



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



In the matter of: )  
)  
) ISCR Case No. 18-02062  
)  
Applicant for Security Clearance )

**Appearances**

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

03/18/2019

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 31, 2018, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. 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 on June 8, 2017.

Applicant answered the SOR on November 21, 2018, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's file of relevant material (FORM), and Applicant received it on January 17, 2019. The Government's evidence is identified as Items 1 through 8. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant provided a timely response to the FORM, which is marked as Applicant Exhibit (AE) A. There were no objections to any of the evidence offered. Items 1 through 8 and AE A are admitted into evidence. The case was assigned to me on February 27, 2019.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 59 years old. He married in 1984 and has three grown children. He earned a bachelor's degree and a doctorate degree from a prestigious university. He is a renowned expert in his field. He started his own company in 1992, which has received defense contracts throughout the years. Applicant has held a security clearance since approximately 1988, at various levels, including secret, top secret, and access to sensitive compartment information.<sup>1</sup>

Applicant admitted that from about 1977 to about August 2017, he used marijuana with varying frequency. He used marijuana while holding a security clearance from about December 1998 to August 2017.<sup>2</sup> He admitted that he purchased marijuana from about October 2016 to August 2017, while granted access to classified information.<sup>3</sup>

Applicant completed security clearance applications (SCA) in November 2006 and June 2012. He admitted he deliberately falsified material facts in both SCAs by not disclosing his previous marijuana use, and his use while holding a security clearance.<sup>4</sup>

In November 2017, Applicant was interviewed by a government investigator. He told the investigator that he had been told over the years, dating back to when he completed his first SCA, that he should answer "no" to the questions on the SCA related to drugs. He declined to disclose to the investigator who told him to answer untruthfully.

---

<sup>1</sup> Item 4.

<sup>2</sup> Items 2, 3. The SOR alleges Applicant used marijuana from December 1998 to about August 2017, while holding a security clearance. The evidence included in the FORM shows Applicant held a clearance from 1988 to August 2017, and during that time he used marijuana. I will only consider the time period alleged in the SOR for disqualifying purposes, but may consider the total period when making a credibility determination, in mitigation, and in my whole-person analysis.

<sup>3</sup> Items 2, 3, 7; AE A.

<sup>4</sup> Items 5, 6.

He stated that there was never an issue in his mind that his marijuana use was impacting national security.<sup>5</sup> In his answer to the SOR, he stated:

In 1986, at the age of 26 and just coming out of college and applying for my first clearance, it was recommended to me by a superior that I disavow any marijuana use. I did just that, and that lie carried forward through the years and subsequent security clearance applications. I note that I have held a security clearance since 1986 and there has been no other drug use, no other lies, and no other violations.<sup>6</sup>

Applicant stated in his answer and FORM responses that he used marijuana at social gatherings beginning in 1977. He said his use was more sporadic and not monthly. This was a correction from what he told the investigator regarding monthly use.<sup>7</sup>

In 2015 and 2016, Applicant was working a full time job, which was stressful, and he also founded a non-profit foundation to purchase a recreational area he felt passionate about. The stress of dealing with both affected his health. He indicated that for a variety of medical reasons, including stress and anxiety, two health care providers recommended that he obtain a medical marijuana card, which allowed him to purchase marijuana under the state law where he was living. He admitted these health care professionals were unaware that Applicant held a security clearance. He obtained the medical marijuana card in October 2016. At that point his family and friends became aware of his use.<sup>8</sup>

After receiving the medical marijuana card, he purchased marijuana from dispensaries. He began to use marijuana daily and multiple times a day using a vape pen. He also smoked it from a pipe and consumed it through edibles. He indicated it lowered his anxiety, and he continued his pattern of use until approximately April 2017, when the effect of the drug began having a negative impact on him. It made him paranoid and nervous. He continued to use marijuana daily despite the negative effects until June 2017, when he decided to stop using it. Applicant went through three days of withdrawal symptoms, and then felt better. Since ceasing daily use of marijuana in June 2017, Applicant has used marijuana on two other occasions. He indicated that he inhaled it once on two separate occasions. His explanation for using it two more times was to confirm that marijuana still had an undesirable and unpleasant effect on him. Applicant told the government investigator that he does not intend to use marijuana or any other illegal drug in the future.<sup>9</sup>

---

<sup>5</sup> Item 7.

<sup>6</sup> Item 2. Presumably, Applicant is referring to no other drug use other than marijuana.

