



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: June 9, 2023

<p style="margin: 0;">In the matter of:</p> <p style="margin: 0; text-align: center;">-----</p> <p style="margin: 0;">Applicant for Security Clearance</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ISCR Case No. 22-01014</p>
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APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

James B. Norman, Esq., Chief Department Counsel

FOR APPLICANT

Ryan C. Nerney, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On July 8, 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 the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective Jun. 8, 2017) and Department of Defense Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On January 13, 2023, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Charles C. Hale denied Applicant’s request for a security clearance. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant used marijuana with varying frequency from about November 2015 to about July 2021, including after he was granted access to classified information in about April 2020; and that he was arrested for possession of marijuana in about September 2020. In responding to the SOR, Applicant admitted both allegations without providing any mitigating evidence. He submitted no response to the Government’s File of Relevant Material. Noting that

Applicant used marijuana after receiving his security clearance and that he continues to associate with individuals who use marijuana, the Judge indicated that he was not convinced that Applicant would abstain from using that substance once the pressure of qualifying for a security clearance was removed and concluded that Applicant did not mitigate the alleged security concerns.

On appeal, Applicant's Counsel does not challenge any of the Judge's findings of fact. Rather, he contends that the Judge erred in failing to comply with the provisions in Executive Order 10865 and the Directive by not considering all the evidence and by not properly applying the mitigating conditions and whole-person concept. For example, Applicant's Counsel is apparently arguing that the Judge did not properly consider either Applicant's age and maturity at the time of his last use of marijuana or his subsequent abstinence for almost two years. Appeal Brief at 10. The Judge, however, made pertinent findings about those matters. None of Counsel's arguments are enough to rebut the presumption that the Judge considered all of the record evidence or to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See, e.g.*, ISCR Case No. 20-02355 at 2 (App. Bd. Jun. 2, 2023).

In his brief, Applicant's Counsel relies on hearing-level decisions in unrelated Guideline H cases to argue the Judge erred in his analysis of this case. His reliance on hearing-level decisions is misplaced because each case must be judged on its own merits. AG ¶ 2(b). As the Board has previously stated, how particular fact scenarios were decided at the hearing level in other cases is generally not a relevant consideration in our review of a case. The Hearing Office decisions that Applicant's Counsel cites have no direct relationship or unique link to Applicant's case that would make them relevant here. *See, e.g.*, ISCR Case No. 20-02355 at 2.

Applicant's brief fails to establish that the Judge committed any harmful error. *See* Directive ¶ E3.1.32. 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* AG ¶ 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
Chair, Appeal Board

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

Signed: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board