

Date: July 27, 2023

In the matter of:	)	
	)	
	)	
-----	)	ISCR Case No. 22-02225
	)	
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 December 12, 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 DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision based on the administrative record. On June 15, 2023, the Defense Office of Hearings and Appeals 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.

Under Guideline H, the SOR alleges that Applicant used marijuana with varying frequency from January 2018 to September 2022. In addition, it alleges that he stated in his March 2022 security clearance application (SCA), his March 2022 interview, and his May 2022 response to interrogatories, that he may use marijuana in the future. In his SOR response, Applicant admitted the SOR allegations. The Judge concluded that Applicant used marijuana to at least September 2022, after he completed his SCA and was interviewed by a DoD background investigator. The Judge correctly noted that the Appeal Board has consistently held:

[A]fter applying for a security clearance and being adequately placed on notice that such conduct was inconsistent with holding a security clearance, an applicant who continues to use marijuana demonstrates a disregard for security clearance eligibility standards, and such behavior raises substantial questions about the applicant's judgment, reliability, and willingness to comply with laws, rules, and regulations. [Decision at 5, citing ISCR Case No. 21-02534 at 4 (App. Bd. Feb. 13, 2023).]

The Judge found against Applicant on both SOR allegations. In general, the Judge concluded that Applicant's promises to abstain from future marijuana use if he is granted a security clearance does not engender confidence that he has stopped using marijuana or that he will not use it in the future.

On appeal, Applicant does not specifically assert the Judge committed any error. Rather, he expressed concern about how the decision affects his career and future employment. He argues that he is a young college student that would benefit from a security clearance in his current and future employment. We are not permitted to consider the adverse impact that an unfavorable decision may have on an applicant. Such an impact is not a relevant consideration in evaluating clearance eligibility. *See, e.g.*, ISCR Case No. 19-02397 at 1-2 (App. Bd. May 6, 2020). Applicant notes that he is taking illegal drug use seriously, has tested negative for drugs, does not intend to use marijuana in the future, and has matured from this experience. The Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. To the extent that he is contending the Judge mis-weighed or did not consider record evidence, we find no merit in those assertions. None of his 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. 22-01631 at 2 (App. Bd. Feb. 16, 2023).

Applicant 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 the 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: Gregg A. Cervi

Gregg A. Cervi  
Administrative Judge  
Member, Appeal Board

Signed: Allison Marie

Allison Marie  
Administrative Judge  
Member, Appeal Board