



**DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: November 17, 2025

In the matter of:)
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-----) ISCR Case No. 24-01030
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Applicant for Security Clearance)
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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 29, 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 August 12, 2025, Defense Office of Hearings and Appeals Administrative Judge Pamela C. Benson denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Background and Judge's Analysis

Applicant, in her late 20s, is unmarried and has no children. She earned a bachelor's degree in 2021 and has been employed with a government contractor since 2018. She was first granted eligibility for access to classified information in 2018, in relation to her employment with the government contractor.

The SOR alleged that Applicant used marijuana from June 2020 until October 2024, including use while occupying a sensitive position. The SOR further alleged that Applicant

intended to continue using marijuana in the future. In her answer to the SOR, Applicant admitted using marijuana from June 2020 to October 2024 and acknowledged that her use was while occupying a sensitive position. She provided documentation showing that she had a medical marijuana license issued by her state. Her employer was informed of her medical marijuana use prior to her obtaining the “prescription” for marijuana and each time she renewed the prescription. Applicant denied an intent to use marijuana in the future “if it jeopardizes [her] security clearance or job.” Answer at 4.

Applicant continued to use marijuana until late March 2025, despite having been placed on notice by the October 2024 SOR that the Defense Counterintelligence and Security Agency was “unable to find that it is clearly consistent with the national interest to grant [her] access to classified information” due to her marijuana use, her use of marijuana while holding a sensitive position, and her future intent to continue to use it.

In light 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 since March 2025 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 all three allegations.

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

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.

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

Challenges to Findings of Fact

Applicant argues that the Judge misinterpreted a series of factual findings. Among the alleged misinterpretations, she asserts that the Judge incorrectly concluded that she did not provide supporting evidence that her employer advised her it was acceptable to use medical marijuana while possessing a security clearance. In her appeal, she noted that she testified about discussing the SOR allegations with "security personnel." Appeal Brief at 2 (citing Transcript (Tr.) at 91). She also argues that the Judge misconstrued her supervisor's recommendation that she stop using medical marijuana as an order; erred in the frequency and amounts of the marijuana she used; and misidentified her psychiatrist as a therapist. Appeal Brief at 3. These assertions simply argue for an alternative weighing of the evidence. A disagreement 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. *See* ISCR Case No. 06-17409 at 3 (App. Bd. Oct. 12, 2007). Additionally, Applicant argued that the Judge overlooked Whole-Person evidence that was favorable to her and mischaracterized her testimony and evidence. Again, this argument goes to the weight that the Judge assigned to evidence and does not establish that the decision was arbitrary, capricious, or contrary to law.

The Judge placed significant weight on Applicant's choice to continue to use marijuana for medical purposes "despite noting the illegal drug question when she filled out a March 2022 SCA, and after being questioned about her use of medical marijuana during her April 2022 background interview." Decision at 7. Moreover, even if Applicant was provided incorrect information by her employer's medical department and a security employee, a reasonable person would have subsequently been placed on notice of the Government's concerns by the October 2024 SOR. Further, Applicant acknowledged she continued to use marijuana even after her supervisor learned of the SOR and suggested she abstain from future marijuana use because marijuana is "federally illegal." Tr. at 137, 142-143, 146-148.

Applicant's continued use of marijuana for medicinal purposes reflects questionable judgment and reliability and renders this decision sustainable. 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). Applicant’s conduct demonstrated a disregard of national security eligibility standards.

Allegation of Bias

Applicant argues that the Judge was biased and suggests that the decision was improperly influenced by the Judge’s personal anti-drug advocacy. Appeal Brief at 4. 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.

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. 24-01030 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Jennifer Goldstein

Jennifer Goldstein
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board