



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



In the matter of: )  
)  
) ISCR Case No. 20-02801  
)  
Applicant for Security Clearance )

**Appearances**

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

07/06/2022

**Decision**

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline H, drug involvement and substance misuse. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On September 3, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on September 15, 2021, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on March 4, 2022. The evidence included in the FORM is identified as Items 3-4. (Items 1-2 include pleadings and transmittal information.) The FORM was mailed to Applicant, who received it on March 20, 2022. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not file any objections or submit any additional evidence. Items 3-4 are admitted into evidence without objection. The case was assigned to me on June 16, 2022.

### **Findings of Fact**

In Applicant's answer, he admitted the allegation in the SOR. He also provided some explanation for his conduct. I adopt his admission as a finding of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact. (Item 2)

Applicant is 30 years old. He married in September 2020. He has worked as a software engineer for his current employer, a federal contractor, since 2015, and that contractor is subject to the drug-free workplace provisions of 41 U.S.C. 701 *et seq.* He holds a bachelor's degree. He has held a top secret security clearance since 2012. (Item 3)

The SOR alleged Applicant used marijuana, with varying frequency, from about May 2017 to about May 2019, while having access to classified information. (Item 1)

In his June 2018 security clearance application (SCA), Applicant admitted using marijuana on three occasions between May 2017 and June 2018. Later in the SCA, he denied using marijuana while holding a security clearance (even though he completed his 2018 SCA stating that he held a security clearance since 2012). He also stated in his SCA that he did not intend to use marijuana in the future because he has nothing to gain by using it and he did not get much pleasure out of using it. In June 2019, during his background interview, Applicant described the three times he used marijuana before completing his 2018 SCA. He then admitted using marijuana three to four more times after completing his 2018 SCA. He told the investigator he was not sure if he possessed a security clearance during his most recent uses of marijuana. He described that his most recent use was in May 2019, when he was traveling through a state where using marijuana was legal under state law. He also told the investigator that he did not intend to use marijuana in the future. (Items 3-4)

In his SOR answer, he admitted using marijuana while possessing a security clearance, but he claimed that at the time of the uses he did not have access to classified information or facilities. He went on to state that he has discontinued use of marijuana and he is committed to a life of abstinence from illegal substances. He reiterated his commitment not to use marijuana in the future. Since Applicant submitted

this case for an administrative determination, I was unable to judge his credibility based on demeanor. (Item 2)

## **Policies**

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.

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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Two conditions are potentially applicable in this case:

- (a) any substance misuse; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position

Applicant used marijuana on multiple occasions from May 2017 to May 2019, while granted access to classified information. I find that both of the above disqualifying conditions apply.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

- (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 or misuse is grounds for revocation of national security eligibility.

Applicant's use of marijuana was not frequent, six uses from 2017 to 2019, but it was recent. It is troubling that Applicant broke the commitment he made in his 2018 SCA not to use marijuana in the future by using marijuana multiple times in 2019. He also failed to provide a signed statement of his intent not to use marijuana in the future. Applicant's short abstention is insufficient to convince me that recurrence is unlikely. Additionally, his use of marijuana while holding a security clearance casts doubt upon his current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) and 26(b) 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 guideline 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 considered that he used marijuana as recently as May 2019, while holding a security clearance and having just recently completed an SCA. I also considered the circumstances he described surrounding his uses and his stated intent not to use marijuana in the future.

Overall, the record evidence leaves me with questions and doubts about 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
Subparagraph 1.a:	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 interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge