DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: April 16, 2025

In the matter of:	)	
	)	
--------	)	ISCR Case No. 24-00468
	)	
Applicant for Security Clearance	)	

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 March 19, 2024, 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), Guideline J (Criminal Conduct), and Guideline E (Personal 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 February 25, 2025, Defense Office of Hearings and Appeals Administrative Judge Jennifer I. Goldstein denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Background and Judge's Analysis

Applicant, 52 years old, has been married since 2006 and has four minor children. He earned a doctoral degree in 2019 and is currently employed as a research scientist for a government contractor and as an adjunct professor.

Guideline H and Guideline E

In his May 2019 initial security clearance application (SCA), Applicant responded "no" to the question, "In the last seven (7) years, have you illegally used any drugs or controlled substances?" Government Exhibit (GE) 2 at 40. Later that year, he was granted national security eligibility and a Secret security clearance. GE 5. Subsequently, as a result of being arrested for Assault, an Incident Report was entered for Applicant, which triggered a reinvestigation.

Applicant completed a new SCA in October 2022 wherein, in response to the same question about drug use in the last seven years, he disclosed that he used marijuana first in 1991 and as recently as April 2022. Applicant characterized the nature of his use as "[v]ery, very rare," estimated having "used marijuana about a dozen times in the past seven years," and asserted that he had "[o]nly one use on a holiday during the past four years." GE 1 at 40. He stated that he had no interest or intention to use marijuana again in the future. *Id*.

Subsequently, during his January 2023 interview, Applicant expanded upon the details of his historical marijuana use, which he reiterated began in 1991 and continued with fluctuating frequency comingled with lengthy periods of abstinence, now through December 2022.[1] Regarding why he omitted the use from his 2019 SCA, Applicant explained that he believed he did not need to list it because the frequency and amount was minimal. GE 7 at 4. He again stated that he had no intention to use marijuana in the future. *Id*.

Based on the foregoing, the SOR, as amended, alleged under Guideline H that Applicant used marijuana with varying frequency from 1991 to at least April 2022, including after December 2021 while occupying a sensitive position. The SOR further alleged under Guideline E that Applicant deliberately failed to disclose his marijuana use on his 2019 SCA.

In his April 2024 response to the amended SOR, Applicant admitted the concerns with explanation, and "emphatically state[d]" that he is "not a regular user of marijuana and [has] not been since college." SOR Response at 1. He again provided a detailed, but different chronology of his marijuana use history, still beginning in 1991 and continuing with fluctuating frequency comingled with lengthy periods of abstinence, now until September 2023.[2] Applicant again averred that he would not use marijuana again.

[1] During his January 2023 interview, Applicant estimated that he used marijuana as follows: four times per week from January 1991 to 1993; once per month from 1993 to 1995; abstained from 1995 to 2003; twice annually from 2003 to 2008; abstained from 2008 to December 2012; once per week from December 2012 to July 2013; abstained from July 2013 to 2017/2018; once per month from 2017/2018 to January 2019; abstained from January 2019 to December 2021; and three to four times per year during the Christmas holiday since December 2021. GE 7 at 3.

[2] In his April 2024 SOR Response, Applicant estimated that he used marijuana as follows: several times per month, then three or four times per week, and finally monthly between 1991 and 1994: abstained from 1994 to mid-2000s; twice annually from mid-2000s to about 2011; abstained from January 2012 to early 2013; less than 10 times in early 2013; abstained from about mid-2013 to late 2015/early 2016; less than three times per month from late 2015/early 2016 to late 2017; abstained from late 2017 to about January 2019; once in about January 2019; abstained from about January 2019 to December 2021; rarely from December 2021 to July 2022; abstained from July 2022 to December 2022; and rarely from December 2022 to September 2023. SOR Response at 1-2.

The Judge found that the Guideline H concern was unmitigated due to Applicant's history of marijuana use followed by periods of abstinence and then resumption of use. In concluding that the Guideline E concern was not mitigated, the Judge opined that Applicant demonstrated poor judgment in falsifying his 2019 SCA, especially because "he is highly educated and should have known he needed to answer fully and truthfully," and his subsequent disclosures were "neither prompt nor complete." Decision at 9. Moreover, Applicant used marijuana after and despite stating that he did not intend to use the drug again.

