



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

In the matter of:

Applicant for Security Clearance

ISCR Case No. 24-01307

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Deputy Chief Department Counsel

FOR APPLICANT

Matthew Thomas, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 13, 2024, DoD issued a statement of reasons (SOR) advising Applicant of the basis for 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 April 21, 2025, Defense Office of Hearings and Appeals Administrative Judge Mark Harvey denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

The Judge found against Applicant on the two Guideline H allegations. These alleged that Applicant used marijuana with varying frequency from about March 2021 to about April 2024 and that he used marijuana after being granted public trust eligibility or while in a sensitive position.

In his appeal brief, Applicant contends that the Judge's adverse determination was arbitrary, capricious, and contrary to law and unsupported by the record evidence. For reasons stated below, we affirm the Judge's decision.

Background

Applicant is in his late 20s and works as an information technology site lead. In 2016, he graduated from high school. He attended two years of college. In 2018, Applicant submitted an application for a public trust position in connection with his employment with a federal contractor.

From 2020 to 2023, Applicant received therapy from a chiropractor to address back pain. In March 2022, the doctor “prescribed” medical marijuana for him, and he received a state issued medical marijuana card. The medical marijuana card authorized him to purchase marijuana under a state law.

In Applicant’s February 5, 2024, security clearance application, he disclosed he used marijuana from March 2021 to February 2024. He also said, “I intend to continue using THC at home medically for my frequent back pain . . . provided to me by the state.” He indicated his intention to continue to use marijuana based on the advice of his physician.

Applicant denied that he used marijuana before 2022. Once he had a marijuana card, he purchased marijuana at state-authorized dispensaries. He did not use marijuana during working hours or for recreation. He does not associate with known marijuana users or go to locations where he knows marijuana is being used.

An Office of Personnel Management investigator asked Applicant if he was willing to end his marijuana use to have a security clearance, and Applicant said yes. In his response to interrogatories, Applicant acknowledged that he became aware that medical marijuana use was federally illegal when applying for and receiving his state’s medical marijuana license. Government Exhibit 4 at 6. However, he also testified that his doctor told him that marijuana use was legal under federal law, and recommended he use medical marijuana to alleviate his back pain. Transcript at 31. He also stated he did not intend to use marijuana in the future to further his career and to support the Federal Government.

Applicant sees a chiropractor on a weekly or bi-weekly basis. His chiropractor treatments successfully assuaged his back pain. If the chiropractor treatments become ineffective, he does not plan to return to his marijuana use. On November 18, 2024, Applicant signed a statement of intent to abstain from all drug involvement and substance misuse and to avoid associations with known drug users and environments where illegal drugs are used. He acknowledged that any future involvement or misuse of drugs is grounds for automatic revocation of national security eligibility.

On December 16, 2024, Applicant provided urine and hair samples for drug testing. Both samples were negative for the presence of illegal substances. On January 30, 2025, Applicant received a psychological evaluation. The evaluating psychologist concluded there was no diagnosis of substance use disorder. She said his prognosis is good and his risk is low for relapse.

Discussion

Applicant contends that it was arbitrary, capricious, and contrary to law for the Judge to find against him based on the record evidence. He asserts that SOR ¶ 1.b should have been found in favor of Applicant and that the Judge erred in his mitigation analyses.

SOR ¶ 1.b

Applicant argues that the Judge's adverse finding on SOR ¶ 1.b was erroneous for two reasons. First, he claims that the Judge failed to articulate a rational connection between the facts found and the adverse finding, it reflects a clear error, and it fails to consider an important aspect of the case. He asserts that, because Applicant did not possess a security clearance nor have access to classified information during his use of marijuana for medical purposes, it was error for the Judge to find against Applicant on SOR ¶ 1.b.

In Applicant's Answer to the SOR, he admitted he used marijuana after being granted public trust eligibility or while in a sensitive position. "If an applicant admits an SOR allegation, then such admission provides an administrative judge with a legally sufficient basis to find that the applicant engaged in the conduct covered by the applicant's admission." ISCR Case 04-09251 at 2 (App. Bd. Mar. 27, 2007).

Additionally, we note that in his carefully crafted analysis, the Judge declined to apply disqualifying condition AG ¶ 25(f) because "there is insufficient evidence that Applicant was holding a sensitive position under AG ¶ 25(f) when he was using marijuana." Decision at 9. Instead, the Judge found that the record established disqualification under AG ¶¶ 25(a) and 25(c).¹ Applicant admitted that he possessed and used marijuana, and that he did so after being granted public trust eligibility or while in a sensitive position. The Judge noted that marijuana is currently listed as a Schedule I Controlled Substance. As a Schedule I Controlled Substance, it has no "currently accepted medical use in treatment." 21 U.S.C. § 812(a)(1)(B). The SOR concerns — Applicant's use and possession of marijuana, and his use and possession of marijuana while in a position requiring a designation of trust — reflect two similar, but different concerns about Applicant's judgment, neither of which are improperly analyzed under AG ¶¶ 25(a) and 25(c). The fact that Applicant did not possess a security clearance nor have access to classified information during his use of marijuana is immaterial to the application of AG ¶¶ 25(a) and 25(c).

