



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



In the matter of:	)	
	)	
	)	ISCR Case No. 18-01701
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

06/28/2019

**Decision**

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the security concerns arising from his past use of marijuana. National security eligibility for access to classified information is granted.

**Statement of the Case**

On December 19, 2017, Applicant completed and signed his security clearance application (SCA). On June 25, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant 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 *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on July 10, 2018, and requested a hearing before an administrative judge. On February 28, 2019, the case was assigned to me. On March 5, 2019, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for March 21, 2019. Applicant’s hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 and 2. Applicant testified and offered Applicant Exhibit (AE) A. I admitted all proffered exhibits into evidence without objection. DOHA received the hearing transcript (Tr.) on April 1, 2019.

### **Findings of Fact**

Applicant is 50 years old. He earned some college credits, but not enough for a college degree. He has been married and divorced three times. He has two adult children from his first marriage. He currently lives with a co-habitant, and also his mother, and his younger brother recently moved into his home. Since November 2017, Applicant has been employed full time by a defense contractor as a senior quality inspector. He does not currently possess a DOD security clearance. (Tr. 12-13, 17; GE 1)

### **Drug Involvement and Substance Misuse**

The SOR alleges Applicant used marijuana, with varying frequency, from approximately 1990 to June 2017. He disclosed his history of marijuana use on his SCA, and he admitted this allegation in his SOR response. (Tr. 17; GE 1)

Applicant first started using marijuana at the age of 21. He continued to use marijuana until June 2017, when he decided to quit using it altogether. His heaviest use of marijuana occurred during his early-to-mid 30s, when he used marijuana two to three times per day. He used marijuana because he enjoyed it. He purchased small amounts of marijuana over the years from his friends. Applicant no longer associates with these friends. (Tr. 14-16; GE 1)

Applicant considered quitting his use of marijuana prior to June 2017. For the past few years he had tapered off using marijuana. He realized that he no longer enjoyed using it, and he did not like how marijuana affected him mentally. He finally reached a point where he wanted to make positive changes and move forward with his life. He quit all marijuana use in June 2017. In November 2017, he was hired by his current employer. (Tr. 16-18, 23)

Applicant's employer required him to take a drug test prior to making him an offer of employment. Three months after he was hired, Applicant was required to take another drug test. He has never tested positive for any type of illegal drug. Other than marijuana, he has not used any other illegal drug. He has never been cited for any offense related to illegal drugs. He has never felt addicted to marijuana, and he denied any cravings for marijuana since he stopped using it in June 2017. His co-habitant does not use marijuana. Applicant understands marijuana use is against Federal law, and is unacceptable for individuals possessing DOD security clearances. In early 2018, Applicant signed a letter of intent declaring that that he had no intent to use marijuana in the future, and acknowledging that any future illegal drug use would be grounds for automatic revocation of his clearance. (Tr. 18-21, 23-25; AE A)

Applicant's work record is excellent. Within 15 months of being hired, he was promoted to a supervisor position. He takes a great deal of pride in his work for the DOD. He wanted to be completely candid about his past drug use when he completed the SCA in December 2017. He is steadfast in remaining drug-free and his co-habitant and family are very supportive of his commitment. (Tr. 20-21, 24)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information will be resolved in favor of 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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**

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following is potentially applicable:

AG ¶ 25(a) any substance misuse.

Applicant used marijuana from about 1990 to June 2017. The above disqualifying condition applies.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

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; and

AG ¶ 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.

Applicant has used marijuana over a long period of time. He tapered off from using marijuana over the last few years of his marijuana use because: he no longer enjoyed

using marijuana; he did not like how it affected him mentally; and he wanted to make positive changes in his life. Applicant has not used or craved marijuana in two years. He provided a letter of intent to never use marijuana again, and understands that marijuana is against Federal law and is unacceptable for holders of a DOD security clearance. He was candid with his history of marijuana use when he completed the SCA in December 2017. I find Applicant is sincere in his commitment to remain drug-free, and his excellent work record supports his determination to make positive changes in his life. Mitigating conditions AG ¶¶ 26(a) and 26(b) apply.

### **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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant has made positive changes in his life, which is supported by his promotion to supervisor within 15 months after being hired by his employer. He is committed to remaining drug-free, and I find his future use of marijuana is unlikely to recur. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the drug involvement and substance misuse security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant Applicant's national security eligibility. Eligibility for access to classified information is granted.

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Pamela C. Benson  
Administrative Judge