



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



In the matter of:	)	
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	)	ISCR Case No. 19-03725
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esquire  
For Applicant: *Pro se*

03/31/2021

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On April 27, 2020, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). The action was taken under Executive Order 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 or after June 8, 2017. In a response transmitted on April 27, 2020, she admitted all allegations raised and requested a determination based on the written record.

On July 8, 2020, the Government issued a File of Relevant Material (FORM) with 12 attachments (“Items”). The Applicant submitted a response to the FORM on July 20, 2020. The case was assigned to me on March 23, 2021. Based on my review of the case file and submissions, I find Applicant failed to mitigate drug involvement and personal conduct security concerns.

## Findings of Fact

Applicant is a 36-year-old project manager who has served in the same capacity since 2010. She enjoys her work and excels in performing her duties. Applicant was raised in an area where she was surrounded by military and U.S. Department of Defense (DOD) personnel her entire life. (FORM, Item 2 at 2) She has earned a bachelor's and master's degree. Applicant lives with a cohabitant. She has no children.

In September 2008 on a Questionnaire for National Security Positions (QNSP), Applicant disclosed that she had used marijuana from June 2007 until April 2008. Subsequently, in about January 2009, she was granted access to classified information. Over the years, Applicant received annual briefings and other security training reminders of the requirements for maintaining a security clearance, including emails in November 2012 and January 2015, advising all employees that marijuana remained federally illegal, despite some non-federal jurisdictions decriminalizing the drug. Applicant recently claimed she quit using marijuana between the time she was granted such access in 2009 until marijuana was legalized in her state, about four years or less later. Her marijuana abuse then continued despite federal law and her possession of a federally-granted security clearance. (FORM, Item 2 at 1)

In her December 2014 QNSP, Applicant disclosed that she used marijuana from January 2009 through November 2018. In so doing, she noted that marijuana was legal where she was located. (FORM, Item 3) She also disclosed that she intended to use marijuana again in the future. Learning of her federally illegal drug use, the Facility Security Officer (FSO) filed an incident report detailing these facts. The FSO noted that prior to her QNSP submission, this information had not been previously reported.

In May 2019, Applicant was interviewed by investigators. She confirmed she had used marijuana as recently as March 2019. Indeed, she stated that she used the federally illegal substance about every other month, and intended to continue to do so in the future. Shortly after the interview, Applicant altered her earlier stance, stating that continued marijuana use was "fairly likely" and "not out of the question," and noting that she "fully understands the significance and gravity of the position of trust the United States would place on me by granting a security clearance, and pledge to abide by federal law and DOD regulations." (FORM, Item 7)

In the SOR, it was alleged that Applicant used marijuana with varying frequency from about June 2007 and at least March 2019, an allegation she admitted. She also admitted that this marijuana use took place despite her having been granted access to classified information in January 2009. These admitted facts were the basis for security concerns under the guidelines for drug involvement and for personal conduct.

In response to the SOR, Applicant minimized her past marijuana use, characterizing it as "an 'anomaly,'" "infrequent," and "irregular." (FORM, Item 2 at 1) She stated that she now fully appreciates the significance and the gravity of the Government's prohibition of illegal drug use by those granted a security clearance. She vowed in that

April 2020 SOR response that it is now her intent to abstain from all illegal use of substances and acknowledged “that any future involvement or misuse is grounds for revocation of my national security eligibility.” (FORM, Item 2 at 1) She explained that because she considered her marijuana use to be as minimal as her handling of secure documents, she “failed to recall the requirement to report” her marijuana use despite her company’s annual security briefings. (FORM, Item 2 at 3)

As an employee, Applicant excels in her work. Over the past five years, her annual performance appraisals have been positive, describing her as hard working and dedicated. (FORM, Item 2 at 4) In 2019, her strengths were described as: “Reliable, efficient, and organized; Self-starting; Confident in technical abilities/knowledge; Thinks outside the box and finds ways to get things done. . . . [She] is an asset to the [ -- ] team, and her peers look up to her in every aspect of the job.” (FORM, Item 2 at 4) She does not believe her federally illegal marijuana use defines her as a person. (Response to the FORM)

### **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. 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. 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. Under the AG, any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national interest. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

## **Analysis**

### **GUIDELINE H – Drug Involvement and Substance Misuse**

The security concern for this guideline is set forth in AG ¶ 24, where it is noted that the illegal use of a controlled substance, and the use of other substances that can 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. Such use also raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. Here, Applicant used marijuana with varying frequency from about June 2007 to at least March 2019. This use of federally illegal marijuana continued despite her having been granted access to classified information in January 2009. These facts potentially raise AG ¶ 25:

(a) any substance misuse . . . , and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

The Government’s substantial evidence, as confirmed by Applicant’s admissions, raises the security concerns noted under this guideline. Therefore, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate related security concerns.

Under Guideline H, conditions that could mitigate security concerns arising from drug involvement and substance misuse are enumerated. The following mitigating conditions under AG ¶ 26 potentially apply to Applicant’s 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;

(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 regularly used marijuana for nearly a dozen years. Based on the most recent information, she has abstained from marijuana, a federally illegal drug, for two years. Her last period of abstinence starting in early 2009, however, lasted no more than four years before she resumed her marijuana use. Moreover, she has been inconsistent with regard to her intentions as to her future use of marijuana. These facts undermine application of AG ¶ 26(a).

In her response to the SOR, Applicant provided 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. This expression effectively raises AG ¶ 26(b)(3).

Otherwise, Applicant provides scant information regarding any recent changes she has made in her life to overcome her marijuana use or resist temptation in an area where marijuana has been decriminalized. Such insight could help raise other portions of AG ¶ 26(b). Moreover, despite her excellent performance appraisals and expressed intent to not use marijuana in the future, we are left with an Applicant who was raised within the military and DOD communities; attended a number of training sessions emphasizing the need to refrain from illegal drugs in order to successfully maintain a federal security clearance; and received emails reinforcing that non-federal legal changes regarding marijuana did not relieve one of their federal obligations in terms of a federal security clearance. That she “failed to recall” her obligation to report such marijuana use to her FSO -- because she used the drug infrequently and rarely handled classified documents -- stretches credulity. No other mitigating conditions apply.

#### **GUIDELINE E – Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15: 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 or sensitive information. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing from national security eligibility:

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are 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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative, and

(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing. . . .

Applicant obfuscated relevant facts concerning her marijuana use to investigators and security personnel during both the process for determining national security eligibility and in the execution of daily work performance. Applicant and those within her work community certainly knew marijuana was federally illegal and its use was inconsistent with the maintenance of a federally-granted security clearance. As witnessed by the reaction of her FSO, knowledge of her drug use could and did affect her standing within her field. I find AG ¶ 16(a), AG ¶ 16(b), and AG ¶ 16(e) apply.

I also have considered these facts in light of the AG ¶ 17 mitigating conditions. I find the following potentially applicable:

AG ¶ 17(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; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Here, AG ¶ 17(c) does not apply for the same reasons AG ¶ 26(a) was found inapplicable. Moreover, the scant information provided by Applicant in her written answers fails to show what positive steps she has taken to reduce any temptation she might encounter living in a region where marijuana is readily available and where she might become vulnerable to social pressures. This would be particularly helpful given her past knowledge that marijuana was federally illegal and her active efforts to minimize her past drug use. Therefore, AG ¶ 17(e) does not apply.

## Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed in the AG. The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. In addition to Applicant's drug use, I considered available facts related to her age, reasons for using illegal drugs or illegally using prescription medications, maturation, professional status, educational attainments, lifestyle, and future intentions regarding illegal substances.

Applicant was put on notice of the security concerns related to marijuana during her initial investigation in 2008. She was granted a security clearance in 2009. At that time, she quit using the drug. By email and through training, she was advised that federal, not state or local, law was controlling with regard to marijuana and the maintenance of a security clearance. She resumed her marijuana use, however, when marijuana was decriminalized in her area. She continued that drug use through at least March 2019, after completing her 2019 QNSP.

Over the years, Applicant's claims and reasoning behind her drug use have evolved. For example, at one point she expressed her intent to continue to use marijuana, then later reported that it was "fairly likely" she would continue to use marijuana. More recently, she conveyed that it is her intent to abstain from all illegal drugs going forward. With regard to her most recent two-year period of abstention, it can only be given diminished weight in light of the fact her previous period of abstinence lasted only until her state jurisdiction decriminalized marijuana, a period of no more than four years. When an applicant's past shows evidence of a lack of self-discipline, unreliability, or untrustworthiness, questions arise. Specifically, they arise as to whether an applicant can truly be relied upon and trusted to exercise the responsibility necessary for working in an environment where they have access to sensitive information. This is true regardless of how much classified information an applicant might actually handle.

The greatest concern in this case is Applicant's choice to continue using marijuana after being granted access to classified information. This is a clear breach of the trust and confidence placed in the Applicant when the Government granted her access to classified information. In continuing to use, then refrain from, marijuana for a second time, it is difficult to gauge the significance of this current period of abstinence. It would not seem inappropriate to expect Applicant to at least refrain from marijuana for a commensurate period of time as her last period of abstinence, and provide some insight into how she is resisting temptation to return to marijuana use while living in a region that has decriminalized the drug. In light of the foregoing, I find Applicant failed to mitigate drug involvement and personal conduct 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge