

DATE: October 23, 2023

In the matter of:)
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-----) ISCR Case No. 22-01256
)
)
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 September 30, 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) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (SEAD 4) (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On September 18, 2023, Defense Office of Hearings and Appeals Chief Administrative Judge Robert B. Blazewick denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged that Applicant used marijuana from 2006 to at least January 2022 and intended to continue using marijuana in the future, and that she purchased marijuana from 2007 to at least October 2019. The Judge found against Applicant on both marijuana allegations. The SOR also alleged that Applicant used cocaine and hallucinogenic mushrooms in 2012 and misused prescription Codeine in 2013, both of which the Judge found favorably for Applicant.

Judge's Findings of Fact and Analysis

Applicant is 32 years old and has been employed as a defense contractor since 2017. She began using marijuana as a teenager when she experienced depression in high school and turned to marijuana and alcohol to self-medicate, finding that the former improves her mood. Prior to her State legalizing medical marijuana, Applicant would occasionally purchase it for personal use and sell small amounts to friends. Applicant obtained a medical prescription for marijuana when it became legal in her State, and stated that it helps her to feel relaxed, optimistic, and peaceful. As of her security clearance hearing, she had last used marijuana that morning. Applicant understood that using marijuana was in violation of Federal law, and she intended to continue to use it. She also stated that her employer has a policy against the use of illegal drugs and that, although the employer occasionally required urinalysis and she expected she would test positive for marijuana, she was not overly concerned.

The Judge found that "Applicant's marijuana use is frequent, ongoing, and she intends to continue her use," and concluded that she did not provide sufficient evidence to mitigate the security concerns raised by her marijuana involvement. Decision at 5, 6.

Discussion

On appeal, Applicant argues, generally, that the evidence actually established her reliability, trustworthiness, and willingness to comply with laws, rules, and regulations, rather than the opposite. Appeal Brief at 1. For example, she contends that using marijuana to help with depression as a teen, currently using it under a prescription, and intention to continue using it in the future are "the definition of reliability," and that voluntarily disclosing her history of marijuana use demonstrates her trustworthiness. *Id.* She also argues that the only law she breaks is "the federal prohibition on a prescription medicine that's legal in [her] state." These arguments are without merit.

Due to her stated intention to continue using marijuana, which renders her an unlawful user of a controlled substance, Applicant is prohibited from being granted a security clearance. *See* 50 U.S. Code § 3343(b); SEAD 4, Appendix B.

Applicant has not established that the Judge committed harmful error or that she should be granted any relief on appeal. 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). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

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