



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



In the matter of: )  
)  
) ISCR Case No. 21-00549  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

11/10/2021

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On May 21, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued to 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant submitted an answer to the SOR, and elected to have his case decided on the written record in lieu of a hearing.<sup>1</sup> Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on July 28, 2021. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 5. Applicant did not provide a response to the FORM or object to any evidence offered. Items 2 through 5 are admitted into evidence. The case was assigned to me on October 26, 2021.

### **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 31 years old. He earned a bachelor's degree in 2012. He is not married and has no children. He has worked for the same employer, a federal contractor, since August 2012 and held a security clearance since then. (Item 3)

In Applicant's July 2012 security clearance application (SCA), he disclosed that he used marijuana with varying frequency from about July 2007 until August 2011. He stated:

I do not intend to use marijuana again for a number of reasons. I haven't used it since last year because of my wanting to focus on my last year of school, associated senior design project, and holding onto my (then) current employment. Future use is not considered because of the desire to secure and maintain a security clearance for [employer]. (Item 4)

In July 2019, Applicant completed a new SCA. In it he disclosed that he used marijuana from April 2015 to July 2018. He stated: "Frequency of use in previous 7 years was infrequent and sporadic." He further explained that marijuana was not addictive for him. He has used it voluntarily in the past. He mostly used it vaporizing and not smoking. He used it only in social settings. He has strong self-control, and said he had not used it in a year despite having it around him on multiple occasions and offered it to him by others. Over the years he has come to value his job more, which now surpasses his desire for the psychoactive effects of marijuana use. He stated: "My responsibilities and desires in life far surpass those of my wants to temporarily alter my state of mind. This is why I do not foresee using marijuana in the future." (Item 4)

In Applicant's answer to the SOR, he stated he does not sell, possess or purchase marijuana. All of his former use was in a state where marijuana is legal so those providing him marijuana were doing so legally. He has not been diagnosed as dependent on marijuana. His most recent use was July 2018. He does not intend to use marijuana in the future because his job and career are more important to him than marijuana usage. He noted that it had been a significant period of time since his last marijuana use. He

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<sup>1</sup> The answer to the SOR is dated before the date of the SOR. This appears to be an error.

explained that marijuana is a Schedule I drug, which he said lends credence to the government's willingness to remove it from penalties associated with drug use. He then indicated removal as a scheduled drug from federal guidelines "would presumably remove marijuana as a prohibitive barrier to security clearance applicants and holders (akin to alcohol use), provided use is medicinal in nature and/or recreational and responsibly administered." (Item 2)

Applicant stated in his SOR answer that 17 states and the District of Columbia have legalized marijuana, which represents the majority of the U.S. population and "therefore the People's belief that marijuana laws require a rewrite pertaining to its federal legality and its potential for abuse." He then said that he "now considers the federal legality of the substance and therefore the severity of its use in regards to potential for his exploitation with continued use." (Item 2)

Applicant stated in his SOR answer that he estimated the frequency of his use from April 2015 to July 2018 averaged less than once a month. He said that when he used marijuana he took into account numerous variables prior to each engagement with its use. He further explained that what he failed to take into account was his current clearance status and the impact its usage would have on his status. He said during the timeframe he was using marijuana he did not do any work that required access to classified material. He said he has matured and has a "better intent" to not use marijuana again because of his growing responsibilities on DOD contracts. (Item 2)

Applicant stated in his SOR answer that he was unaware of the potential gravity or seriousness his infrequent use could have on national security if he was in possession of classified material. He stated he has every intention to no longer engage in the use of marijuana. (Item 2)

## **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 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

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

Applicant used marijuana with varying frequency from about July 2007 until August 2011. After being granted a security clearance in August 2012, Applicant used marijuana from about April 2015 to about July 2018. 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; and

(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;

Applicant disclosed his marijuana use when first applying for a security clearance in 2012. He indicated in that application that he had not used marijuana for a significant period of time and did not intend to use it in the future because he wanted to focus on his future and his career. He was put on notice of the government's concerns that the use of illegal drugs was prohibited. He was then granted a security clearance and resumed using marijuana from April 2015 to July 2018, while holding that clearance.

When Applicant completed his 2019 SCA, he explained he had not used marijuana since July 2018, because he was focusing on his future and his career. He provided explanations and justifications for the minimal impact marijuana has had on his well-being. He also explained that although he had a security clearance, he did not have access to classified material and that marijuana is legal in many states and is a Schedule I substance.

Applicant fails to grasp that he was entrusted with a security clearance, and he repeatedly violated that trust over a three-year period by using marijuana. He promised

in his first SCA not to use marijuana in the future, and the government accepted his statement. He repeated in his 2019 SCA that he did not intend to use marijuana in the future. He attempted to minimize his conduct by providing a myriad of reasons for why marijuana should be legalized under federal law or that it is the "People's belief" that the law should be changed. He continues to participate in social settings where marijuana is being used. He has shown that he can abstain from marijuana use, but repeatedly made a conscious choice after his abstinence to use it while holding a security clearance. Based on his past statements, promises, and conduct, I do not find Applicant's statements credible. I am not convinced that future use of marijuana is unlikely to recur. I find his past behavior was not infrequent, and it did not happen under unusual circumstances. I find his conduct cast doubt on his current reliability, trustworthiness, and good judgment. The above mitigating conditions do not 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 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 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 31 years old. He has worked for a federal contractor since 2012 and held a security clearance during this time. He has a long history of marijuana use. Despite his statement in his 2012 SCA that he did not intend to use marijuana in the future, he resumed using it while holding a security clearance from April 2015 to July 2018. I am not confident that Applicant has an appreciation for the seriousness of his conduct of violating the trust given to him when he was granted a security clearance. 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.

**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

**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 grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge