and criminal conduct. He used marijuana multiple times daily from January 2000 through September 2009. He tested positive for marijuana on a random drug test, resulting in his being fired from his job. In 2007, he was cited by a sheriff for marijuana possession. He appeared in court and the charge was dismissed.

In 2009, Applicant was stopped by the highway patrol. The officer confiscated a handgun. Applicant pled no contest to a misdemeanor charge of unlawful carrying and possession of a loaded firearm in a public place. The court sentenced Applicant to 48 hours confinement and three years of probation. He completed the probation in September 2012.

At the hearing, Applicant stated that he was no longer a misguided youth and that he intends not to use drugs again. He signed a statement of intent with automatic revocation of clearance for any subsequent violation.

The Judge's Analysis

The Judge concluded that Applicant's circumstances raised concerns under both Guidelines alleged in the SOR. He also concluded that Applicant had failed to mitigate these concerns. He noted favorable evidence, such as Applicant's statement of intent and that he disclosed his drug use in completing his clearance application. However, the Judge stated that Applicant's history of security-significant conduct included daily drug use for nearly a decade and a conviction for a firearm offense that resulted in his being incarcerated. The Judge stated that Applicant's conduct raises serious doubt about his judgment, reliability, and trustworthiness.

Discussion

Applicant contends that the result of his case might have been different if he had been represented by counsel. DOHA gave Applicant pre-hearing guidance that advised him of his right to counsel, his right to submit evidence, etc. At the beginning of the hearing, the Judge queried Applicant about his capacity to represent himself, concluding that Applicant was able to do so. Tr. at 10-12. In addition, Department Counsel provided Applicant with some assistance in preparing a document for submission into evidence. Tr. at 33-34. Applicant has cited to no evidence that he would have submitted had he been represented by counsel. We conclude that Applicant was not

denied the due process afforded by the Directive. *See, e.g.*, ISCR Case No. 08-07352 at 2 (App. Bd. Jul. 28, 2009).

Applicant cites to evidence that his security-significant conduct ended in September 2009. He argues that enough time has elapsed so as to demonstrate that he has rehabilitated himself. The Judge acknowledged the lapse of time, as well as other evidence favorable to Applicant. However, Applicant's conduct, viewed cumulatively and taking into account his weapons conviction, supports the Judge's adverse conclusion. Applicant has advanced an alternative interpretation of the evidence, but that is not sufficient to demonstrate that the Judge mis-weighed the evidence or reached an erroneous conclusion regarding the ultimate issue in the case. *See, e.g.*, ISCR Case No. 08-08944 at 2 (App. Bd. Nov. 3, 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: Jeffrey D. Billett
Jeffrey D. Billett
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