



**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: June 3, 2024

In the matter of:)	
)	
)	
-----)	ISCR Case No. 20-00768
)	
Applicant for Security Clearance)	
)	

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Brian Farrell, Esq., Department Counsel

FOR APPLICANT

Daniel F. Aldridge, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On August 20, 2021, DoD issued a statement of reasons (SOR) advising Applicant of the basis for that decision – security concerns raised under Guidelines E (Personal Conduct) and H (Drug Involvement) 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 hearing, which was held on October 26, 2023. On March 14, 2024, Defense Office of Hearings and Appeals Administrative Judge Ross D. Hyams 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.

Under Guidelines E and H, the SOR alleged that Applicant used marijuana with varying frequency between 1978 and 2018, at times while having been granted access to classified information. The Administrative Judge found against Applicant as to each of the allegations. On appeal, Applicant does not challenge the Judge’s factual findings, but rather argues that the Judge did not appropriately weigh those facts relative to the Mitigating Conditions. He also asserts that the Government is estopped from denying Applicant a clearance based upon his drug use because

his use was previously known to the Government and he had been granted access to classified information in the past. We find that estoppel does not apply in this situation and the Judge adequately addressed Applicant's circumstances in his decision.

To the extent that an applicant has been granted eligibility for access to classified information in the past, neither estoppel nor reciprocity precludes revocation or denial of a security clearance. "[P]ossession 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. 05-11366 at 3 (App. Bd. Jan. 12, 2007). It is well established that there is no right to a security clearance, nor is there a presumption in favor of granting or continuing a security clearance. "Prior security clearance adjudications and the granting of clearances for the Applicant have no bearing on the legal sufficiency of the Judge's adverse clearance decision here." ISCR Case No. 07-00260 at 3 (App. Bd. Jan. 24, 2008) (internal citations omitted). Past conduct may be considered "even where the past conduct was considered in a prior favorable adjudication." ISCR Case No. 04-12742 at 4 (App. Bd. Feb. 25, 2011). The Government simply cannot be estopped from protecting classified information and reviewing the facts anew. *E.g.* ISCR Case No. 94-0966 at 3 (App. Bd. July 21, 1995). Moreover, the Board is in the position of reviewing only the instant case, not any prior adjudication of Applicant's security clearance eligibility. ISCR Case No. 09-07066 at 4 (July 26, 2011).

The remainder of Applicant's arguments advocate for an alternative weighing of the evidence. An applicant's disagreement with the judge's weighing of the evidence or an ability to argue for a different interpretation of the evidence is not sufficient to demonstrate that the judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *E.g.*, ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Moreover, Applicant's arguments fail to rebut the presumption that the Judge considered all of the record evidence. The mere presence of some favorable or mitigating evidence does not require the Judge to make an overall favorable determination in the face of disqualifying conduct such as Applicant's. *See* ISCR Case No. 04-08975 at 2 (App. Bd. Aug. 4, 2006).

We have considered the entirety of the arguments contained in Applicant's appeal brief. The record supports a conclusion that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, "including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of the United States v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168 (1962)). His conclusions and adverse decision are 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: Gregg A. Cervi

Gregg A. Cervi
Administrative Judge
Member, Appeal Board

Signed: James B. Norman

James B. Norman
Administrative Judge
Member, Appeal Board