



**DEPARTMENT OF DEFENSE  
 DEFENSE LEGAL SERVICES AGENCY  
 DEFENSE OFFICE OF HEARINGS AND APPEALS  
 APPEAL BOARD  
 POST OFFICE BOX 3656  
 ARLINGTON, VIRGINIA 22203  
 (703) 696-4759**

KEYWORD: Guideline E

DIGEST: Applicant’s appeal brief contains assertions and documents that were not presented to the Judge for consideration. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. Adverse Decision is Affirmed

CASE NO: 20-01207.a1

DATE: 11/15/2021

Date: November 15, 2021

In the matter of:	)	
	)	
	)	
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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 Department of Defense (DoD) declined to grant Applicant a security clearance. On August 24, 2020, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that

decision—security concerns raised under Guideline E (Personal Conduct) of DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On August 26, 2021, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Eric H. Borgstrom denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant was fired from employment in 2018 for distributing prescription medications to a fellow employee and for using the employer’s computing resources in order to distribute those controlled substances. The Judge found against Applicant on the sole Guideline E allegation.

Applicant’s appeal brief contains assertions and documents that were not presented to the Judge for consideration. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

Applicant does not challenge any of the Judge’s findings of fact. Rather, she explains the circumstances surrounding the alleged conduct. She does not dispute that she transferred prescription medications to the fellow employee but essentially argues she was not involved in selling drugs. She has failed to demonstrate the Judge’s analysis or conclusions were arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3.

Applicant has failed to establish that the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the record. “The general standard is that a clearance may be granted only when ‘clearly consistent with national security.’” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). *See also*, Directive, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of national security.”

**Order**

The decision is **AFFIRMED**.

Signed: Michael Ra'anan  
Michael Ra'anan  
Administrative Judge  
Chairperson, Appeal Board

Signed: James E. Moody  
James E. Moody  
Administrative Judge  
Member, Appeal Board

Signed: James F. Duffy  
James F. Duffy  
Administrative Judge  
Member, Appeal Board