



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

Date: July 20, 2022

In the matter of:)	
)	
-----)	ISCR Case No. 21-02363
)	
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 7, 2021, 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 DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On May 18, 2022, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Paul J. Mason denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant received Department Counsel’s File of Relevant Material (FORM) on March 7, 2022, and was given 30 days from its receipt to file objections or submit additional matters for the Judge’s consideration. She did not submit a response to the FORM. The Judge found against Applicant on the sole SOR allegation asserting that she used marijuana with varying frequency from about 2012 to about November 2021.

In her July 2022 appeal brief, Applicant’s brief makes no assertion of harmful error on the part of the Judge. Rather, she indicates that, due to therapy and lifestyle changes, she has not needed to use marijuana in over three months. She asks that “the Appeal Board take this new information into consideration when reviewing [her] case[.]” Appeal Brief at 1. The Board, however, is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29.

The Board does not review cases *de novo*. The Appeal Board’s authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. Because Applicant has not alleged any harmful error, the decision of the Judge denying Applicant security clearance eligibility is sustainable.

Order

The decision is **AFFIRMED**.

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

Signed: Jennifer I. Goldstein
Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

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