



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: July 30, 2025

In the matter of:

Applicant for Security Clearance

ISCR Case No. 24-01713

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 October 11, 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 May 21, 2025, Defense Office of Hearings and Appeals Administrative Judge LeRoy F. Foreman denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Background

Applicant is in his mid-20s and has been employed by a federal contractor since August 2022. He received a bachelor's degree in May 2022. He has lived with his girlfriend since September 2022.

The SOR alleged that Applicant used marijuana with varying frequency from about January 2018 to about March 2024, and that he purchased marijuana with varying frequency from about January 2018 to about July 2021. Applicant admitted both allegations. He acknowledged that he obtained a medical marijuana card in July 2019. He purchased marijuana products at a dispensary using his medical marijuana card until about 2021 or 2022. The date the card expired varies in the record. He used the marijuana products on Friday and Saturday nights to help him sleep. He stopped using marijuana in 2021 or early-to-mid 2022. However, he used it again on one occasion in 2024 with his girlfriend, who continues to use medical marijuana. They have an agreement that she will not smoke it in the house when Applicant is present.

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. 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).

When an appeal issue raises a question of law, the Board's scope of review is plenary. *See* DISCR OSD Case No. 87-2107, 1992 WL 388439 at *3-4 (App. Bd. Sep. 29, 1992) (citations to federal cases omitted). If an appealing party demonstrates factual or legal error, then the Board must consider the following questions: (1) Is the error harmful or harmless? (2) Has the nonappealing party made a persuasive argument for how the judge's decision can be affirmed on alternate grounds? and (3) If the judge's decision cannot be affirmed, should the case be reversed or remanded? *See* ISCR Case No. 02-08032 at 2 (App. Bd. May 14, 2004).

Discussion

On appeal, Applicant raises three separate issues. First, he contends that the Judge erred in the Findings of Fact when the Judge found, "He testified that after he graduated from college in May 2022, he knew that he wanted to work as a federal contractor in engineering and aerospace, and he stopped using marijuana." Decision at 2. In Applicant's appeal, he clarified he stopped using marijuana in January of 2022, as he stated during the hearing. Transcript (Tr.) at 16. This six-month difference did not appear to weigh heavily in the Judge's decision, and the record evidence fluctuates between 2021 and 2022 for the date of last use. For instance, the Judge also noted that Applicant "stopped using marijuana in July 2021, when his marijuana card expired." Decision at 2. However, Applicant testified his card expired in 2022. Tr. at 16. An error is harmless

if it is not outcome determinative. *See* ISCR Case No. 95-0495 at 4 (App. Bd. Mar. 22, 1996). These discrepancies in dates were due to differences in the record, as reported by Applicant. Further, the Judge’s analysis focused on Applicant’s choice to use marijuana with his girlfriend on one occasion in March 2024, after previously abstaining from marijuana use. We conclude that any error in these dates was harmless and likely did not affect the outcome of the case.

Second, Applicant asserts that the Judge was biased toward the Government. He asserts that their apparent familiarity led him to conclude their relationship “had some effect on the decision made.” Appeal Brief at 2. There is a rebuttable presumption that a judge is impartial and unbiased, and a party seeking to rebut that presumption has a heavy burden of persuasion. *See* ISCR Case No. 02-08032 at 4 (App. Bd. May 14, 2004). “The issue is not whether Applicant personally believes the Judge was biased or prejudiced against Applicant. Rather, the issue is whether the record contains any indication the Judge acted in a manner that would lead a reasonable person to question the fairness and impartiality of the Judge. Bias or prejudice is not demonstrated merely because the Judge made adverse findings or reached unfavorable conclusions. Moreover, even if an appealing party demonstrates error by the Judge, proof of such error, standing alone, does not demonstrate the Judge was biased or prejudice.” *See* ISCR Case No. 04-03834 at 2 (App. Bd. Jul. 2, 2007) (internal citations omitted). Here, Applicant points to the fact that “the [Department] counsel was already well known and liked by the judge” as evidence of bias. Appeal Brief at 2. However, Applicant points to no action that would show unfairness or impartiality in the eyes of a reasonable person, and our review of the record reveals none. Applicant did not rebut the presumption that the Judge was impartial, unbiased, and professional.

Finally, Applicant’s brief advocates for an alternative weighing of the evidence under the applicable mitigating conditions and the Whole-Person Concept but fails to demonstrate error. An applicant’s “disagreement with the Judge’s weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate that the Judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law.” ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). These arguments fail to demonstrate the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law, and the decision is sustainable on this record.

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).

Order

The decision in ISCR Case No. 24-01713 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Jennifer Goldstein

Jennifer Goldstein
Administrative Judge
Member, Appeal Board