



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 20-02536
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
 For Applicant: *Pro se*  
 01/25/2022  
**Decision**

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KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. Applicant has not mitigated the security concern raised by his use of illegal drugs. Eligibility is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on March 3, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on December 7, 2020, detailing security concerns under Guideline H, Drug Involvement and Substance Misuse. The DOD CAF acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on December 18, 2020, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On May 20, 2021, Department Counsel submitted the Government’s file of relevant material (FORM), including documents identified as Items1 through 11 (Items). Applicant was sent the FORM on June 2, 2021, and he received it on June 21, 2021. He was afforded 30 days after receiving the FORM to file objections and submit

material in refutation, extenuation, or mitigation. Applicant responded to the FORM on July 26, 2021 (Response). The SOR and the answer (Items 1 and 2, respectively) are the pleadings in this case. Items 3 through 11 and Applicant's response to the FORM are admitted without objection. The case was assigned to me on September 10, 2021.

### **Findings of Fact**

Applicant is 59 years old. He is divorced with no children. Since 2002, he has been employed by a defense contractor. (Item 3.)

The SOR alleged that Applicant: (1) used marijuana with varying frequency from about 2015 to present; (2) used marijuana with varying frequency from about 2017 to present while having access to classified information; (3) and intends to continue using marijuana in the future. (Item 1.) Applicant admitted the first two allegations (with qualifications) and denied that he intends to use marijuana in the future. Applicant claimed that contrary to the SOR his most recent use of marijuana began in 2018 or 2019. (Response pp. 3 and 9.) That claim does not comport with Applicant's April 2, 2020 statement that he used marijuana from 2015 to February 2020, including while holding a security clearance. (Item 5, Drugs, Developed Marijuana Use, and Drug Use Reporting.) Applicant completed SCAs in 2020 and 2016. In neither of those applications did Applicant disclose his prior marijuana use. (Items 3 and 4.) Applicant submitted a statement of intent that he does not intend to use illegal drugs in the future. (Item 5.) His statement is undercut by his contradictory statement denying his use of marijuana between 2015 and 2020 and his explanation that he, or someone, was confused. (Item 5.)

### **Discussion**

#### **Guideline H – Drug Involvement and Substance Abuse**

Under AG H for drug use, suitability of an applicant may be questioned or put into doubt because drug use can both impair judgment and raise questions about a person's ability or willingness to comply with laws, rules, and regulations. AG ¶¶ 24, 25 and 26 (setting forth the concern and the disqualifying and mitigating conditions).

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.

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

AG ¶ 25(a) any substance misuse (see above definition);

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

AG ¶ 25(f) any illegal drug use while granted access to classified information;

AG ¶ 25(g) expressed intent to continue drug involvement . . . or failure to clearly and convincingly commit to discontinue such misuse;

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;

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 for revocation of national security eligibility.

Applicant admitted using marijuana while holding a security with the most recent usage being in February 2020. Facts admitted by an applicant in an answer to an SOR or in an interview require no further proof from the Government. ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) (“any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof”); ISCR Case No. 94-0569 at 4 and n.1 (App. Bd. Mar. 30, 1995) (“[a]n applicant's admissions, whether testimonial or written, can provide a legal basis for an Administrative Judge's findings”).

Marijuana is a Schedule I controlled substances, and possession of it is regulated by the federal government under the Controlled Substances Act. 21 U.S.C. § 811 *et seq.* The knowing or intentional possession and use of any such substance is unlawful and

punishable by imprisonment, a fine or both. 21U.S.C. §844. In an October 25, 2014 memorandum, the Director of National Intelligence affirmed that the use of marijuana is a security concern. James R. Clapper, Director of National Intelligence, Memorandum: *Adherence to Federal Laws Prohibiting Marijuana Use* (October 25, 2014). See also <http://www.dea.gov/druginfo/ds.shtml>

On December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

Disqualifying conditions AG ¶¶ 25(a), (c), and (f) apply here. Because of Applicant’s record of prior marijuana use and his equivocation on future use, AG ¶ 25(g) may also apply. The next inquiry is whether any mitigating factors apply.

I have considered mitigating factor AG ¶ 26(a). Applicant used illegal drugs with varying frequency as recently as February 2020. His behavior was neither infrequent, nor did it occur that long ago, with his last use being in February 2020, just two years ago. I find that AG ¶ 26(a) does not apply.

I have considered mitigating factor AG ¶ 26(b). Applicant’s signed written statement does track the language of AG ¶ and 26(b). In explaining his future intent, Applicant’s interview was equivocal. He cites “confusion” and apologizes if he caused any confusion. Taking the record as a whole given Applicant’s recent and a frequent use of marijuana, I find that his statement of intent lacks credibility. AG ¶ 26(b) does not apply.

The record raises doubt about Applicant’s reliability, trustworthiness, judgment, and ability to protect classified 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 gave due consideration to the whole-person concept. AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6). Accordingly, I conclude that Applicant 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**

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline H:                   Against Applicant

Subparagraphs 1.a-1.c:                   Against Applicant

**Conclusion**

In light of the record as a whole, it is clearly not consistent with the national interest to grant Applicant access to classified information.

Philip J. Katauskas  
Administrative Judge