

**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**

Judge's Findings of Fact and Analysis

Applicant is in his early-30s and has worked for his current federal contractor employer since April 2024. Applicant was previously granted public trust eligibility in 2018, while working for a different government contractor.

In his April 2024 security clearance application (SCA), Applicant disclosed that he used marijuana from July 2017 to March 2024. In his June 2024 personal subject interview (PSI) with an investigator, Applicant admitted that he continued to use marijuana through June 2024. In his October 2024 SOR answer, he admitted his use of marijuana extended through September 2024.

During his PSI, Applicant explained that he used marijuana occasionally at home or at a friend's house on weekends to relax or for social purposes. Applicant acknowledged his awareness that marijuana use violated federal law. Applicant stated that he used marijuana prior to holding a position of trust in 2018, ceased using while holding the position, and resumed use after he was no longer in the position. He stated that he intended to continue his marijuana use because he likes the way it makes him feel but stated that he would stop using it once he is cleared.

In Applicant's response to the FORM, he highlighted that he stopped using marijuana when he held a position of trust in approximately 2018 and that he can stop using again, especially because he is older now and is less impulsive.

The Judge found that disqualifying conditions AG ¶¶ 25(a) and 25(g)¹ were applicable. Although the Judge considered the applicability of mitigating conditions AG ¶¶ 26(a) and 26(b),² he ultimately concluded that neither fully applied:

Applicant's use and purchase of marijuana was frequent and was as recent as September 2024. It is troubling that Applicant continued using marijuana when he was fully aware doing so violated federal law. He continued to use marijuana after he completed his April 2024 SCA, after he was interviewed by an investigator in June 2024, and during the same month as he received the SOR.

Although Applicant stated he no longer intends to use marijuana in the future if he is granted a clearance, he failed to provide a signed statement of his intent not to use or misuse drugs in the future. Even though he apparently stopped using marijuana when he held a position of trust, his recent resumption casts doubt upon his current reliability, trustworthiness, and good judgment. [Decision at 5.]

¹ AG ¶¶ 25(a): any substance misuse; 25(g): expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

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

Discussion

On appeal, Applicant argues that the Judge erred both in his mitigation analysis and in “improperly considering criminal conduct which was not raised in the Statement of Reasons pursuant to Guideline J.” Appeal Brief at 1.

Applicant argues that the Judge erred in his AG ¶ 26(a) mitigation analysis in that he failed to consider that Applicant’s prior use “happened under such circumstances that it is unlikely to recur.” *Id.* at 4. Applicant highlights that he stopped using marijuana while holding a position of public trust and that he has promised to stop using again. Consequently, Applicant argues, his “usage **outside** of a position of public trust does not cast doubt upon his reliability and trustworthiness as he has effectively demonstrated that he can abide by the law, rules, and regulations imposed upon a security clearance holder.” *Id.* at 5 (emphasis added). Applicant contends that the Judge “considered only the recency of [his] usage, but failed to consider the other factors expressly articulated in AG ¶ 26(a), namely whether the usage occurred under specific circumstances.” *Id.*

Applicant misconstrues the Judge’s analysis, which is well-rooted in Appeal Board precedent. The dispositive factor in the Judge’s analysis was that Applicant continued to use marijuana after becoming aware that such use is inconsistent with holding national security eligibility. Although Applicant may have ceased using while employed in a position of public trust, Applicant began to use again upon leaving that position and continued to use after being hired by another federal contractor, after filling out an SCA, and after being interviewed by a Government investigator. 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 due to prior eligibility, that he was using again when he completed his SCA for his current position, and that he continued to use during the adjudicative process, despite acknowledging that such use is illegal under federal law.³ 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).

³ Applicant’s assertion that the Judge erred in considering the non-alleged criminality of his conduct is wholly without merit. Guideline H explicitly and repeatedly references “illegal” drug use. Contrary to Applicant’s novel argument that Applicant “was not on notice that the illegality of his actions would be considered in the determination of whether to grant him a security clearance,” the SOR clearly put him on notice that his illegal use of a controlled substance was in issue. Appeal Brief at 6.

Order

The decision in ISCR Case No. 24-01718 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