



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



In the matter of: )  
 )  
----- ) ISCR Case No. 20-02701  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas T. Temple, Esq., Department Counsel  
For Applicant: *Pro se*

06/09/2021

---

**Decision**

---

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. He did not present sufficient evidence to mitigate his history of marijuana use during 2008-2019, which included testing positive for marijuana in July 2019 after being granted a security clearance. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant completed and submitted a Questionnaire for National Security Positions (SF 86 format), the official form used for personnel security investigations, on February 9, 2017. (Exhibit 3) This document is commonly known as a security clearance application. In May 2019, the Defense Department granted Applicant eligibility for access to classified information, commonly referred to as a security clearance. Later that summer in July 2019, he was selected by his employer for a random drug screen, and he tested positive for marijuana. (Exhibit 4) He was interviewed about his illegal drug use and other matters during a November 2019 background investigation. (Exhibit 5)

Thereafter, on November 20, 2020, after reviewing the available information, the Department of Defense Consolidated Adjudications Facility, Fort Meade, Maryland, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information. The SOR is similar to a complaint. It detailed the factual reasons for the action under the security guidelines known as Guideline H for drug involvement and substance misuse and Guideline E for personal conduct. The allegations under Guideline E includes a cross-allegation to the matters alleged under Guideline H.

Applicant answered the SOR in an undated response. He admitted the SOR allegations, and he requested a decision based on the written record in lieu of a hearing. He did not elaborate or provide explanatory remarks for his admissions. Nor did he provide supporting documentation.

On March 10, 2021, Department Counsel submitted a file of relevant material (FORM). It consists of Department Counsel's written brief and supporting documentation, some of which are identified as evidentiary exhibits herein. The FORM was mailed to Applicant, who received it on March 25, 2021. He did not reply within 30 days of receipt of the FORM. To date, no reply has been received. The case was assigned to me on May 27, 2021.

### **Findings of Fact**

Applicant is a 31-year-old employee who is seeking eligibility for access to classified information. He is employed as a control center specialist for a security monitoring company doing business in the defense industry. He has had this job since November 2015. His educational background includes attendance at two community colleges during 2008-2011. He was awarded an associate degree in applied sciences in May 2011. He then attended a state university during 2011-2014. He was awarded a bachelor's degree in science in May 2014. He has never married and has no children.

Applicant submitted a security clearance application for the first time in February 2017. (Exhibit 3) In doing so, he disclosed a history of illegal drug use consisting of using marijuana. He reported smoking marijuana recreationally approximately 50 to 100 times while a college student during 2008-2014. He stated that he did not intend to use marijuana or controlled substances in the future. He explained marijuana did little for his enthusiasm for work and it limited his career potential.

About four months later in June 2017, Applicant was arrested for a drunk-driving incident. (Exhibit 5) He consumed a combination of 8 to 9 beers or mixed drinks at home and at a bar. He left the bar and attempted to drive home, but the police stopped him driving the wrong way on an Interstate highway. He stopped voluntarily, but then fled the scene when the police approached his car. The police subsequently forced him to stop by disabling his automobile with spike strips. A breathalyzer test administered at the police station resulted in a blood-alcohol content (BAC) of .20%, which is well above the legal limit. The police charged him with multiple offenses, including aggravated driving while intoxicated (DWI) and resisting arrest. He subsequently pleaded guilty to

the lesser included offense of driving while ability impaired and the other charges were dismissed.

In May 2019, Applicant was granted eligibility for access to classified information, commonly referred to as a security clearance. A few months later in July 2019, Applicant was subject to a random drug screen, and he tested positive for the illegal drug known as marijuana. (Exhibit 4)

Applicant did not provide any explanatory information in his Answer to the SOR, and he did not reply to the FORM, but he offered some explanation during his November 2019 background investigation. (Exhibit 5) He stated that he was traumatized in May 2017 when he was confronted outside his workplace by a man with a firearm who threatened to shoot or kill him. The binge-drinking episode and the resulting drunk-driving incident occurred the following month in June 2017.

Applicant's trauma included recurrent nightmares. He had not used any marijuana from 2014 to 2017, but resumed using it after the May 2017 confrontation. (Exhibit 5 at 4) He used marijuana about five times per month during May-June 2017. He stopped for a time after the June 2017 drunk-driving incident. He then resumed using marijuana as a means to deal with stress after a June 2018 breakup. (Exhibit 5 at 4) He continued smoking marijuana until about July 2019 when he tested positive during the random drug test at work.

Applicant reported receiving counseling for his alcohol use and illegal drug use. (Exhibit 5) He successfully completed alcohol counseling during October 2017-February 2018. He stated that he no longer drives after drinking. He also successfully completed drug counseling during July 2019-October 2019. He has not used any illegal drug other than marijuana. He denies any further illegal drug use after July 2019, when he tested positive for marijuana.

