



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-01761
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

06/17/2020

**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 January 30, 2019, Applicant completed and signed his security clearance application (SCA). On August 9, 2019, 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 August 30, 2019, and requested a hearing before an administrative judge. He admitted SOR ¶ 1.a. The case was assigned to me and on February 10, 2020, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for February 27, 2020.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 and 2, and Applicant offered Applicant Exhibits (AE) A-I. I admitted all proffered exhibits into evidence without objection. DOHA received the hearing transcript (Tr.) on March 6, 2020.

### **Findings of Fact**

Applicant is 28 years old. In 2015, he earned a bachelor's degree in electrical engineering. He has never married, but he lives with his girlfriend in their newly purchased home. He does not have any children. In 2015, Applicant was accepted into a college internship with a defense contractor. After his college graduation in 2015, he has been employed full time by this defense contractor as an electrical design engineer. He does not currently possess a DOD security clearance. (Tr. 25-28; GE 1)

The SOR alleges Applicant used marijuana with varying frequency, from approximately October 2009 to January 2019. He disclosed his history of marijuana use on his SCA he completed in January 2019, and he admitted this allegation in his SOR response. (Tr. 30, 32-33; GE 1)

In October 2009, Applicant first started using marijuana during his senior year of high school. He used it with friends on three or four occasions. He did not use marijuana during his college years as he was heavily involved in the university's Christian student fellowship ministry. He resumed his use of marijuana in August 2016 and in July 2017, during vacations he took by himself to State A. He met different individuals from different countries at the hostels he stayed in during these trips. The use and purchase of marijuana was legal in State A. On both occasions he purchased marijuana from a dispensary, and he smoked approximately three joints with individuals he met over the course of each vacation. In July 2018, Applicant and his girlfriend vacationed in State A. They purchased edible marijuana and a couple of joints at the dispensary, and they shared their marijuana with other people they met at the hostels. (Tr. 30, 32-38, 45, 51; GE 1, GE 2)

Applicant was aware that although marijuana was legal in State A, it remained illegal under Federal law. He returned to his state of residence where marijuana use is legally prohibited. In about November 2018, he smoked marijuana recreationally with his friend. His last use of marijuana occurred in January 2019, when he smoked a joint with his friend again at his friend's house. Applicant felt that the use of marijuana added no value to his life. He finally reached a point where he wanted to make positive changes and move forward with his life and career, and he made a decision to never use marijuana again. Shortly after he made that decision, he was notified by his supervisor that he was one of two employees selected out of 12 individuals who would be sponsored for a DOD security clearance. (Tr. 31-32, 39-43, 45-48)

Applicant's employer required him to take a drug test in about February 2019, and he tested negative for all controlled substances. Applicant has used only marijuana and not any other illegal drug, to include the misuse of prescription medication. He has never

been arrested or received treatment for his use of marijuana. He no longer associates with people who use marijuana. He signed a statement of intent to never use marijuana again, and his co-habitant and friends are very supportive of his commitment. He further acknowledged any personal involvement with marijuana would be acceptable grounds for immediate revocation of his DOD security clearance. His supervisor is aware of the security concern addressed in his SOR, and he is fully supportive of Applicant. Other co-workers, supervisors, and friends who provided character reference letters were also aware of his past use of marijuana. In 2018 Applicant received a job promotion and a prestigious award from his employer. He recently purchased a house. Applicant feels he's matured greatly these last few years. (Tr. 29-31, 44-46, 49-50, 52-58, 61)

### **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, with varying frequency, from about October 2009 to January 2019. 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

Applicant has used marijuana over a long period of time. He stopped all use of marijuana during his college years, but he resumed the use of marijuana thereafter. He purchased and consumed marijuana from a state that had legalized marijuana, although he knew at the time that the use of marijuana was illegal under Federal law. Applicant made positive changes in his life and he realized that marijuana added no value to it. He has been promoted in his career, and he recently purchased a home. He is steadfast in remaining drug-free, and his co-habitant and friends are very supportive in his commitment. I find Applicant is sincere with his commitment to remain drug-free. Applicant was forthright about his past illegal drug use during his security clearance investigation, and is unlikely to resume his use of marijuana. He stopped associating with friends who use illegal drugs, and he has abstained from using marijuana for one and one-half years. 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 are supported by his promotion, his recent award, and the selection by his employer for the sponsorship of a DOD security clearance. His supervisor continues to support Applicant despite reading the information alleged in his SOR. Applicant 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