



**DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS**



In the matter of: )  
)  
) ISCR Case No. 18-00650  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: Jessica Coronado, Esq.

February 5, 2019

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

**Statement of the Case**

On June 22, 2017, Applicant submitted a security clearance applications (e-QIP). (Government Exhibit 1.) On May 2, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DoD after June 8, 2017.

Applicant answered the SOR on May 25, 2018, and requested a hearing before an administrative judge. The case was assigned to me on September 5, 2018. The Defense Office of Hearings and Appeals issued a notice of hearing on November 15, 2018, and the hearing was convened as scheduled on December 4, 2018. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which

were admitted without objection. The Applicant offered seven exhibits, referred to as Applicant's Exhibit A through G, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 13, 2018.

### **Findings of Fact**

Applicant is 31 years old. He is not married and has no children. He has a Bachelor's of Science degree in Aerospace Engineering. He is employed by a defense contractor as an Engineer. He is seeking to obtain a security clearance in connection with his employment.

#### **Guideline H - Drug Involvement and Substance Misuse**

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness. Applicant has a history of illegal drug use that includes his use of marijuana from about July 2000 to at least October 2017; including from about 2010 to October 2017, while holding a security clearance.

Applicant attended college from 2005 to 2010. He stated that during college he used marijuana one time. After graduating, in February 2010, he was hired by his current employer, a defense contractor, and applied for a security clearance which he was granted. Applicant testified that when he completed the security clearance questionnaire in 2010, he did not intend on ever using marijuana again. (Tr. p. 20.)

From 2010 to 2017, while holding a security clearance, Applicant used marijuana on at least four separate occasions. He stated that he used it with friends at social events. On at least two occasions, he stated to the investigator that he used marijuana due to peer pressure. (Government Exhibit 2.) Throughout this period, Applicant received annual security briefings at work, and was aware of DoD policy as well as his company policy prohibiting the use of illegal drugs while holding a security clearance. (Tr. pp. 37 - 38.)

In June 2017, Applicant completed another security clearance application, and was later interviewed by an investigator on August 15, 2017. On the application and during the interview, Applicant expressed his intent to continue to use marijuana in the future. At the hearing, Applicant testified that he no longer intends to use marijuana. He states that he now realizes his poor choices in the past concerning his illegal drug use. To try and be a better person he voluntarily enrolled in a 16-hour, two-day course, called "Primed for Life" sponsored by the Marine Corps. (Applicant's Exhibit E.) He states that it was an eye-opener for him. (Tr. p. 23.)

Applicant submitted a Statement of Intent dated December 3, 2018, swearing to never use marijuana or any other illegal substance again. He stated that he now understands the seriousness of his illegal drug use while holding a security clearance.

He states that he no longer associates with anyone who uses illegal drugs, or anyone who places him in situations where marijuana is freely available, except his brother. He further states that any future misuse of any illegal drug will be grounds for immediate revocation of his national security eligibility. (Applicant's Exhibit D.)

A letter from the Applicant's lead engineer dated November 1, 2018, indicates that Applicant exhibits good judgment, reliability, and trustworthiness. He is described as a great asset to the team. He is recommended for a security clearance. (Applicant's Exhibit A.)

A letter from a coworker dated November 6, 2018, who has worked with the Applicant since 2011, reflects that Applicant is considered to be an excellent, dependable, honest, and responsible employee. Applicant is known to always follow proper procedures in protecting classified information. He still works in the classified area on a weekly basis. (Applicant's Exhibit B.)

Performance reviews of the Applicant for the period from January 1, 2015, through December 31, 2015, reflects that he "consistently exceeds expectations." (Applicant's Exhibit C.)

Applicant underwent three drug tests on October 3, 2018; November 7, 2018; and November 27, 2018, which all show negative results for illegal drugs. (Applicant's Exhibit F.)

A letter from a friend of the Applicant, who has known him for the past five years, stated that she has only known Applicant to partake in the use of illegal drugs on one occasion. She believes he is a man of integrity, honesty and accountability. (Applicant's Exhibit G.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline H: Drug Involvement and Substance Misuse**

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia, and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are applicable:

- (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; and
- (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.

None of the mitigating factors demonstrate full mitigation. Applicant is not a young and immature man, with little experience in the defense industry. In fact, he is 31 years old and has worked in the defense industry for his current employer for the past eight years. After receiving a security clearance in 2010, he continued to use marijuana while holding a security clearance. He last used marijuana in 2017, about a year and a half ago. Applicant was aware of DoD policy and his company's zero tolerance drug policy, but chose to defy the policies by using marijuana after being granted a security clearance. There is no excuse for this misconduct, and his actions do not show the requisite good judgment, reliability and trustworthiness necessary to be eligible for access to classified information.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Applicant is well respected on the job and is considered to be an excellent engineer. However, he has failed to provide sufficient evidence to demonstrate that he meets the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse security concern.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge