



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: January 10, 2023

In the matter of:)	
)	
-----)	ISCR Case No. 22-00315
)	
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 April 15, 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) and Guideline E (Personal Conduct) of DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a hearing. On October 3, 2022, after the hearing, Administrative Judge John Bayard Glendon denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline H, the SOR alleged that Applicant used marijuana with varying frequency from August 2019 to March 2021 and that he used marijuana after being granted a security clearance in November 2018. Under Guideline E, this same conduct was cross-alleged. In addition, the SOR alleged two alcohol offenses and failures to disclose an alcohol offense. The Judge found favorably for Applicant on the Guideline E alcohol offenses and the failures to

disclose. He found adversely to Applicant on the marijuana allegations under both Guideline H and Guideline E.

In his appeal brief, Applicant asserts that the Judge “did not consider the totality of conduct that mitigates and establishes the applicant’s integrity.” Appeal Brief at 1. In particular, Applicant highlights that he “freely admitted to the marijuana use” and that his “forthrightness should be considered.” *Id.* at 2. The fact that an applicant provides full and truthful answers does not preclude the government from evaluating the security significance of the applicant's answers and conduct. *See, e.g.*, ISCR Case No. 99-0519 at 14 (App. Bd. Feb. 23, 2001). Moreover, the Judge discussed Applicant’s candor, as well as the other mitigating factors that Applicant is raising on appeal. Applicant’s arguments are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to show that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 19-01400 at 2 (App. Bd. Jun. 3, 2020). In his whole-person analysis, the Judge complied with the requirements of the Directive by considering the totality of the evidence in reaching his decision.

Applicant also points out that he is required to have a clearance for his position even though he has no access to classified information. An individual’s access to classified material is not a relevant consideration in determining national security eligibility. *See, e.g.*, ISCR Case No. 19-01759 at 3 (App. Bd. Jun. 8, 2020).

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 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