

Date: February 15, 2023

\_\_\_\_\_ )  
 In the matter of: )  
 )  
 ----- )  
 )  
 Applicant for Security Clearance )  
 \_\_\_\_\_ )

ISCR Case No. 21-02729

**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 March 21, 2022, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—security concerns raised under Guideline J (Criminal Conduct), 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 November 30, 2022, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Noreen A. Lynch 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.

The SOR alleged that Applicant was charged with possession of marijuana in 2014 and 2019; that he purchased and used marijuana with varying frequency from about 2012 to 2021, including from mid-2018 to mid-2021 while granted access to classified information; and that he falsified responses in 2017 and 2021 security clearance applications (SCAs) by denying he purchased and used an illegal drug or controlled substance, including while possessing a security clearance. In responding to the SOR, Applicant admitted the Guideline J and H allegations and

denied the Guideline E falsification allegation with an explanation. Applicant neither submitted any documents to corroborate the explanation in his SOR Response nor submitted a response to Department Counsel's File of Relevant Material (FORM). The Judge found against Applicant on each of the SOR allegations.

The Judge found that Applicant received probation and a fine for his 2014 possession of marijuana charge. The disposition of Applicant's 2019 possession of marijuana charge is unknown. FORM Item 4 at 5. In his appeal brief, Applicant states that, on October 6, 2022, the President of the United States pardoned all U.S. citizens for the offense of simple possession of marijuana in violation of the U.S. Code and D.C. Code. To the extent he is contending this pardon applies to him, we find that argument unpersuasive. There is no basis for concluding the President's pardon has any impact on Applicant's state drug possession charges. We find adversely to Applicant on this assignment of error.

In his appeal brief, Applicant raises an issue regarding the dates of his alleged drug involvement. Those dates are based on statements he reportedly made during his background interviews. FORM Item 4. When he responded to interrogatories, Applicant adopted the summaries of the background interviews as accurate and did not make any corrections to the dates of his drug involvement.<sup>1</sup> In addressing the drug involvement allegations in his SOR response, Applicant stated, "The timespan noted was persuaded by the investigator during the interview as a general from and to date." FORM Item 1 at 6. In his brief, Applicant again raises the issue by stating, "some of the dates noted for use were persuaded/influenced by the investigators." Appeal Brief at 1. However, neither Applicant's SOR response nor his appeal brief identifies any specific dates that are incorrect or provides any evidence to corroborate his claim. An appealing party must state with sufficient specificity what it is about a Judge's decision that he or she believes to be erroneous so that reviewing authorities, such as the Appeal Board, are enabled to address the assignment of error. *See, e.g.*, ISCR Case No. 17-03372 at 2-3 (App. Bd. Oct. 19, 2018). Applicant's assertions regarding this issue fail for a lack of specificity and fail to establish the Judge committed any harmful error.

Applicant also challenges the Judge's adverse falsification determination. In his 2017 and 2021 SCAs, Applicant disclosed that he was charged with a "possession" offense in 2014 (FORM Items 2 at 26-27 and 3 at 27) but responded "no" to all the Section 23 – Illegal Use of Drug or Drug Activity questions. In a background interview on February 2, 2018, Applicant reportedly denied any purchase of illegal drugs in the past seven years but no mention is made of marijuana use. FORM Item 4 at 13. During a background interview on March 29, 2018, Applicant reportedly stated he "smoked marijuana joints once per year for 2 years[.]" but the specific years of such use were not identified. FORM Item 4 at 14. During a background interview on July 28, 2021, Applicant reportedly stated he smoked marijuana twice between 2012 and 2014, "which was indicated in his previous interview[.]" and he "used marijuana occasionally, possibly one a year over a couple of years on vacation as a recreational use" from 2014 to 2019. FORM Item 4 at 6.

---

<sup>1</sup> In his interrogatory response, Applicant added the following comment: "To address items noted as discrepant under the employment and residence section; the estimated months and dates noted are fairly accurate." The Judge apparently interpreted the latter phrase as pertaining to Applicant's drug involvement. We do not agree with that interpretation but instead construe that phrase as referring to the employment and residence sections of the background interview.

When asked during that latter interview why he did not report his marijuana usage or the 2019 arrest for possession of marijuana on his SCA, Applicant reportedly stated, “it wasn’t that serious, and the case wasn’t yet resolved to his knowledge.” FORM Item 4 at 6. As the Appeal Board has said previously, multiple omissions undercut any argument that an applicant’s failure to disclose required information was the result of mistake, oversight, or lack of recall. *See, e.g.*, ISCR Case No. 19-02345 at 3 (App. Bd. Feb. 8, 2021). Noting that Applicant was a mature, educated adult with experience in the adjudication process, the Judge concluded that he intentionally falsified his SCAs. In his appeal brief, Applicant claims:

I noted on the [SCA] that I would\have discussed any items with the investigator, when meeting with the investigator I explained I was unaware of the process and quickly resubmitted my [SCA] without further review. I was under the impression I received an [SCA] request that it was time to renew my secret clearance so I just resubmitted w/o updates related to the dismissed 2022 (sic) possession case. In the [quote] below the investigator notes that I mentioned the 2022 (sic) incident w/o being questioned. I was unaware that pending or dismissed cases needed to be added to the [SCA], I was never informed until talking with the investigator that day. [Appeal Brief at 2.]

We do not find Applicant’s argument persuasive and note that he certified in his 2017 and 2021 SCAs that his statements in those documents were true, complete, and correct to the best of his knowledge and belief and were made in good faith. FORM Items 2 at 1 and 3 at 34. An applicant’s knowing omission of required information from an SCA, even if he or she had the intent to later disclose that information during a background interview, is a deliberate falsification. From our review of the record, the Judge’s material findings and conclusions of a security concern regarding Applicant’s falsification allegation are based on substantial evidence or constitute reasonable inferences that could be drawn from the evidence. *See, e.g.*, ISCR Case No. 17-02225 at 2-3 (App. Bd. Jun. 25, 2019).

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 the national security.”

**Order**

The decision is **AFFIRMED**.

Signed: James F. Duffy

James F. Duffy  
Administrative Judge  
Chairperson, Appeal Board

Signed Moira Modzelewski

Moira Modzelewski  
Administrative Judge  
Member, Appeal Board

Signed: Allison Marie

Allison Marie  
Administrative Judge  
Member, Appeal Board