

Date: April 28, 2022

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In the matter of:)	
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-----)	ISCR Case No. 20-02536
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)	
Applicant for Security Clearance)	
_____)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Alan V. Edmunds, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On December 7, 2020, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline H (Drug Involvement and Substance Misuse) of Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On January 25, 2022, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Philip J. Katauskas 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 the Judge erred in the findings of fact 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 and Analysis

The SOR alleged that Applicant used marijuana with varying frequency from about 2015 until the present; that he used marijuana with varying frequency from about 2017 until the present while holding a security clearance; and that Applicant intends to continue using marijuana in the future. Applicant admitted the first two allegations with qualifications and denied the third. Applicant made inconsistent statements about the extent of his marijuana use. Moreover, in security clearance applications (SCAs) completed in 2016 and in 2020 he did not disclose his marijuana use. The Judge found that Applicant's stated intent to refrain from future marijuana use lacked credibility in view of contradictory statement denying use of marijuana between 2015 and 2020 and by his explanation that he was confused regarding the information that he should disclose.

The Judge concluded that Applicant's use of marijuana was recent and frequent and that Applicant's promise of future abstention lacked credibility. He stated that the record raises doubts about Applicant's reliability and trustworthiness and that Applicant did not meet his burden of persuasion as to mitigation.

Discussion

Applicant challenges the sufficiency of the Judge's findings of fact. He argues that the Judge did not make findings about the frequency of Applicant's marijuana use and that he did not find that Applicant's SOR admissions were accompanied by clarifying remarks. He also contends that the Judge erred in finding that Applicant had denied use of marijuana between 2015 and 2020. Regarding this last argument, we conclude that the challenged finding is in error. In responding to the SOR, Applicant admitted infrequent marijuana use between 2015 and 2020. Item 5 at 18. However, even if he had not made this error the Judge's overall decision would have been the same. Therefore, the error is harmless. *See, e.g.*, ISCR Case No. 21-02033 at 3 (App. Bd. Apr. 11, 2022). We have considered the totality of Applicant's arguments regarding the Judge's findings of fact, and we conclude that, other than the error addressed above, the essential findings are based upon "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record." Directive ¶ E3.1.32.1.

Applicant challenges the Judge's application of the mitigating factors. We conclude that his arguments are not enough to rebut the presumption that the Judge considered all of the evidence in the record or to demonstrate that he weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01494 at 3 (App. Bd. Mar. 24, 2022). We conclude that the Judge's whole-person analysis complies with the requirements of the Directive in that he evaluated Applicant's case in light of the entirety of the record evidence. *See, e.g.*, ISCR Case No. 19-02047 at 4 (App. Bd. Mar. 24, 2022). We note the Hearing Office cases that Applicant has cited in support of his appeal and give them due consideration. However, they are not binding precedent and, in any event, to not undermine the Judge's adverse conclusions. *Id.*

The Judge examined the relevant evidence 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, Encl. 2, App. A ¶ 2(b): “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Order

The Decision is **AFFIRMED**.

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

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

Signed: Moira Modzelewski
Moira Modzelewski
Administrative Judge
Member, Appeal Board