



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



In the matter of:

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ISCR Case No. 19-01853

Applicant for Security Clearance

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

**07/27/2020**

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant truthfully disclosed his infrequent marijuana use between 2008 and 2018. Resulting security concerns were mitigated after he voluntarily stopped using marijuana and credibly evinced his intent to abstain from substance misuse in the future. Based upon a review of the record as a whole, national security eligibility for access to classified information is granted.

**History of Case**

On January 27, 2017, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) to apply for his initial security clearance. On June 26, 2019, 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 Security Executive Agent Directive (SEAD) 4 National Security Adjudicative Guidelines (AG), which came into effect June 8, 2017.

Applicant submitted his written Answer to the SOR on July 12, 2019. He admitted the SOR allegations and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on August 21, 2019. DOHA issued a Notice of Hearing on October 16, 2019, setting the hearing for November 7, 2019. On that date, Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence. Applicant testified, and offered Applicant Exhibit (AE) A into evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open for submission of additional evidence until November 21, 2019. Applicant timely submitted AE B, C, and D, which were admitted without objection. DOHA received the hearing transcript (Tr.) on November 19, 2019.

### **Findings of Fact**

Applicant is 34 years old. He is married, and recently became a father for the first time. He earned an associate's degree in 2014, and a bachelor's degree in computer science in 2016. He began his current employment with a defense contractor in December 2015, working on contracts with major commercial clients. He rapidly advanced through increasingly responsible positions, and is currently a senior cybersecurity consultant. His company's vice president asked him to apply for national security eligibility so he could support ongoing and prospective Government contracts. He never served in the military or held a Federal civil service position. (GE 1; GE 2; AE A; AE B; Tr. 26, 28, 31-34, 46-47.)

Applicant disclosed on his e-QIP that he had occasionally used tetrahydrocannabinol (THC), by smoking marijuana or eating ingestible THC products, with his wife at home or with friends in a social environment. He did this about four times a year between August 2008 and December 2016. At that point he stopped because he had agreed to apply for a security clearance. He knew then, and fully believes, that substance misuse is inconsistent with national security eligibility. His wife agrees with and shares in his abstinence from use of THC. During most of the time he used THC, it was legal to do so under the law of his state of residence. (GE 1; GE 2; Tr. 34-39, 43-44.)

Applicant and a group of friends have attended a regional rock music concert held during August each year. Marijuana was sometimes offered and shared among the friends. During the 2017 concert, Applicant declined to share in the friends' marijuana use because he had applied for a security clearance and wanted to comply with the eligibility standards. By August 2018, however, he had heard nothing from the Office of Personnel Management (OPM), or any other government entity, concerning his January 2017 clearance application, and assumed that it had been denied. At the concert in 2018, with marijuana use having become legal in the state and assuming there was no further Federal interest in his conduct, he shared in using a marijuana cigarette being smoked by the group. Several days later, he was contacted by an OPM investigator to schedule his unsworn subject interview and realized that he was still under consideration for a clearance. He has not used any THC since then, including when he attended the concert event in August 2019. (Answer; GE 2; Tr. 28-30, 41-43.)

The veracity of Applicant's frank prehearing disclosures, about his otherwise-unknowable minor THC use, was enhanced by his forthright, consistent, and uncontroverted hearing testimony. He rejected the advice of an attorney he consulted, who suggested that he attempt to portray his August 2018 use of marijuana as a temporary lapse in judgment that he did not even think about before participating when someone passed it around. He described his rejection of this advice as follows:

To me, an excuse such as that shows someone who's prone to making mistakes, bad decisions, or can be swayed to make a poor choice, which is a serious character flaw I would expect you all to consider. In truth, I made a calculated decision. I was well aware of my security clearance process, but I had not received a statement regarding an interim clearance or any intent of the process moving forward. As this is the only time I have been – this is the only time I've been through this process, I acted on my own assumption that I would not be hearing from the government regarding my clearance and that I must have been denied. After making that assumption, I made the decision to enjoy myself at a concert with friends, where we ultimately shared a joint attending the event -- before attending the event. Days after the event, I received notification from an investigator about scheduling an interview for my security clearance. It was at that time when I felt immediate regret in my recent decision. (Tr. 29-30.)

Applicant then expressed his complete acceptance of the policy that substance misuse is inconsistent with national security eligibility, and his sincere reasons for wanting to abide by such limitations in order to fulfill his desire to contribute to Federal cloud computing and network information security efforts. (Tr. 26-29, 44-46.) After the hearing, he submitted a signed and sworn declaration of his intent to permanently abstain from drug involvement and substance misuse, and his agreement to the immediate revocation of his security clearance should he be involved with or misuse drugs in the future. He has kept appropriate peers and supervisors within his company informed concerning his past use of THC and his progress through the security clearance process. (AE B.)

Applicant's supervisory senior vice president, and two longtime friends who hold responsible leadership positions in other fields, wrote letters describing their admiration for his character, integrity, and trustworthiness. Each has known him in different capacities, but they uniformly praised his responsibility, dedication, and honesty. His vice president noted that he has developed a reputation as, "a stickler," with respect to observing and expecting strict compliance with applicable rules and procedures. (AE C.)

Applicant's two most recent performance evaluations describe his professionalism in meeting customer requirements, growing natural leadership role within the company, and successful assumption of increased responsibility as a senior consultant. He fully met all standards, and exceeded expectations for the majority of them during the periods involved. (AE D.)

## Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, each guideline lists potentially disqualifying and mitigating conditions. 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 AG ¶ 2 describing the adjudicative process.

The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 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, pertinent, and reliable information about the person, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for national security eligibility 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. I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states, "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 national security eligibility 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 eligibility for access to classified information or assignment in sensitive duties. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of protected information.

Section 7 of EO 10865 provides, "Any determination under this order adverse to an applicant shall be a determination 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 concerns under the guideline for drug involvement and substance misuse are 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. *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.

AG ¶ 25 describes one condition that could raise security concerns and may be disqualifying based on the SOR allegations in this case:

- (a) any substance misuse (see above definition).

Applicant infrequently used small amounts of THC several times per year between August 2008 and December 2016. He had not used THC for several months, and decided to continue abstaining when he agreed to his company's January 2017 request that he apply for a security clearance. He understands and agrees that THC use is not consistent with national security eligibility. On one occasion during August 2018, under the erroneous assumption that his clearance had been denied, he shared a marijuana cigarette with some friends. The evidence supports security concerns under AG ¶ 25(a).

AG ¶ 26 provides two conditions that could mitigate the drug-related security concerns raised in this case:

- (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:

- (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 abused small amounts of THC several times a year in social settings from August 2008 to December 2016, and once in August 2018. This drug abuse was infrequent, stopped almost two years ago, is unlikely to recur, and does not cast doubt on his current reliability, trustworthiness, and good judgment. Substantial mitigation under AG ¶ 26(a) was established.

Applicant readily acknowledges his illegal use of THC in the past, and has established a credible pattern of abstinence since his last use in 2018. He cannot fully disassociate from friends and family members who have occasionally used marijuana, but he and his wife have committed to abstain from future drug involvement. He provided a signed statement of intent to continue abstaining from THC misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility. He accordingly established persuasive mitigation under AG ¶ 20(b). Other potential mitigating conditions are inapplicable in the absence of prescription drug abuse or any recommended form of drug treatment.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

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

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who fully disclosed and consistently demonstrated accountability for his relatively minor misuse of THC in the past. He convincingly demonstrated his intention to abstain from further substance misuse. This is not a matter of substituting a credibility assessment for the facts of this case. Applicant has been honest and forthright throughout this process, which is important to establishing and maintaining national security eligibility. That integrity fortifies other strong evidence of his trustworthiness, responsibility, and willingness to comply with rules and regulations.

The potential for pressure, exploitation, or duress is minimal since Applicant has fully informed his supervisors, relevant coworkers, family, and friends about his previous involvement with THC and his decision abstain from drug involvement in the future. Recurrence of substance misuse is not likely.

Overall, the evidence has eliminated any doubt as to Applicant's eligibility and suitability for a security clearance. He successfully met his burden to mitigate the security concerns arising under the Drug Involvement and Substance Misuse guideline.

### **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: FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant Applicant a security clearance. National security eligibility for access to classified information is granted.

DAVID M. WHITE  
Administrative Judge