<sup>7</sup> Items 2, 3, 7; AE A.

<sup>8</sup> Items 2, 3, 7; AE A.

<sup>9</sup> Items 2, 7; AE A.

Applicant sought legal advice about the status of his company and the effect his disclosure about using marijuana while holding a security clearance would have on it. He was advised to step aside from his company until his drug use issue was resolved, which he did. He then reported his marijuana use to his facilities security officer and the chief executive officer.<sup>10</sup>

In Applicant's response to the FORM he stated:

I have used marijuana more or less most of my life, in a manner similar to alcohol, and I did not disclose it on my security clearance applications. In my view of previous settled cases, I can truthfully think of no basis and no argument that would allow, under current law, for me to hold a security clearance.<sup>11</sup>

Applicant indicated in his answer to the SOR that his expertise in his field warrants reinstating his security clearance. In his FORM response, he indicated that he genuinely believes he is a good and honest person except for this one serious indiscretion. He has unique experience and capabilities that could benefit the safety of our country. Applicant apologized for his actions and accepts that he let his colleagues, family, and country down.<sup>12</sup>

## **Policies**

When evaluating an applicant's suitability for national security eligibility, 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 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 national security eligibility will be resolved in favor of the national security." In reaching this decision, I have

---

<sup>10</sup> Items 2, 7; AE A.

<sup>11</sup> AE A.

<sup>12</sup> AE C.

drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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 out in 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse;

(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.

Applicant admitted that he has used marijuana with varying frequency from approximately 1977 to about August 2017. He was granted a security clearance in approximately 1988. He purchased marijuana from about October 2016 to August 2017. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 are potentially 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;

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the 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 being 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; and

(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.

Applicant used marijuana with varying frequency for approximately 40 years. Even after receiving a security clearance in about 1988, he continued to use marijuana. In 2016, he received a medical marijuana card from the state where he lives. He did not disclose to his health care providers that he held a security clearance. He purchased marijuana from October 2016 to August 2017. He began using marijuana daily. He was fully aware that his actions, both prior to receiving the card and after, were illegal under Federal law and impermissible while holding a security clearance. He stopped using marijuana because it started to have negative health effects on him. He later decided to use it two more times to see if the negative effects continued, indicating his motive for stopping was because it made him feel badly, not because it was a violation while holding a security clearance. His conduct continues to cast doubt on his reliability, trustworthiness and good judgment. AG ¶ 26(a) does not apply.

Applicant stopped using marijuana when its effects made him feel physically and psychologically sick. After abstaining for a period, he decided to try it again to test if it would continue to make him ill. He used it twice more and confirmed its negative effects. It appears his last use was in August 2017. Applicant stated in the record that he did not intend to use marijuana in the future. I have considered his comments. Applicant did not provide any evidence of participation in drug treatment, rehabilitation, or aftercare programs. He did not provide a favorable prognosis by a duly qualified medical professional. I find AG ¶¶ 26(b) has minimal application. There is insufficient evidence to apply AG ¶ 26(d).

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 16, and one that may be potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately failed to disclose his marijuana use on his 2006 and 2012 SCAs. He deliberately lied on both applications by denying he had ever used marijuana while holding a security clearance. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omissions, or concealment was caused or significantly contributed to by advice of legal counsel or a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the

requirement to cooperate or provide the information, the individual cooperated fully and truthfully; and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant indicated when he completed his first SCA in 1986, a supervisor told him to lie about his drug use, which he did. Despite being aware that illegal drug use was prohibited while holding a security clearance, he continued to use marijuana for decades. He then repeatedly lied about using marijuana while holding a security clearance and also lied about his more recent drug use. The evidence does not support the application of any of the above mitigating conditions.

### **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 the 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 59 years old. As an expert in his field, he has provided valuable research and development that was important to our nation's defense. Unfortunately, for almost 30 years while holding a security clearance, he disregarded the law by using marijuana. He then repeatedly lied about it on his SCAs. Applicant stopped using marijuana for a period of time because it began having a negative effect on his health. However, he was not convinced that it created a problem for him, and he decided to test



it again by using it two more times before he quit. Although he is remorseful, his abject and repeated violation of the trust bestowed on him after he was granted a security clearance remains a security concern. The record evidence leaves me with serious 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 security concerns arising under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.d:	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 security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

---

Carol G. Ricciardello  
Administrative Judge