Guideline J

In January 2013, Applicant was playing a song he created for his children on his laptop, and his wife shut the laptop hard because she did not want their children exposed to rock music. He claimed that his wife proceeded to scream at him for half an hour. When Applicant attempted to leave the situation and take the children to their grandmother's house, his wife threatened to call the police and started to dial 911. Applicant testified that he grabbed the phone and "stiff-armed" her to stop her from calling 911. *Id*. at 3 (citing Tr. at 83). The wife testified that Applicant threw her on the floor, and that she hit her head and sought medical treatment. She testified that she was diagnosed with a mild concussion, while Applicant testified that the tests for concussion were negative. The hospital notified the police, and Applicant was arrested and charged with Disorderly Conduct (domestic violence) and Battery. The Battery charge was subsequently dismissed, and Applicant was placed on six months' probation for the Disorderly Conduct charge.

In July 2022, Applicant and his wife were involved in another incident that began with a verbal dispute, but which became physical, and she hit her head. She testified that Applicant pushed her hard into the wall, and he asserted that he grabbed her shoulders, she pushed him, and then he pushed her back. She went to the hospital and was diagnosed with a concussion. Applicant was arrested and charged with Assault on a Female. He entered into a deferred prosecution agreement and was placed on probation for one year and required to participate in counseling. After successfully completing the terms of his probation, the charges were dismissed in August 2023.

At hearing, Applicant's wife testified that their relationship is struggling, that they argue daily, and that he has spat on her, but never hit her. She indicated that she angers easily and has provoked him. In response to whether she believes Applicant is a truthful person, his wife responded that his arranging dates with other women is dishonest and that he was not honest about money. Applicant entered videos into evidence, some of which he contended reflect that he has been an unretaliating victim of his wife's abusive behavior, including several that depict her yelling and, in one, throwing food at him.

The Judge assessed that the "volatility that led to the domestic incidents is not unusual" in Applicant's marital home and is ongoing. Decision at 8. As a result, and especially considering the wife's reports that Applicant has spat on her, the Judge was unable to conclude that he is rehabilitated or that the Guideline J concern was mitigated. Overall, the Judge concluded that Applicant's "history of drug involvement, criminal conduct, and falsification creates questions about his trustworthiness" and ruled adversely on all concerns. *Id*. at 10.

Scope of Review

On appeal, the Board does not review a case *de novo*. Rather, the Board addresses the material issues raised by the parties to determine whether there is factual or legal error. There is no presumption of error below, and the appealing party must raise claims of error with specificity and identify how the judge committed factual or legal error.

When a judge's factual findings are challenged, the Board must determine whether the findings "are supported by such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record" and shall give deference to the judge's credibility determinations. Directive ¶ E3.1.32.1.

When a judge's ruling or conclusions are challenged, we must determine whether they are arbitrary, capricious, or contrary to law. Directive ¶ E3.1.32.3. A judge's decision can be arbitrary or capricious if: it does not examine relevant evidence; it fails to articulate a satisfactory explanation for its conclusions, including a rational connection between the facts found and the choice made; it does not consider relevant factors; it reflects a clear error of judgment; it fails to consider an important aspect of the case; it offers an explanation for the decision that runs contrary to the record evidence; or it is so implausible that it cannot be ascribed to a mere difference of opinion. *See* ISCR Case No. 95-0600, 1996 WL 480993 at *3 (App. Bd. May 16, 1996) (citing *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)). In deciding whether a judge's rulings or conclusions are contrary to law, the Board will consider whether they are contrary to provisions of Executive Order 10865, the Directive, or other applicable federal law. *See* ISCR Case No. 03-22861 at 2 (App. Bd. Jun. 2, 2006).

Discussion

On appeal, Applicant contends that the Judge was biased against him and challenges her factual findings and mitigation analysis. For the following reasons, we affirm the Judge's decision.

Challenges to Findings of Fact

Turning first to the 2013 incident and Applicant's related assignment of factual error, the Judge found that, "[a]ccording to the FBI rap sheet in evidence, the Battery charge was dismissed, but he was convicted of Disorderly Conduct and placed on probation. Applicant claims he was not convicted of this charge." Decision at 3. Arguing that he has "never been convicted of any crime," Applicant challenges the Judge's finding as a "serious error [that] should suffice to reverse her decision." Appeal Brief at 1. We disagree.

