



Date: April 22, 2025

In the matter of:

Applicant for Security Clearance

ISCR Case No. 24-01001

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

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The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 17, 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) 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 Richard A. Cefola denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Background

Applicant, in his mid-40s, has been employed by a defense contractor as an electromechanical engineer since September 2023. In his October 2023 initial security clearance application (SCA), Applicant disclosed having used marijuana recreationally from 2005 to August 2023 and stated that he did not intend to use again in the future, acknowledging its inconsistency with holding a security clearance. The following month, during his November 2023 interview,

Applicant disclosed that he last used marijuana five days earlier and again asserted that he had no intention of using in the future. Then, in a subsequent response to Government interrogatories, Applicant disclosed that his marijuana use had again continued to February 2024, and he reasserted that he had no intention of using the drug in the future and submitted a signed Statement of Intent to abstain from all future drug involvement.

Based on the foregoing information, the SOR alleged that Applicant used marijuana from May 2005 to about February 2024, and that he purchased marijuana during that time. In response, Applicant admitted both allegations, explaining that his use was minimal and that he has ceased all marijuana use and purchase. At hearing, Applicant explained that, after initiating his investigation, he continued using marijuana as he had before – recreationally on weekends – until stopping altogether in February 2024.

By virtue of Applicant’s admitted marijuana involvement, the Judge found that disqualifying conditions AG ¶¶ 25(a) and 25(c)¹ were applicable. Acknowledging that Applicant had abstained from marijuana use for about a year and had signed a letter of intent against future drug involvement, the Judge considered the applicability of mitigating conditions AG ¶¶ 26(a) and 26(b),² but ultimately concluded that the extent of Applicant’s marijuana use history left questions and doubts about Applicant’s national security eligibility and suitability and ruled adversely on both allegations.

Discussion

On appeal, Applicant argues generally that the Judge erred by not properly applying the mitigating conditions and Whole-Person Concept, rendering his decision arbitrary, capricious, or contrary to law. The Board does not review cases *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.

Applicant argues that “[s]everal mitigating factors apply to the facts that were not fully considered by the Administrative Judge, leading to an incomplete and potentially unfair assessment of [Applicant’s] situation under the Adjudicative Guidelines.” Appeal Brief at 9. Although Applicant fails to identify which of the mitigating conditions was applicable but not considered, he contends that “the decision disproportionately emphasized the duration and frequency of [Applicant’s] past marijuana use while disregarding the substantial and verifiable steps he has taken toward rehabilitation.” *Id.* at 9-10. This argument is ultimately tied to the Whole-Person Concept and, for the following reason, is unpersuasive.³

¹ AG ¶¶ 25(a): any substance misuse; 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

² AG ¶¶ 26(a): the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; 26(b): the 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

³ Applicant also explicitly challenges the Judge’s Whole-Person analysis, arguing that he “failed to properly weigh [Applicant’s] longstanding professional record, personal integrity, and demonstrated ability to safeguard classified

It is not necessarily Applicant's history of marijuana use, *per se*, that raises questions about his judgment and reliability,⁴ but rather his continued use while aware that using marijuana is inconsistent with holding national security eligibility. The 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. 20-01772 at 3 (App. Bd. Sep. 14, 2021). The evidence in this case establishes that Applicant was on notice when he completed his SCA submission but continued to use marijuana for four subsequent months, despite multiple intervening assertions that he had no intention of using in the future and in recognition that such use is illegal under federal law.⁵ Applicant's post-SCA conduct demonstrated a disregard of national security eligibility standards that negatively reflects on his judgment and reliability and renders this decision sustainable.

Conclusion

Applicant has not established that the Judge's conclusions were arbitrary, capricious, or contrary to law. 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).

information when assessing his overall risk level." Appeal Brief at 10. The Judge acknowledged that "Applicant is respected in the workplace and in his community," but ultimately concluded that the record left questions and doubts about Applicant's eligibility, which is sustainable on this record. Decision at 5.

⁴ We agree – to a limited extent – that the Judge's emphasis on the duration and frequency of Applicant's prior marijuana use was misplaced. The Board has recently assessed that "a commonsense understanding of the evolving landscape of marijuana law and policy in the United States informs us that simple recreational marijuana use no longer holds the same severe negative implications as many other illegal drugs," which is "especially . . . true when the use occurs permissibly under state law." ISCR Case No. 24-00914 at 3 (App. Bd. Apr. 9, 2025) (citations omitted). Applicant resides in a state where recreational adult purchase, possession, and consumption of marijuana have been permissible under state law for over a decade. The legal status of marijuana where Applicant resides and the fact that he has never previously been granted national security eligibility merit some application of AG ¶¶ 26(a) and 26(b) and warranted more discussion and consideration than the Judge gave. Any error, however, is harmless under the facts of the case.

⁵ See Government Exhibit (GE) 1 at 29 ("I do not intend to [use marijuana in the future] because it is prohibited for a security clearance."); GE 2 at 4-5 (asserting no intention to use marijuana in the future after acknowledging that it remains illegal under federal law and is inconsistent with being granted access to classified information); Applicant Exhibit N at 68; Tr. at 37 (Applicant responded affirmatively to the Government's question, "But you knew it was illegal under federal law, you knew you were applying for a security clearance, you knew you were hoping to get a security clearance? And you were still using marijuana, correct?").

Order

The decision in ISCR Case No. 24-01001 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