



**DEPARTMENT OF DEFENSE**  
**DEFENSE LEGAL SERVICES AGENCY**  
**DEFENSE OFFICE OF HEARINGS AND APPEALS**  
**APPEAL BOARD**  
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REDACTED COPY

Date: November 28, 2023

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 In the matter of: )  
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 Applicant for Public Trust Position )  
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ADP Case No. 23-00433

**APPEAL BOARD DECISION**

**APPEARANCES**

**FOR GOVERNMENT**

Julie R. Mendez, Esq., Deputy Chief Department Counsel

**FOR APPLICANT**

*Pro se*

The Department of Defense (DoD) declined to grant Applicant a trustworthiness designation. On March 23, 2023, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision—trustworthiness concerns raised under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (January 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. On September 29, 2023, after considering the record, Defense Office of Hearings and Appeals (DOHA) Administrative Judge Matthew E. Malone denied Applicant’s request for a trustworthiness designation. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30. For reasons stated below, we affirm the Judge’s decision.

Under Guideline H, the SOR alleged that Applicant used marijuana from about 1991 to February 2023; that he purchased marijuana from about 2015 to September 2022; that he used Vicodin in about 2010 without a prescription; that he was arrested for possession of a narcotic controlled substance in about 2010; that he was required to obtain drug treatment in about 2009 but did not complete it; that he used methamphetamine in about 1994 and from about 2000 to

2007; that he was charged with possession of, and being under the influence of, a controlled substance in about 2007; that he was charged with possession of a controlled substance for sale in 1998; that he sold cocaine from about 1993 to 1996; and that he was charged with sale or transportation of a controlled substance and possession of methamphetamine in about 1994. Under Guideline E, the SOR cross-alleged the Guideline H allegations and also alleged that Applicant falsified responses on his 2022 security clearance application (SCA) by deliberately failing to disclose the above drug charges against him and by deliberately failing to disclose his marijuana use within the preceding seven years. In responding to the SOR, Applicant admitted each of the SOR allegations except for the Guideline E allegation cross alleging the Guideline H allegations, which he neither admitted nor denied. The Judge found in favor of Applicant on two SOR allegations (the 1998 charge pertaining to possession of a controlled substance for sale and the Guideline E allegation cross alleging the Guideline H allegations) and found against him on the other allegations.

Regarding the SCA falsification allegation pertaining to his failure to disclose his marijuana use during the preceding seven years, Applicant contends on appeal that his answer to that question “was contingent upon the fact that I had not been in trouble for any drug-related activities within the 7-year timeframe.” Appeal Brief at 1. To the extent that he is now claiming that he did not deliberately falsify the response because he misunderstood the question, he has failed to establish that the Judge committed any error. When Applicant responded to the SOR, he admitted this falsification allegation without providing any explanatory comments. His admission established that falsification allegation. The record contains no evidence that would have brought to the Judge’s attention that Applicant may have misunderstood that question. By raising this issue on appeal, Applicant is making a claim that constitutes new evidence, which the Appeal Board is prohibited from receiving or considering. Directive ¶ E3.1.29. We resolve this issue adversely to Applicant.

In his brief, Applicant further asserts that he was a voluntary participant in the 2009 drug treatment program. To the extent that he is contending that the Judge erred in finding a local child protective service (CPS) agency ordered him to undergo that treatment, we conclude the Judge committed no error. Applicant’s background interview reflects that the CPS agency required him to receive that treatment. In responding to interrogatories, Applicant indicated the summary of his interview was accurate. File of Relevant Material, Item 3 at 3. The record evidence supports the challenged finding.

The remainder of Applicant’s arguments amount to a disagreement with the Judge’s weighing of the evidence; however, none of his arguments are sufficient to establish the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3

Applicant failed to establish that the Judge committed any harmful error or that he 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 the record. A trustworthiness determination will be granted only when “clearly consistent with the national security interests of the United States.” AG ¶ 1(d). *See also Kaplan v. Conyers*, 733 F.3d 1148

(Fed. Cir. 2013) (citing *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988)); ADP Case No. 17-03252 at 3 (App. Bd. Aug. 13, 2018). “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: Moira Modzelewski

Moira Modzelewski  
Administrative Judge  
Chair, Appeal Board

Signed: Allison Marie

Allison Marie  
Administrative Judge  
Member, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi  
Administrative Judge  
Member, Appeal Board