



**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: January 31, 2024

In the matter of:)	
)	
-----)	ISCR Case No. 23-00346
)	
Applicant for Security Clearance)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Julie R. Mendez, Esq., Chief Department Counsel

FOR APPLICANT

Pro se

The Department of Defense (DoD) declined to grant Applicant a security clearance. On March 29, 2023, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – security concerns raised under Guideline E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). Applicant requested a decision on the written record. He was sent the Government’s File of Relevant Material (FORM) and given the opportunity to respond. Applicant did not respond to the FORM. On November 20, 2023, after considering the record, Defense Office of Hearings and Appeals Administrative Judge Carol G. Ricciardello issued a decision in which she concluded that it is not clearly consistent with the national interest to grant Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant is in his early thirties and has worked as a Federal contractor since 2019. The SOR alleged that he had been arrested four times between 2009 and 2019, and that he failed to report three of those arrests as required in Section 22 of his security clearance application. Applicant admitted the arrests but denied intentionally falsifying his application. The Judge concluded that Applicant’s denial lacked credibility. Decision at 3, 6. She also found against him as to the allegations regarding the arrests themselves, concluding that “(a)lthough, some of his

arrests are relatively minor, there is a continuing pattern of failing to abide by rules and regulations that raise questions about his reliability, trustworthiness, and judgment.” *Id.* at 6.

On appeal, Applicant made no assertion of harmful error on the part of the Judge. Instead, he advocates for reconsideration of the Judge’s decision. 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 cases in which the appealing party has alleged the Judge committed harmful error. Because Applicant has not made such an allegation of error, the decision of the Judge denying Applicant a security clearance 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: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board