



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: May 13, 2025

In the matter of:

Applicant for Public Trust Position

ADP Case No. 24-00644

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 eligibility for a public trust position. On July 25, 2024, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – trustworthiness concerns raised under Guideline H (Drug Involvement and Substance Misuse), Guideline J (Criminal Conduct), Guideline F (Financial Considerations), 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 27, 2025, Defense Office of Hearings and Appeals Administrative Judge Roger C. Wesley denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

In his response to the SOR, Applicant elected a decision on the written record. Prior to submission of the case to the Administrative Judge, the Government withdrew the Guideline J allegation and added further allegations under Guidelines E and F. The Judge found favorably for Applicant on the Guideline E allegations. The Judge found adversely to Applicant on the sole Guideline H allegation—that he used marijuana between November 2020 and December 2021 while in a sensitive position, i.e., one in which he held a security clearance. The Judge also found

adversely to Applicant on the eight Guideline F allegations, which included allegations that Applicant failed to file federal income tax returns for tax years 2018, 2019, and 2022, that he owed a total of approximately \$10,300 in delinquent taxes for those years, and that he had three relatively minor delinquent consumer debts.

On appeal, Applicant make no assertion of harmful error on the part of the Judge. Instead, he requests reconsideration of the Judge's decision and provides additional information about the circumstances that led to his drug use and his steps to move forward, as well as the circumstances that led to his financial issues and his efforts to resolve them.¹ The Appeal Board does not review cases *de novo* and is prohibited from considering new evidence on appeal. Directive E3.1.29. The Board's authority to review a case is limited to cases in which the appealing party has alleged the Judge committed harmful error. Because Applicant has not made such an allegation of error, the decision of the Judge denying Applicant eligibility for a public trust position is sustainable.

¹ With his appeal, Applicant includes a signed Statement of Intent (SOI) to abstain from drug use, dated September 12, 2024. Although there is some evidence that Applicant previously submitted—or attempted to submit—the SOI during the adjudicative process, it is clear from the Judge's decision that he did not receive or consider the document. Under the facts of this case, we conclude that any error was harmless, as the SOI would not likely have resulted in a different outcome had the Judge considered it. *See* ISCR Case No. 00-0250 at 4 (App. Bd. Jul. 11, 2001) (discussing harmless error doctrine).

Order

The decision in ADP Case No. 24-00644 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board