



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



In the matter of: )  
)  
) ISCR Case No. 20-03323  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

04/01/2022

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**Decision**

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Hyams, Ross D., Administrative Judge:

Applicant used marijuana from 2012 to 2019, both recreationally and medicinally. Marijuana use remains illegal under federal law. Applicant falsified material facts about her marijuana use on two security clearance applications. Security concerns under Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct) are not mitigated. Applicant’s eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on September 23, 2019. On July 26, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct). The DOD issued the SOR 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 the Security Executive Agent Directive 4 (SEAD 4), *National*

*Security Adjudicative Guidelines* (AG), effective June 8, 2017. When Applicant answered the SOR on July 29, 2021, she requested a decision based on the administrative (written) record, without a hearing before an administrative judge from the Department of Defense Office of Hearings and Appeals (DOHA).

On November 9, 2021, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 7. The SOR and the Answer (Items 1, 3) are the pleadings in the case. Item 2 is a procedural document. Items 4 and 5 are Applicant's SCAs, submitted in April 2016 and September 2019, respectively. Item 6 is Applicant's November 2020 response to interrogatories. Item 7 is a summary of clearance status from DOD's Joint Personnel Adjudication System (JPAS).

The FORM was mailed to Applicant on November 9, 2021. She was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. She signed for her receipt of the FORM on November 18, 2021. No subsequent response from Applicant was received by DOHA, and the case was assigned to me on February 9, 2022. Since Applicant did not respond to the FORM, she did not submit any evidence after submitting the Answer to the SOR, nor did she offer any objection to the Government's evidence. Items 4 through 7 are admitted without objection.

### **Findings of Fact**

In her Answer, Applicant denied all of the SOR allegations. For SOR ¶¶ 1.a – 1.d, she stated that she did not recall the dates of her marijuana use, and that she did not start using marijuana until she was in college. She also denied using marijuana while holding a sensitive position, or while granted access to classified information. For SOR ¶¶ 2.a – 2.c, she denied falsifying her SCAs, stating the dates in allegation ¶ 1.a are wrong. However, she admits that she answered "no" to the relevant questions on her 2019 SCA. For the cross-allegation at SOR ¶ 2.d, she denied the allegation, stating that the dates are inaccurate, she did not start using marijuana until college, and stopped well before receiving her current position. She stated that she did not purchase marijuana on or before her start date, or use marijuana while holding a clearance. (Item 3)

Her explanations are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 28 years old. She graduated from high school in May 2012, and earned a bachelor's degree in May 2016. She started working for employer 1, her initial clearance sponsor, as an intern in 2016. She reported on her 2019 SCA that she was granted a clearance in July 2016. She left employer 1 after approximately four months to work in an uncleared position for employer 2. In late 2019, she returned to employer

1 and submitted another SCA. She was granted an interim clearance in November 2019. (Items 4, 5, 6, 7)

Applicant disclosed on her 2016 SCA that she used marijuana from February 2012 to June 2014. She reported that she used it occasionally on the weekends. She stated in this SCA that "It was just for fun as a college student. I am an adult now and do not wish to consume such drugs." On her 2019 SCA, however, she answered "no" when asked: if in the last seven years: she illegally used any drugs or controlled substances, or was involved in the illegal purchase of any drugs or controlled substances. (Items 4, 5)

Applicant was interviewed by a government investigator on or about December 12, 2019. She verified the accuracy of this interview in her November 10, 2020 interrogatory response. In this interview, she disclosed that she had been smoking marijuana recreationally, alone and with friends in social settings, starting in August 2012. In college she used marijuana daily during her freshman year (2012-2013), but abstained in her sophomore year (2013-2014). During her junior year (2014-2015), she used marijuana about five times a month, and every weekend in her senior year (2015-2016). She admitted purchasing marijuana a couple times a month while in college. This timeline of marijuana use ends two years later than she reported on her 2016 SCA. (Item 6)

Upon graduation in May 2016, Applicant stopped using marijuana for four months while employed on a government contract, from about May 2016 to August 2016. She estimated that she smoked marijuana at least monthly between August 2016 and December 2019. She also self-medicated with marijuana to treat some medical symptoms and conditions. She reported her last use was five days prior to her interview with the government investigator. She held an interim clearance during this instance of marijuana use. She has never had any drug counseling or treatment. (Item 6)

In her interview, Applicant told the investigator that she did not report her marijuana use on her 2019 SCA because she was scared of being denied a clearance. She said that she intentionally answered "no" to hide her marijuana use. She decided to discuss it in her interview, because she stated she wanted to be truthful, and knew it might come up in the investigation. She stated that she had not thought about stopping her marijuana use, and did not want to be in pain. She then said that she does not want her marijuana use to have a negative impact on her employment, so she intends to stop using marijuana. (Item 6)

In a handwritten narrative statement included with her November 10, 2020 interrogatory response, Applicant stated that she is getting therapy and medication for her medical symptoms and conditions. However, she did not provide any corroborating documentation. She affirmed the accuracy of her interview summary regarding her drug use, but said that she has not used marijuana since December 2019. She stated that she does not intend to use marijuana in the future. (Item 6)

Applicant did not respond to the Government's FORM. She did not provide any information about whether she has continued to abstain from marijuana use. She did not provide any explanation about why she verified the accuracy of her drug use in her November 2020 interrogatory response, but denied it in her July 2021 SOR Answer.

