

Date: July 31, 2023

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In the matter of:)	
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-----)	ISCR Case No. 22-02236
)	
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 November 18, 2022, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct) of the National Security Adjudicative Guidelines in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On June 12, 2023, Defense Office of Hearings and Appeals Administrative Judge John Bayard Glendon denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline H, the SOR alleged that Applicant used marijuana in December 2013 and May 2016 while granted access to classified information. The SOR further alleged under Guideline E that Applicant deliberately failed to disclose the foregoing marijuana use on her 2016 and 2019 security clearance applications (SCAs). The Judge found in favor of Applicant with respect to the Guideline H allegation, but against her on the Guideline E allegations.

Discussion

Applicant is in her late 50s. She was granted a security clearance in 2006, which was renewed in about 2016 and upgraded in 2020. In completing her 2016 SCA, Applicant answered “No” to the question seeking disclosure of any drug use in the prior seven years. Applicant completed another SCA in July 2019, wherein she again denied any reportable drug use in the prior seven years. Applicant affirmed her response about drug use during her September 2019 subject interview. In January 2020, however, Applicant’s sister was interviewed and revealed that Applicant is a member of Narcotics Anonymous (NA). The next day, Applicant contacted her interviewer to disclose that she had lied during the earlier interview. She then disclosed various drug and alcohol use that occurred during her late-teens and 20s, which prompted her to join NA in 1995 and she thereafter remained drug- and alcohol-free for about 17 years. She resumed drinking several times between 2012 and 2019 but has abstained from alcohol since mid-2019. Applicant also used marijuana two times after joining NA, in late 2013 and mid-2016, both while holding a security clearance. She continues to participate regularly in NA.

The Judge found that Applicant’s two marijuana uses in 2013 and 2016 were fully mitigated by the passage of time and because the use was infrequent and occurred under unusual circumstances. Turning to the falsification allegations, the Judge found that none of the mitigating conditions fully applied. Applicant’s correction of her omissions from 2016 and 2019 SCAs occurred only after she learned that her sister revealed her NA membership. The Judge found that Applicant is a “mature and accountable adult who knowingly engaged in this deception in connection with two applications because she feared that the truth would disqualify her.” Decision at 10. Accordingly, the likelihood of recurrence is significant, and doubts remain as to Applicant’s present suitability for national security eligibility and a security clearance.

On appeal, Applicant makes no assertion of error on the part of the Judge. Rather, she requests reconsideration on the basis that the record evidence and the Judge’s decision do not fully represent her true character and instead only consider her mistakes. Applicant also submits new evidence in the form of four additional character reference letters. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. The Board’s authority to review a case is limited to matters in which the appealing party has alleged that the judge committed harmful error. Applicant has not alleged any such error, and therefore the Judge’s decision denying Applicant a security clearance is sustainable.

Order

The decision is **AFFIRMED**.

Signed: James F. Duffy
James F. Duffy
Administrative Judge
Chair, Appeal Board

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

Signed: Allison Marie
Allison Marie
Administrative Judge
Member, Appeal Board