



**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: February 15, 2024

In the matter of:	)	
	)	
-----	)	ISCR Case No. 21-02297
	)	
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 April 11, 2022, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guidelines E (Personal Conduct) and H (Drug Involvement) 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 (Jan. 2, 1992, as amended) (Directive). On November 22, 2023, Defense Office of Hearings and Appeals Administrative Judge Paul J. Mason denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Applicant is in his late 30s. He is unmarried and has a daughter from a current relationship and a son from a previous relationship. In response to the SOR and at the hearing, Applicant admitted to having used marijuana from 2002 until the present, including three days prior to the hearing. Tr. at 20, 45. He also used marijuana while granted interim eligibility to access classified information from 2019 to 2022. He was arrested twice on civilian drug charges in 2010 and 2012, and also twice tested positive for marijuana in 2005 and 2008 while on active duty in the military, which resulted in disciplinary action and led to his administrative separation. Tr. at 52. He

described himself as “an avid user” of marijuana. Tr. at 56. Applicant also admitted to intentionally falsifying his response to questions regarding drug use and arrests when filling out his security clearance application. Additionally, he admitted that, while in the Army, he was found guilty of Forced Sodomy, Indecent Acts Upon a Child, Making a False Statement, and Conspiracy. The Judge found against Applicant on all of the foregoing SOR allegations.

On appeal, Applicant made no assertion of harmful error on the part of the Judge although he asked “[d]id the court take my prescriptions in to (sic) consideration . . . ?” At the hearing Applicant asserted that, although most of his marijuana use had been illegal, he obtained a prescription for medical marijuana in 2022. Tr. at 21. The Judge left the record open to allow him to enter the prescription into evidence. In his decision, the Judge specifically acknowledged receiving the document but concluded that “[m]edical marijuana assigns no special status under the adjudicative guidelines.” Decision at 2, 11 (citing ISCR Case No. 20-02794 at 5 (App. Bd. Feb. 1, 2022)).

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: Allison Marie

Allison Marie  
Administrative Judge  
Member, Appeal Board

Signed: James B. Norman

James B. Norman  
Administrative Judge  
Member, Appeal Board