



**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, 2025

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 In the matter of:)
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)
 Applicant for Security Clearance)
 _____)

ISCR Case No. 23-00595

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Esq., Deputy 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 of that decision – security concerns raised under Guidelines B (Foreign Influence), H (Drug Involvement and Substance Abuse), and J (Criminal Conduct) 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 December 9, 2024, Defense Office of Hearings and Appeals Administrative Judge Ross D. Hyams denied Applicant 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, was arrested on weapons and marijuana charges, and has a relative who is a citizen and resident of Ukraine. The allegation that Applicant used marijuana while granted access to classified information was amended to allege that Applicant’s drug use occurred while in a sensitive position. Applicant admitted the Guideline J and B allegations, and denied some of the details of the Guideline H allegations.

There is no presumption of error below, and the appealing party has the burden of demonstrating that the judge committed factual or legal error. ISCR Case No. 00-0050 at 2 (App. Bd. Jul. 23, 2001). The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. On appeal, Applicant makes no assertion of harmful error on the part of the Judge. Instead, he argues that the Judge should have weighed the evidence differently. 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. ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

Our review of the record reflects that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which 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 in ISCR Case No. 23-00595 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