

Date: January 27, 2023

In the matter of:)	
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-----)	ISCR Case No. 21-01945
)	
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 February 25, 2022, 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 hearing. On November 1, 2022, after the hearing, Defense Office of Hearings and Appeals (DOHA) Administrative Elizabeth M. Matchinski denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge’s Findings of Fact and Analysis

Applicant is in his early 40s and has worked for a defense contractor since 2017. He served in the National Guard from 2006 until 2014 and held a security clearance for about eight years until it was “taken away.” Decision at 3.

The Judge summarized Applicant's security-significant conduct in the Analysis. In essence, Applicant used marijuana and cocaine while in college from 2000 until 2004 and continued to use cocaine every few months for about a year after graduation. While in the Guard, he used Percocet occasionally for back pain and purchased it illegally after his prescription ran out. In 2013 he started using heroin two to three times a week. In late 2013, Applicant underwent inpatient treatment for a diagnosis of opiate use disorder, followed by outpatient treatment. In 2014 he was again prescribed Percocet, became addicted, and received a second round of inpatient treatment in January 2015. Applicant entered a long-term rehabilitation program following treatment but left prematurely against medical advice. He abstained from illegal drug use from 2015 until 2019, when he resumed using marijuana for relaxation purposes, continuing until early 2020. In late 2019, he was prescribed an opiate following surgery. When his prescription ran out, he used heroin and a prescription opiate illegally until late 2019. He again relapsed into heroin use for two months before beginning another course of therapy in November 2021.

Applicant used marijuana and heroin and misused Percocet after having been granted a security clearance. The Judge found that Applicant made statements that were inconsistent with one another or that were contradicted by other record evidence.¹ He executed a statement of intent not to use illegal drugs in the future and enjoys a good reputation for his work performance. Character references assert that he is intent on getting his problems behind him.

The Judge concluded that Applicant's use of cocaine following college was not recent. Accordingly, she resolved that allegation in his favor. However, she entered adverse findings for the remaining allegations, noting that he had resumed heroin use as recently as late 2021, concluding that Applicant's drug involvement other than cocaine did not happen so long ago that it no longer casts doubt upon his trustworthiness or good judgment. Directive, Encl. 2, App. A ¶ 26(a). She found that Applicant's use of marijuana and heroin while holding a clearance was an aggravating factor and that he did not provide evidence of a favorable prognosis regarding his substance abuse diagnosis.

Discussion

Applicant's appeal brief argues that the Judge failed to consider, or that she mis-weighted, significant record evidence, citing to Hearing Office cases on the question of recency. As we have noted before, Hearing Office cases are not binding either on other Hearing Office Judges or on the Appeal Board. Each case must be decided on its own merits. *See, e.g.*, ISCR Case No. 18-02074 at 2 (App. Bd. Aug. 27, 2019). In the case before us, given the extent of Applicant's drug involvement and his resumption of such conduct after treatment, we are unable to say that the Judge erred in concluding that Applicant's misconduct was recent. Applicant argues that the Judge erred by relying on the absence of a favorable prognosis. However, the challenged analysis by the Judge is directly relevant to the applicability of Directive, Encl. 2, App. A ¶ 26(d), which assigns

¹ "He asserted in response to the SOR that he maintained complete abstinence from opioids and illegal drugs during and following his inpatient and outpatient treatment programs from late 2013 until the end of 2015 . . . However, as he disclosed to an [OPM] investigator in September 2017, he became addicted to Percocet prescribed to him for pain in 2014." Decision at 3. "[Applicant] testified that he left the long-term rehabilitation program prematurely because he wasn't aware he was going to be there that long and 'his son's birthday was coming up.' . . . Based on the dates of his stay in the program and his older son's birthdate, it appears that his son had his birthday the day before Applicant was admitted to the program." *Id.* at 5.

mitigating effect to an applicant's completion of a drug treatment program accompanied by a favorable prognosis by a "duly qualified medical professional." Applicant's arguments are not sufficient to rebut the presumption that the Judge considered all of the evidence in the record, nor do they demonstrate that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 18-02872 at 3 (App. Bd. Jan. 15, 2020).

Applicant has not demonstrated that the Judge committed harmful error. 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