



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
POST OFFICE BOX 3656
ARLINGTON, VIRGINIA 22203
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Date: April 29, 2024

<p>In the matter of:</p> <p style="text-align: center;">-----</p> <p>Applicant for Security Clearance</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>ISCR Case No. 23-01784</p>
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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 August 16, 2023, 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 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On February 21, 2024, Defense Office of Hearings and Appeals Administrative Judge Edward W. Loughran 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 while granted access to classified information, from January 2022 to about June 2022; and that he used marijuana from January 2015 to about August 2017. The Judge found against Applicant on the allegation that he used marijuana from January 2022 to about June 2022 (but not while granted access to classified information), and in Applicant’s favor on the remaining SOR allegation. Consistent with the following, we affirm.

On appeal, Applicant does not challenge any of the Judge's findings of fact but asserts the Judge erred in the "overall unfavorable determination." Appeal Brief at 1. Applicant focuses on a portion of the Judge's findings of fact wherein the Judge quotes from Applicant's witness: "He is praised for his dependability, responsibility, professionalism, loyalty, humility, trustworthiness, work ethic, honesty, reliability, dedication, patriotism, and integrity. He is recommended for a security clearance." Decision at 2-3. Applicant states in his appeal; "It is my assertion that the intended outcome of Judge Loughran's ruling was to deny my application for a top-secret security clearance, but not to render an overall unfavorable outcome and revocation of my active secret security clearance."

To the extent that Applicant disagrees with the Judge's weighing of the evidence, 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 ¶ E3.132.3. The opinion of Applicant's witness is not binding on the Administrative Judge. In DOHA proceedings, the determination of pertinent facts, policies and conclusions as to the allegations contained within an SOR and the ultimate question of whether it is clearly consistent with the national interest to grant or deny a security clearance rests solely with the Administrative Judge. *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988). Moreover, to the extent that Applicant believes the Judge denied his top-secret clearance, but not his secret clearance, he misunderstands the security eligibility process and misreads the decision. The Judge ruled on Applicant's security eligibility, not a particular clearance level. The level of clearance currently held, or the level of clearance applied for, do not affect the Judge's analysis or the Board's review. Directive ¶ 3.2 makes no distinction concerning basic clearance levels in its procedures for deciding whether access to classified information is clearly in the national interest. ISCR Case No. 05-11366 at 3 (App. Bd. Jan. 12, 2007). Possession of a previously granted clearance does not give rise to any right or vested interest, nor does any favorable clearance decision preclude the Government from reassessing a person's security eligibility in light of current circumstances. ISCR Case No. 03-24144 at 6 (App. Bd. Dec. 6, 2005).

Applicant has 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, which is sustainable on the 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). *See also* AG ¶ 2(b): "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Order

The decision is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board