

**DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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information for the Judge to consider. Applicant did not respond to the FORM and the Judge found against him on all allegations. In doing so, the Judge concluded that Applicant's acknowledgement of his drug involvement, abstinence from the purchase and use of marijuana, separation from environments conducive to marijuana use, and expression of an intent not to use marijuana in the future satisfied portions of AG ¶¶ 26(b)(1), (2), and (3). However, the presence of some favorable or mitigating evidence does not compel a favorable security clearance decision and, given the scope of Applicant's prior drug use, the Judge found that insufficient time had passed to establish a pattern of abstinence.¹ Decision at 5.

On appeal, Applicant provides new evidence in the form of recent drug test results. The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive ¶ E3.1.29. Applicant does not challenge any of the Judge's specific findings of fact. Instead, he argues that the Judge erred in his conclusion that Applicant needed to establish a longer track record of abstinence from illegal drug use. This argument simply advocates for an alternative weighing of the evidence, which is not enough to show that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law. *See, e.g.,* ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007).

The extent to which prior drug use has become mitigated through the passage of time is a question that must be resolved based on the evidence as a whole. *See* ISCR Case No. 17-02779 at 2 (App. Bd. Nov. 7, 2018). The Board has declined to adopt any "bright line" definition for what constitutes recent conduct, or the lack thereof regarding the passage of time since an applicant's last involvement with marijuana. Rather, the Board has indicated the matter requires a Judge to evaluate the record evidence as a whole and reach a reasonable conclusion as to the recency of an applicant's conduct for purposes of mitigation. *See* ISCR Case No. 11-12165 at 4 (App. Bd. Jan. 29, 2014). Promises of future good behavior carry less weight than a track record of reform and rehabilitation. ISCR Case No. 06-17541 at 4 (App. Bd. Jan. 14, 2008). Here, the Judge's conclusion that Applicant's period of abstinence was insufficient to establish such a track record or fully mitigate the drug concerns was reasonable and sustainable.

Conclusion

Applicant has not established that the Judge's conclusions were arbitrary, capricious, or contrary to law. In the instant case, the Judge examined the relevant evidence, weighed the disqualifying and mitigating evidence, and articulated a satisfactory explanation for the decision. The record is sufficient to support that the Judge's findings and conclusions are sustainable. "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).

¹ AG ¶ 26(b): "[T]he individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility[.]"

Order

The decision in ISCR Case No. 24-00571 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