Despite Applicant's repeated assertion to the contrary, his FBI Criminal History Record indicates that he was convicted of Disorderly Conduct (domestic abuse) on March 12, 2013, and placed on probation for six months, following which the charge was dismissed on September 17, 2013. *See* GE 4 at 7-8.[3] The language Applicant challenges in the Judge's decision does not reflect

[3] On appeal, in support of his contention that he was never convicted of the crime, Applicant submits the Motion and Order to Dismiss that dismissed the case based on Applicant's successful completion of the conditions in his Diversion Agreement. This document constitutes new evidence, which the Board may not consider. Directive ¶ E3.1.29. Even

an affirmative finding that he was convicted of the charge, but rather is merely a summary of the competing evidence regarding the disposition of his 2013 arrest. Moreover, even if the Judge had entered such a finding, it would be supported by the evidence and reflect a reasonable and sustainable weighing of the FBI record against Applicant's explanation.

Applicant also renews his objection to the Government's use of the term "varying frequency" to characterize his marijuana use history and challenges the Judge's use of the term in her factual findings as "an inaccurate and possible [sic] even slanderous mischaracterization of [his] use." Appeal Brief at 3. During his current adjudication, Applicant provided multiple, varying estimates of his periods of marijuana use and abstinence since 1991. In her findings of fact, the Judge summarized that "Applicant has used marijuana at varying frequencies since 1991" before identifying some of his estimated periods of use and abstinence, as reported by him, through September 2023. Decision at 2-3. It is unclear how the term "varying frequency" is inaccurate, let alone slanderous, on its own, but especially when followed by a comprehensive breakdown of his use over more than 30 years, and we are unpersuaded that this constitutes any error.

Allegation of Bias

Applicant argues that the Judge was "prejudiced against [him]" and suggests that either "gender bias" or his wife's emotional testimony influenced the Judge to ultimately downplay his wife's acts of aggression and overemphasize his two arrests. Appeal Brief at 1. There is a rebuttable presumption that administrative judges are impartial and unbiased, and a party seeking to overcome that presumption has a heavy burden of persuasion. *See* ISCR Case No. 99-0710 at 3 (App. Bd. Mar. 19, 2001) (citations omitted). The issue is not whether the appealing party personally believes that the judge was biased or prejudiced but, rather, whether the record contains any indication that the judge acted in a manner that would lead a reasonable person to question the judge's fairness or impartiality. *Id*. Having examined the record, paying particular attention to the transcript, we find no such indication. Nothing in the record below or the Judge's decision supports Applicant's claims of bias.

Credibility Determination and Applicant's Future Intent

In her Guideline H mitigating analysis, the Judge concluded that Applicant failed to establish that his marijuana use is unlikely to recur, citing that "he has had long periods of abstaining from marijuana use, but has, as he put it, 'relapsed.'" Decision at 7. The Judge also questioned Applicant's credibility and current claims of abstinence "given his history of lying about his marijuana use . . . and lying to [his wife] about dating other women and about finances." *Id*.

Applicant assigns multiple errors to the foregoing analysis, beginning with her use of the word "relapse" to characterize his instances of resuming marijuana use after periods of abstaining. His challenge to this word fails for several reasons, not the least of which is that Applicant

if the Board could consider the new evidence, it would not impact our review of this case. The document does not establish that Applicant was not convicted of the charge, but instead that his case was dismissed, which suggests that dismissal followed successful completion of a *post-conviction* diversion program.

introduced the term into the record to describe how he came to use marijuana again each time.[4] The Judge then used the word twice in her decision, each time contained in quotation marks to refer to Applicant's original characterization and once while specifically identifying that origin. We are unpersuaded that, considering the source and context of its use, the Judge's use of the word "relapse" constitutes harmful error or contributed to an arbitrary and capricious decision.