### **Law and Policies**

This case is adjudicated under Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective June 8, 2017.

It is well-established law that no one has a right to a security clearance.<sup>1</sup> As noted by the Supreme Court in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security clearance determinations should err, if they must, on the

---

<sup>1</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988) ("it should be obvious that no one has a 'right' to a security clearance"); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10<sup>th</sup> Cir. 2002) (no right to a security clearance).

side of denials.”<sup>2</sup> Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security. In *Egan*, the Supreme Court stated that the burden of proof is less than a preponderance of evidence.<sup>3</sup> The Appeal Board has followed the Court’s reasoning, and a judge’s findings of fact are reviewed under the substantial-evidence standard.<sup>4</sup>

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.<sup>5</sup> The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.<sup>6</sup> An Applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.<sup>7</sup> In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.<sup>8</sup>

### **Discussion**

Under Guideline H for drug involvement and substance misuse, the concern as set forth in AG ¶ 24 is that:

[t]he illegal use of controlled substances, to include the misuse of prescriptions and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are use 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. . . .

In analyzing the facts of this case, I considered the following disqualifying and mitigating conditions:

AG ¶ 25(a) any substance abuse;

AG ¶ 25(b) testing positive for an illegal drug;

---

<sup>2</sup> 484 U.S. at 531.

<sup>3</sup> 484 U.S. at 531.

<sup>4</sup> ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

<sup>5</sup> ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

<sup>6</sup> Directive, Enclosure 3, ¶ E3.1.14.

<sup>7</sup> Directive, Enclosure 3, ¶ E3.1.15.

<sup>8</sup> Directive, Enclosure 3, ¶ E3.1.15.

AG ¶ 25(f) any illegal drug use while granted access to classified information or holding a sensitive position;

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 of revocation of national security eligibility.

I have considered the totality of Applicant's involvement with marijuana. It consisted of his recreational use of marijuana while in college during 2008-2014, which was then followed by periodic marijuana use in 2017, 2018, and 2019. His most recent marijuana use was detected by a random drug test in July 2019. Some of his marijuana use occurred during his employment with a federal contractor and while he held a security clearance. Any illegal drug use is relevant in the context of evaluating a person's security worthiness, but it is particularly egregious if it occurs during the course of employment while granted access to classified information.

Applicant's case in mitigation is not very strong. The one item that stands out in his favor is the May 2017 incident when he was confronted by a stranger who threatened him with a firearm. Acting out or engaging in self-medicating behavior with marijuana or alcohol or both would not be unusual in such circumstances.

Nonetheless, I am not persuaded that Applicant is an acceptable security risk within the meaning of ¶ 2(a) of Appendix A of Enclosure 2 to the Directive. I reached this conclusion for a couple of reasons. First, his most recent July 2019 marijuana use was clearly forbidden conduct that he chose to engage in despite knowing the potential negative consequences. In addition to being a serious lapse in good judgment, his marijuana use demonstrated a willingness to engage in high-risk behavior, which does not make him a good candidate for a security clearance. Second, I doubt Applicant's most recent marijuana use would have come to light but for the random drug test. Indeed, he did not report his marijuana use during 2017-2019 to his employer before the random drug test. Taken together, the seriousness of his misconduct and his failure to voluntarily self-report his marijuana use undermine his security suitability. Finally, I note that the ultimate outcome here is consistent with similar cases that I have decided involving illegal drug use while holding a security clearance. *E.g.*, ISCR Case No. 17-02225 (May, 10, 2019), which was affirmed by the DOHA Appeal Board in ISCR Case No. 17-02225 (App. Bd. Jun. 25, 2019).

Following *Egan* and the clearly consistent standard, I have doubts and concerns about Applicant's reliability, trustworthiness, good judgment, and ability to protect classified or sensitive information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also considered the whole-person concept. I conclude that he has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

### **Formal Findings**

The formal findings on the SOR allegations are:

Paragraph 1, Guideline H:	Against Applicant
Subparagraphs 1.a – 1.c:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	For Applicant <sup>9</sup>
Subparagraph 2.b:	Against Applicant <sup>10</sup>

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for access to classified information. Eligibility is denied.

Michael H. Leonard  
Administrative Judge

---

<sup>9</sup> The June 2017 drunk-driving incident in SOR ¶ 2.a is decided for Applicant. His questionable judgment in light of the incident is mitigated by the passage of time without recurrence, his participation in an alcohol-counseling program, and his modified consumption of alcohol.

<sup>10</sup> The cross-allegation in SOR ¶ 2.b concerns Applicant's questionable judgment in light of his marijuana use. After considering the applicable disqualifying and mitigating conditions under Guideline E, the matter is decided against Applicant under the rationale discussed above under Guideline H. Further discussion under Guideline E is redundant.