



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-00336
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
 For Applicant: *Pro se*  
 08/09/2022

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Department of Defense’s (DOD) intent to deny her eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the security concerns raised by her use of marijuana in violation of her employer’s drug policy, and after applying for a security clearance. Applicant’s nearly two-year period of abstinence is insufficient to mitigate the underlying security concerns. Clearance is denied.

**Statement of the Case**

On March 12, 2021, DOD issued a Statement of Reasons (SOR) detailing security concerns under the criminal conduct, drug involvement and substance misuse, and the personal conduct guidelines. The Agency acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive); and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, implemented on June 8, 2017.

Based on the available information, DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant Applicant’s security clearance and recommended that the case be submitted to a Defense Office of Hearings and Appeals

(DOHA) administrative judge to determine whether to grant or deny her security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing convened on January 12, 2022, I admitted as Hearing Exhibits (HE) I and II: (I) the pre-hearing notice; and, (II) the disclosure letter the Government sent to Applicant, dated December 14, 2021. I also admitted Government's Exhibits (GE) 1 through 3, without objection. After the hearing, Applicant timely submitted the following documents:

Applicant's Exhibit (AE) A: A signed statement of intent to abstain from future drug use, undated (1 page); and,

AE B: A letter from Applicant's physician, dated January 17, 2022 (1 page).

I admitted AE A and B, without objection. DOHA received the hearing transcript (Tr.) on January 21, 2022.

### **Procedural Matters**

Pursuant to Directive, Additional Procedural Guidance ¶ E3.1.17, Department Counsel moved to amend the SOR to conform to the evidence in the case. Initially, SOR ¶ 1.b alleged, based on disclosures from Applicant, that she used marijuana between October 2018 and April 10, 2020, while employed in a sensitive position with a federal contracting company. Without objection, Department Counsel moved to amend the language of the allegation to state:

You used and purchased marijuana with varying frequency, from about October 2018 to about April 10, 2020, while employed [by a federal contracting company] and being on notice of the company's drug-free work policy.

The amended allegation accurately reflects the evidence admitted during the hearing. (Tr. 47-50)

### **Findings of Fact**

Applicant, 28, has worked for her current employer, a federal contracting company, since October 2018. She completed a security clearance application, her first, in March 2020. In response to questions about her use of illegal drugs or drug activity, she disclosed that she purchased and used marijuana between October 2008 and March 2020 to self-medicate depression and another medical condition. She affirmatively answered the question relating to her use of illegal drugs while having a security clearance and the question regarding her intention to continue using marijuana in the future. In her April 2020 interview with a background investigator, Applicant clarified that she mistakenly reported having a security clearance on her security clearance application, but affirmed her intention to use marijuana in the future to address her medical issues. At the hearing, she testified that she mistakenly indicated a

future intent to use marijuana on the security clearance application. These disclosures form the basis of the SOR allegations in this case. Applicant reports that she did not receive an interim security clearance. (GE 1-2)

Applicant was introduced to marijuana in middle school, using the drug when it was available to her. While in high school between 2009 to 2012, she used the drug twice a week to help with the symptoms of a medical condition. In 2013, at age 19, she obtained a prescription for medical marijuana, and purchased it at a state-sanctioned dispensary. After turning 21, she no longer required a prescription to purchase the drug. (Tr. 18-19, 29, 31-34; GE 1)

Between 2013 and 2017, Applicant was in college. Between 2013 and 2014, she worked at a funeral home. Because her position required drug testing, she abstained from marijuana. After leaving the funeral home position in 2014, she resumed using marijuana to deal with a recurring medical issue that her doctor was unable to diagnose. After graduating from community college in 2017, she decided to take a class to learn a skill that would make her an attractive candidate for a position at a federal contracting company. While taking the class, she abstained from marijuana to ensure that she was eligible for hire, knowing that she would be required to pass a drug test if she received an offer of employment. After securing her current job in October 2018, she learned about her employer's standards of business conduct, which included the admonition that the company complied with the federal Drug Free Workplace Act and that because marijuana remained illegal under federal law, the company prohibited its use even in states where it was not against state law. (Tr. 16-17, 19-20, 23-24; GE 3)

In October 2019, Applicant experienced pregnancy loss. Between October 2019 and December 2019, she used marijuana once a week to self-medicate her depressed mood. Concerned that her depression was not improving, she decided to get help in December 2019. She sought counseling through her employer's employee assistance program (EAP) and treatment from a psychiatrist. When Applicant began taking antidepressant medication in January 2020, she used marijuana once a week until April 2020, to alleviate the side effects of the medication. She continued to use marijuana even after completing a security clearance application in March 2020. Once she was able to better tolerate the medication, she stopped using the drug. Applicant reported that she has not used marijuana since April 2020. In 2021, Applicant again sought counseling when she felt she needed additional support. (Tr. 17, 20-21, 24-27, 30, 35-36, 38-40)

At the hearing, Applicant testified that she remained on antidepressant medication and was under the care of a psychiatrist for medication management. According to a January 2022 letter from the treating psychiatrist, she treated Applicant for anxiety and depression with a short course of medication to improve Applicant's mood and anxiety. The course of medication stopped when Applicant went into remission. The psychiatrist noted that Applicant disclosed her marijuana use and described her as being compliant with her prescribed treatment. (Tr. 37; AE B)

Applicant testified that she no longer uses marijuana because it is not compatible with her lifestyle or employment obligations. She has made changes to her life to support her mental health, including medication, exercise, and a healthy diet. She stated that she no longer associates with individuals who use marijuana. She provided a letter of intent stating her intent to abstain from illegal drug use in the future. (Tr. 22, 30-31, 42; AE A)

## **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 to be 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, administrative judges apply the guidelines 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant 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.

Section 7 of EO 10865 provides that adverse 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**

The SOR alleges disqualifying conduct under the drug involvement and substance misuse and personal conduct guidelines. The government has established a *prima facie* case under each.

#### **Drug Involvement and Substance Misuse**

The illegal use of controlled substances . . . that cause physical or mental impairment . . . raises 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. (See AG ¶ 24). Applicant admits to a history of marijuana use between 2008 and April 2020. After abstaining from the drug for two years between 2017 and 2018, she began using the drug in October 2019 to self-medicate depression. She continued to use the drug between January and April 2020 after taking antidepressant medication and after completing a security clearance application. She used marijuana knowing that it was against her employer’s standard of conduct policy. Applicant’s conduct requires the application of the following disqualifying condition:

AG ¶ 25(a) Any substance misuse.

None of the relevant mitigating conditions apply. Applicant used marijuana to self-medicate recurring medical conditions. Given the circumstances of her marijuana use and her long history of use, neither her statement of intent to abstain from future use, nor her current period of abstinence, just over two years, is sufficient to mitigate the alleged security concern. Furthermore, the lifestyle changes she has made to support abstinence are recent and have not been in effect long enough to establish their effectiveness or sustainability.

#### **Personal Conduct**

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. (AG ¶ 16) The SOR cross alleges Applicant’s history of marijuana use. Although Applicant’s use was medicinal and not recreational, doing so was an intentional violation of her employer’s drug policy and federal law. While none of the enumerated disqualifying conditions apply, her conduct indicates an unwillingness to follow rules and regulations highlighted in the general personal conduct concern as detailed in AG ¶16.

The record does contain some evidence in mitigation. Applicant recognized she needed medical help to address her underlying mental health issues, and has since been under a physician's care and received counseling as needed. In addition to receiving medical attention, she has also made lifestyle changes to support her mental health and encourage abstinence; however, as explained above, these changes are too recent to fully mitigate the underlying concerns.

Based on the record, Applicant is not a suitable candidate for access to classified information at this time. This decision is not changed by a consideration of the facts under the whole-person factors listed in AG ¶ 2(d). Applicant's use of marijuana is not mitigated because she used the drug to manage the symptoms of two recurring medical conditions. While her need to address her medical issues is valid, medical marijuana use is not compatible with her duties and responsibilities as an individual seeking access to classified information. An adverse decision in this case is not a determination that Applicant cannot achieve a sufficient period of abstinence to obtain a security clearance in the future. However, at this time, her marijuana use is too recent and her period of abstinence too short to mitigate the concerns raised by her history of marijuana use.

### **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, Drug Involvement and Substance Misuse:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d	Against Applicant
Paragraph 2, Personal Conduct	AGAINST APPLICANT
Subparagraph 2.a	Against Applicant

### **Conclusion**

In light of all of the circumstances presented in this case, it is not clearly consistent with the national interest to grant Applicant's security clearance. Eligibility for access to classified information is denied.

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Nichole L. Noel  
Administrative Judge