Next, in a set of related arguments, Applicant charges that the Judge failed to properly consider the "context and frequency" of his marijuana use, reiterates that his various disclosures were estimates made "to the best of [his] recollection," and challenges the Judge's negative credibility assessment, asserting that, "[t]he only reason why the government is aware of any marijuana use is because I have been totally honest about it, especially during and since the subject interview in 202[3]." Appeal Brief at 2.

As an initial matter, Applicant's assertion about being "totally honest" is flatly contradicted by the record. His first opportunity to disclose his marijuana use occurred in completing his 2019 SCA, which covered a reporting period beginning May 2012. Based on the information later provided in his 2023 interview, Applicant should have reported *weekly marijuana use* from December 2012 to July 2013 and *monthly use* from 2017 or 2018 until January 2019.[5] Alternatively, based on the information provided in response to the SOR or at hearing, Applicant should have reported using marijuana five to ten times in 2013, monthly from late 2015 or early 2016 to late 2017, and once in about January 2019.[6] Instead, Applicant affirmatively asserted in his 2019 SCA that he had not illegally used any drugs since May 2012. This was categorically false, as is his statement on appeal that he has "been totally honest about" his marijuana use. It was not until his triggered reinvestigation and completion of a new SCA in 2022 that Applicant *began* to disclose any marijuana use, and even that proved inconsistent with his subsequent disclosures.

Additionally, Applicant's focus on specific periods and frequencies of marijuana use overlooks the more significant concerns under Guidelines E and H – that he intentionally omitted any marijuana use from his original SCA and, at some point after being granted national security eligibility and while holding a sensitive position, resumed using marijuana, *including while his current investigation was ongoing.* The security significance of both types of misconduct is well-established, casting serious doubt on an applicant's judgment, reliability, trustworthiness.[7]

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[4] *See* SOR Response at 1 ("Even during my brief relapses with marijuana . . ."). At hearing, Applicant explained that the word "relapse" was intended to describe that he does not "take it lightly" that he resumed marijuana use. Tr. at 112-113.

[5] *See supra* text accompanying note 1.

[6] *See supra* text accompanying note 2; Tr. at 101-106.

[7] *See, e.g.*, ISCR Case No. 01-06852 at 2-3 (App. Bd. Aug. 21, 2002) ("Falsification of a security questionnaire constitutes misconduct that casts serious doubts on an applicant's judgment, reliability, or trustworthiness [and] provides a rational basis for an adverse security clearance decision."); ISCR Case No. 02-07555 at 3 (App. Bd. Jul. 19, 2004) ("An applicant who deliberately tries to deceive or mislead the federal government does not demonstrate the high degree of judgment, reliability, and trustworthiness that must be expected of persons granted access to classified information."); ISCR Case No. 20-01772 at 3 (App. Bd. Sep. 14, 2021) (The Appeal Board has "long held that applicants who use marijuana after having been placed on notice of the security significance of such conduct may be lacking in the judgment and reliability expected of those with access to classified information."); ISCR Case No. 21-02534 at 4 (App. Bd. Feb. 13, 2023) ("[A]fter applying for a security clearance and being adequately placed on notice that such conduct was inconsistent with holding a security clearance, an applicant who continues to use

Applicant's credibility also impacts negatively on his renewed assurance that he will not use marijuana in the future considering that he has broken the same promise not just once, but twice before. Applicant asserted in his October 2022 SCA that he had neither intention nor interest in using marijuana again. *Just two months later* during the 2022 Christmas holiday, however, he did. During his interview the following month, he again stated that he had no intention to use marijuana in the future. Despite that statement against future use, he apparently continued to use marijuana, albeit "rarely", through September 2023. Applicant used marijuana while occupying a sensitive position, while his national security eligibility adjudication was ongoing, and while concurrently espousing no future intent, all of which reflect a complete disregard for national security eligibility standards. His latest assurances of lessons learned and future abstinence are due little, if any, weight. The Judge's unfavorable credibility determination is amply supported by the record, as is her reliant mitigation analysis, and we find no cause to disturb either on appeal.

Conclusion

Applicant has not established that the Judge committed harmful error. 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).

marijuana demonstrates a disregard for security clearance eligibility standards, and such behavior raises substantial questions about the applicant's judgment, reliability, and willingness to comply with laws, rules, and regulations.").

Order

The decision in ISCR Case No. 24-00468 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