## **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." 484 U.S. 518, 531 (1988).

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. 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(a), 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 not drawn 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. Under Directive ¶ E3.1.15, 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 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 the applicant may deliberately or inadvertently fail to safeguard

classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including... purchase; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The Controlled Substances Act ("CSA") makes it illegal under Federal law to manufacture, possess, or distribute certain drugs, including marijuana. (Controlled Substances Act, 21 U.S.C. § 801, et seq. See § 844). All controlled substances are classified into five schedules, based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. §§811, 812. Marijuana is classified as a Schedule I controlled substance, §812(c), based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment. §812(b)(1). See *Gonzales v. Raich*, 545 U.S. 1 (2005).

Applicant acknowledged on her 2016 SCA that she used marijuana between 2012 and 2014. She acknowledged in her 2019 background interview that she resumed using marijuana on a monthly basis from 2016 until five days before her interview, in December 2019. She also acknowledged purchasing marijuana. Her later drug use included times while she had been granted access to classified information. The Government provided substantial evidence, using Applicant's own reporting and

admissions in the record, that she: used and purchased marijuana during the time periods alleged; used marijuana while granted access to classified information; and used marijuana while holding a sensitive position as a federal contractor. AG ¶¶ 25(a), 25(c), and 25(f) apply.

I have considered the mitigating conditions under AG ¶ 26. The following 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 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 is grounds for revocation of national security eligibility.

Applicant used and purchased marijuana with varying frequency, to include monthly, from 2012 to December 2019. Her involvement with marijuana is frequent and recent. The record shows that she has temporarily stopped using marijuana, and restarted several times in the past. Further, her most recent period of use occurred after she submitted not one but two SCAs, in 2016 and 2019, and while granted access to classified information. She did not provide sufficient evidence showing that her marijuana use occurred under circumstances that are unlikely to recur, or that she is currently abstaining. She provided no evidence that she has disassociated from her drug-using friends and contacts, or avoids social situations where there is recreational drug use. Furthermore, the finding (below) that she falsified her 2016 and 2019 SCAs, undercuts the credibility of her assertions of abstinence or changed circumstances made in her interrogatory response. Her long history of illegal marijuana use continues to cast doubt on her current reliability, trustworthiness, and good judgment with respect to her eligibility for a security clearance. AG ¶¶ 25(a) and 25(b) do not apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 details the personal conduct security concern:

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. Of special interest is any failure to

cooperate or provide truthful and candid answers during national security investigative or adjudicative processes...

I have considered the disqualifying conditions for drug involvement under AG ¶ 16 and the following 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; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

SOR ¶ 2.a alleges that Applicant falsified her April 2016 SCA when she underreported her prior illegal drug use. She reported on Item 4 that she used and purchased marijuana between 2012 and 2014. She later told the investigator in her December 2019 background interview that she used marijuana several times a month during her junior year (2014-2015), and every weekend in her senior year (2015-2016). In deliberately underreporting her college-era marijuana use, she deliberately falsified her 2016 SCA, and AG ¶ 16(a) applies.

SOR ¶¶ 2.b and 2.c are also established. Applicant did not disclose any illegal use or purchase of marijuana in the previous seven years on her September 2019 SCA. She later admitted to a government investigator that she had purchased marijuana monthly, and used marijuana until at least December 2019. Applicant told the government investigator that she falsified her 2019 SCA because she wanted to hide her marijuana use, and did not want her SCA to be denied. AG ¶ 16(a) applies to SOR ¶¶ 2.b and 2.c.

SOR ¶ 2.d is a cross-allegation of Applicant's Guideline H allegations (SOR ¶¶ 1.a-1.d, discussed above). Since those allegations are established as unmitigated security concerns under Guideline H, it cannot be said that those allegations are "not sufficient for an adverse determination under any other single guideline," as required under AG ¶ 16(c), so that disqualifying condition does not apply. However, Applicant's history of involvement with marijuana satisfies the general concern of AG ¶ 15, given the questionable judgment and unwillingness to comply with rules and regulations that her conduct shows.

I have considered the mitigating conditions under AG ¶ 17. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (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.

Applicant deliberately underreported her college-era marijuana use on her 2016 SCA and deliberately failed to disclose any drug use at all on her 2019 SCA, whether in college or afterwards. She admitted that she hid her involvement with marijuana on her 2019 SCA because she did not want her application for a clearance to be denied. She used marijuana frequently, recently, and after submitting two SCAs. Neither AG ¶ 17(a) or 17(c) applies.

### **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 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.

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 Guidelines H and E in my whole-person analysis.

In this case, Applicant offered little whole-person evidence to consider. She provided no documentary evidence in her Answer to support her claims that she is abstaining from marijuana, or is using alternative means to treat her medical symptoms and conditions. She told a government investigator that she does not want her



marijuana use to have a negative impact on her employment, yet she has used marijuana after filling out her SCAs, while granted access to classified information, and while holding a sensitive position. She has falsified two different SCAs, admitted falsifying her 2019 SCA to hide her marijuana use, and offered vague denials in her Answer, despite her earlier admissions. In her interrogatory response, she wrote that the interview report is correct about her recreational drug use.

Applicant did not provide sufficient evidence to mitigate the security concerns of her history of illegal marijuana use and purchase, and her marijuana use while granted access to classified information, and while holding a sensitive position. All of this continues to cast doubt on her reliability, trustworthiness, and good judgment with respect to her eligibility for a security clearance. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance.

### **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.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.d:	Against Applicant

### **Conclusion**

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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Ross D. Hyams  
Administrative Judge