		Date: November 3, 2022
In the matter of:)	
)))	ISCR Case No. 21-01106
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 September 28, 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) and 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 31, 2022, after consideration of the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Braden M. Murphy denied Applicant's request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons stated below, we affirm the decision.

Under Guidelines H and E, the SOR alleged that Applicant used marijuana, MDMA, cocaine, and LSD with varying frequency until late 2020, including while granted access to classified information, and that he continued to associate with others involved in drug use. Because the Government failed to prove Applicant used illegal drugs while possessing a security clearance, the Judge concluded that Disqualifying Condition 25(f), any illegal drug while granted access to classified information or while holding a sensitive position, was not established. The Judge further concluded Applicant's continued association with illegal drug users was not

established. In finding against Applicant on each of the illegal drug use allegations, the Judge stated:

With the exception of his marijuana use in 2009, all of Applicant's subsequent use of illegal drugs came as a mature adult, in his early 30s. He was employed by a defense contractor at the time (his current employer) whether or not he held a clearance at the time, or had actual access to classified information. Regardless, he should have known better. Applicant's history of illegal drug use is too recent and too varied to provide much evidence of mitigation. [Decision at 8.]

In his appeal brief, Applicant argues he had no access to classified information when he used illegal drugs. There is no need to address this argument because, as noted above, the Judge concluded Disqualifying Condition 25(f) was not established. From a plain reading of the decision, it is apparent the Judge disregarded the phrase "while granted access to classified information" in finding against Applicant on the drug use allegations.

Applicant contends that the Judge did not accurately apply the whole-person concept and mischaracterized his trustworthiness. These arguments, however, are not sufficient to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3.

Applicant failed to establish 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: 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 Modzelewski Moira Modzelewski Administrative Judge Member, Appeal Board