Moreover, consideration of Applicant's status as occupying a position requiring a designation of trust is consistent with the requirement in the Security Executive Agent's *Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (Dec. 2021) [hereinafter *Clarifying Guidance*]. The *Clarifying Guidance* notes, "particularly in response

¹ Under AG ¶¶ 25(a) and 25(c), conditions that could raise a security concern and may be disqualifying include: "(a) any substance misuse;" "(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia[.]" Additionally, we note that the instant matter is distinguishable from ISCR Case No. 20-03111 at 3 (App. Bd. Aug. 10, 2022), where the judge applied AG ¶ 25(f).

to the increase in the number of state and local governments legalizing or decriminalizing uses of marijuana,” that “prior recreational marijuana use by an individual *may* be relevant to adjudications *but not determinative*.” *Clarifying Guidance* at 1-2. The *Clarifying Guidance* emphasizes the importance of the Whole-Person Concept² in marijuana cases in weighing the “variables in an individual’s life to determine whether that individual’s behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination.” Here, the Judge satisfied the *Clarifying Guidance*’s directive by engaging in a comprehensive Whole-Person analysis that included consideration of Applicant’s use of marijuana while occupying a position that required a designation of trust, along with multiple other factors. We are unpersuaded by Applicant’s argument to the contrary. The Judge properly considered Applicant’s use of marijuana while holding a position requiring a designation of trust as “a factor that must be considered in the analysis along with the numerous uses of marijuana (sometimes two or three times a week) from about March of 2021 to about March or April of 2024.” Decision at 9.

Mitigation

Applicant also contends that the Judge erred in his application of AG ¶¶ 26(a) and 26(b)³; his failure to adequately consider AG ¶¶ 26(c) and 26(d)⁴; and his application of the Whole-Person Concept.

AG ¶ 26(a), AG ¶26(b), and the Whole-Person Concept

Applicant argues that the Judge failed to do a full analysis under AG ¶¶ 26(a), 26(b), and the Whole-Person Concept. We disagree. Applicant’s arguments essentially amount to a disagreement with the Judge’s weighing of the evidence and are neither sufficient to rebut the presumption that the Judge considered all of the evidence in the record nor enough to establish that the Judge weighed the evidence in a manner that was arbitrary, capricious, or contrary to law. *See* ISCR Case No. 04-08975 at 1 (App. Bd. Aug. 4, 2006) (citation omitted). In this case, the Judge discussed all of the relevant factors.

² AG ¶¶ 2(a), 2(c). In evaluating the relevance of an individual’s conduct, the following factors should be considered: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual’s age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence. *Id.* at ¶ 2(d).

³ 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, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

⁴ AG ¶¶ 26(c): abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; 26(d): satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

The Judge found that “Applicant said he ended his marijuana use in March or April 2024, and his hearing was on February 6, 2025. He had less than one year of abstinence from marijuana use at the time of his hearing.” Decision at 9. The Appeal Board has “never established a ‘bright line’ rule as to recency of drug use. The extent to which security concerns may have become attenuated through the passage of time is a question that must be resolved based on the evidence as a whole.” *See* ISCR Case No. 14-01847 at 3 (App. Bd. Apr. 9, 2015). Weighing the recency of Applicant’s marijuana use and his use while in a position of trust amidst all of the other factors, the Judge concluded that Applicant’s marijuana use casts doubt on his current reliability, trustworthiness, and judgment. Decision at 9. Thus, he fully analyzed AG ¶ 26(a).

Similarly, while crediting Applicant for signing a statement of intent to abstain from all drug involvement and substance misuse, promising to avoid associations with known drug users and environments where illegal drugs are used, and acknowledging that any future involvement or misuse of drugs is grounds for automatic revocation of national security eligibility, the Judge found “He satisfied the requirements of AG ¶ 26(b)(3), except he has not established a sufficient ‘pattern of abstinence of marijuana use.’” Decision at 9 (citing ISCR Case No. 24-00914 at 6 (App. Bd. Apr. 9, 2025)). In this instance, the Judge articulated a reasonable analysis for his findings under AG ¶ 26(a), AG ¶ 26(b), and the Whole-Person Concept.

AG ¶¶ 26(c) and 26(d)

Applicant also asserts that the Judge should have considered the mitigating factors in AG ¶¶ 26(c) and 26(d). We disagree. A judge is not required to discuss all of the potentially applicable analytical factors set forth in the Directive. *See* ISCR Case No. 14-06135 at 2 n.1 (App. Bd. Jun. 15, 2016). Here, the Judge was not required to discuss mitigating conditions AG ¶¶ 26(c) and 26(d) because they are inapplicable to the case at hand. AG ¶ 26(d) does not apply because marijuana currently cannot be “prescribed” as a Schedule I drug.⁵ Applicant presented no evidence that he was prescribed a drug controlled by the U.S. Food and Drug Administration. Similarly, AG ¶ 26(d) is not supported by the evidence. While Applicant’s participation in a psychological evaluation and his favorable prognosis constitute evidence that the Judge was bound to consider, it does not satisfy the criteria set forth in AG ¶ 26(d). *See* ISCR Case No. 21-00265 at 2 (App. Bd. Jul. 8, 2022).

Conclusion

Based on our review of the record, the Judge’s conclusions regarding Applicant’s marijuana use from 2021 to 2024 are sustainable and sufficient to support denial of his national security eligibility. Applicant failed to establish the Judge committed any harmful error. The Judge examined the relevant evidence and articulated a satisfactory explanation for the decision. The decision is sustainable on the 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.*

⁵ Additionally, Applicant’s [State] Const. Art. XIV, § 1 permits “state-licensed physicians and nurse practitioners to *recommend* marijuana for medical purposes to patients with serious illnesses and medical conditions.” (Emphasis added). No evidence was presented that the medicinal marijuana is by *prescription*.

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. 24-01307 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