



**DEPARTMENT OF DEFENSE
 DEFENSE LEGAL SERVICES AGENCY
 DEFENSE OFFICE OF HEARINGS AND APPEALS
 APPEAL BOARD
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 ARLINGTON, VIRGINIA 22203
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Date: March 20, 2024

In the matter of: <div style="text-align: center;">-----</div> Applicant for Security Clearance)))))))))))	ISCR Case No. 23-00892
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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 June 5, 2023, 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) and Guideline E (Personal Conduct) 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 written record in lieu of a hearing. On January 22, 2024, Defense Office of Hearings and Appeals (DOHA) Administrative Judge LeRoy F. Foreman denied Applicant’s security clearance eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The SOR alleged under Guideline H, that Applicant used hallucinogens such as LSD and mushrooms between 2013 and September 2021; that he used marijuana between August 2012 and

September 2021; and that he used Adderall without a valid prescription between May 2014 and May 2016. Under Guideline E, the information under Guideline H was cross-alleged, and Applicant is alleged to have falsified his 2017 Electronic Questionnaires for Investigations Processing (e-QIP) by not disclosing his use of LSD, mushrooms, and marijuana. In responding to the SOR, Applicant admitted each allegation with explanations. The Judge found against him on all of the allegations.

In summary of the decision, the Judge found that Applicant, in his late 20s and currently a test engineer for a government contractor, previously submitted an electronic Questionnaire for Non-Sensitive Positions (e-QIP) (SF 85 format) in 2017 wherein he answered “no” to questions regarding his use or possession of illegal drugs, failing to disclose use of illegal drugs including LSD, mushrooms, and marijuana that he admitted to in a subsequent security clearance application (SCA) he completed in 2022. In the 2022 SCA, Applicant admitted to using hallucinogenic substances (LSD and mushrooms) about twice per year while in college and about once a year until 2021. He also admitted to using Adderall as a study aid in college a few times a year, to using marijuana from 2012 to 2016, and to purchasing marijuana from legal dispensaries from 2016 to 2021. Decision at 2. In Applicant’s answer to the SOR, he stated that his previous drug use was infrequent, that he was not dependent on drugs, and that they had no negative effect on his work or personal life. He stopped using illegal drugs in September 2021 when he was offered a position requiring a security clearance, has not used Adderall for seven years, and did not disclose his prior drug use on his 2017 e-QIP because he was young, fresh out of school, and afraid that he would be fired if he disclosed it. He declared that he will not use illegal drugs in the future and that his falsification was wrong. *Id.* at 2-3.

The Judge held that the evidence falls short of demonstrating rehabilitation as Applicant continued using drugs until about two years ago, including after completing his 2017 e-QIP, and he was motivated by his search for a new job, not a change of attitude about drug involvement. Although he has acknowledged his illegal drug use and abstained since 2021, Applicant provided no evidence that he has disassociated from his drug-using associates or changed his environment, nor did he express acknowledgement that any future involvement would be grounds for revocation of national security eligibility. Finally, the Judge held that Applicant worked a long time under false pretenses, which undermines the credibility of his current promise to abstain from illegal drug use. *Id.* at 5. Also, Applicant admitted he knew he would be fired if he disclosed his drug involvement in his 2017 e-QIP.

Applicant’s appeal asserts that the decision is contrary to his character and his conduct throughout the investigation process, attempts to clarify his prior statements regarding his drug use history, and argues his family life, work performance, and support from his employer are reasons to grant his security eligibility. He does not assert that the Judge committed any harmful error but

argues for a different interpretation of the facts, some of which are new, and reversal of the decision. Appeal Brief at 1-2.

We note that the Appeal Board is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. The Appeal Board does not review cases *de novo*. The Board's authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. Directive ¶ E3.1.32. Our review of the record indicates that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. "The general standard is that a clearance may be granted only when 'clearly consistent with 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."

Because Applicant has not alleged harmful error, the decision of the Judge denying Applicant security clearance eligibility is sustainable.

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: Gregg A. Cervi
Gregg A. Cervi
Administrative Judge
Member, Appeal Board