



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



In the matter of: )  
)  
) ISCR Case No. 21-00421  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

07/14/2022

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, financial considerations, but 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 April 23, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement and substance misuse, and Guideline F, financial considerations. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on May 14, 2021, and requested a hearing before an administrative judge. The case was assigned to me on April 4, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 19, 2022, scheduling the hearing for May 12, 2022, by Microsoft Teams. The hearing was held as scheduled. The Government offered exhibits (GE) 1 and 2. Applicant testified and did not offer any documentary evidence. There were no objections to the Government exhibits and they were admitted into evidence. The record remained opened until May 26, 2022, to permit Applicant time to provide additional evidence. Applicant offered Applicant Exhibits (AE) A through L. There were no objections and all were admitted into evidence and the record closed. DOHA received the hearing transcript on May 20, 2022.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b and denied the allegations in 2.a and 2.b. Applicant's admission are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 39 years old. He earned a bachelor's degree in 2007. He was married from 2004 to 2015 and has three children, ages 16, 14, and 12. He served in the National Guard from 2010 to 2016 and was honorably discharged. He deployed to Afghanistan for 15 months in 2012 to 2013. He has been employed by federal contractors and his present employer since January 2018. He has held a security clearance since approximately 2010. (Tr. 14-16, 22; GE 1, 2)

Applicant testified that he suffers from post-traumatic stress disorder (PTSD), depression, and anxiety. He sees mental health professionals. Applicant explained that in 2015, he began having PTSD symptoms. He received therapy and medication through the Department of Veterans Affairs (VA). After months of trying different medications, he decided in November 2016 to use marijuana to help him because the prescribed medications were not helping him. He purchased it from unknown street vendors. (Tr. 19-25, 33-34)

When Applicant completed his security clearance application (SCA) in April 2020, he did not disclose his marijuana use. He explained that he rushed to complete the SCA. He was using marijuana at the time he completed it. He stated it did not register with him to stop using marijuana, despite the question on the SCA asking about his drug use. He said he did not stop using marijuana at that time and did not take into consideration his job. He stopped using it when he found medication that worked. He explained that his mental health trumped all other considerations. (Tr. 26-27, 36)

In June 2020, during Applicant's background interview with a government investigator, he was asked by the investigator about his use of illegal drugs and he disclosed his marijuana use. He testified that his use of marijuana was in conjunction with going to the VA to help him manage his PTSD. His use was not based on advice or recommendations from any mental health professional. When asked if he understood his

use of marijuana was contrary to holding a security clearance, he said at the time he was only focused on his mental health. The thought of losing his security clearance never crossed his mind when he used marijuana. (Tr. 25-28)

Applicant believes he is on a better medication now and does not need to use marijuana. He testified that he stopped using marijuana in December 2020. Because his medication is working, he does not feel the need to use marijuana in the future. (Tr. 19, 27-28, 35)

Applicant testified that marijuana is a natural supplement and is legal in many states. He stated that it does not alter his performance. If he believed its use would alter his performance, he would not use it. He used it for his mental health. His psychiatrist and therapist were aware he was using marijuana. They did not recommend its use and were concerned because they could not manage it. He would use it at night to aid him in getting to sleep. He estimated he used it less than once a week. He testified he used marijuana for several years before he found medication that worked. He said if his medication stopped working, he would not resume using marijuana. He now has an appreciation that marijuana use is inconsistent with holding a security clearance. He had been seeing his mental health professionals about once a month, but now sees them about every three months. Applicant provided copies of prescriptions he takes for depression and anxiety. He also provided copies of some of his medical records. (Tr. 26-33; AE A-I)

The SOR alleges two delinquent debts (§§ 1.a - \$13,795; 1.b – \$2,050) that were charged off. Applicant testified that a few years ago he had some collection accounts, but they are now resolved. He provided documentary evidence that both debts have been resolved. (Tr. 16, GE 2; AE J, K, L)

### **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the 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 F: Financial Considerations**

The security concern relating to the guideline for financial considerations is set out in AG ¶ 18:

Failure to live within one’s means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant had two delinquent debts that were charged off. There is sufficient evidence to support the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating condition under AG ¶ 20 is potentially applicable:

- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant resolved the delinquent accounts in SOR ¶¶ 2.a and 2.b and provided documentary proof. AG ¶ 20(d) applies.

#### **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, manufacturing, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana from November 2016 to December 2020 with varying frequency. He purchased and used marijuana during this same time period and while holding a security clearance. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns. 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.

The evidence supports that Applicant was suffering from PTSD and was being treated by mental health professionals. He felt the medications prescribed were ineffective, so he decided to purchase and use marijuana for over four years while holding a security clearance. Applicant's main focus was on treating his mental health, which is understandable. However, his failure to recognize and act responsibly regarding his use of marijuana is a concern. He did not consider that using marijuana, an illegal substance, and without the approval of his mental health professionals, was a security concern. He used it after completing his April 2020 SCA and after he was interviewed by a government investigator in June 2020. He testified he stopped using marijuana in December 2020 when new medication he was prescribed helped.

I have considered the impact PTSD has had on Applicant's life and his attempt to resolve his mental health issues. However, I cannot ignore that he failed to consider that his use of marijuana while holding a security clearance was a serious concern. He purchased it from an unknown source, which is also a concern. He used it contrary to his doctor's recommendations. Although he testified that he would not use it again and has not used it since December 2020, I am not convinced that if his medication became ineffective, he would not resume its use. His years of purchasing and using marijuana while holding a security clearance casts doubt on his reliability, trustworthiness and good judgment. I find 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 Guidelines F and H in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I have considered that Applicant is a veteran who suffers from PTSD. Applicant was being treated by mental health professionals for it. He was dissatisfied with the medication he was prescribed and decided to use marijuana. He used it for over four years while holding a security clearance and testified that his mental health trumped all other considerations. He did not consider the impact his marijuana use would have on his security clearance. He has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising under Guideline F, financial considerations, but failed to mitigate the security concerns 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
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For 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