



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



In the matter of: )  
)  
) ISCR Case No. 21-00824  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrea Corrales, Esq., Department Counsel  
For Applicant: *Pro se*

11/22/2022

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**Decision**

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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's 18 months of abstinence is not sufficient to mitigate the security concern raised by his 14-year history of marijuana use. Clearance is denied.

**Statement of the Case**

On March 12, 2021, DOD issued Applicant a Statement of Reasons (SOR) detailing security concerns under drug involvement and substance misuse 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 his security clearance.

Applicant timely answered the SOR and requested a hearing. At the hearing convened on April 26, 2022, I admitted as Hearing Exhibit (HE) I the disclosure letter the Government sent to Applicant, dated June 1, 2021. I also admitted Government's Exhibits (GE) 1 through 3, without objection. Applicant did not submit any documentation. DOHA received the hearing transcript (Tr.) on May 5, 2022.

### **Findings of Fact**

Applicant, 32, has worked for a federal contractor as an information technology professional since March 2012. He was promoted to a management position in February 2022. He previously applied for and was granted public trust eligibility in 2018 to support a specific federal contract. He completed a security clearance application in January 2020, seeking access to classified information. He does not require a security clearance for his current position, but obtaining eligibility allows his employer more flexibility in staffing him on other contracts. On his security clearance application, Applicant disclosed marijuana use between October 2007 and January 2020 several times a week to help with his anxiety and depression. He also indicated that he intended to continue using the drug in the future. (GE 1-2, Tr. 12-15, 18)

Applicant began using marijuana recreationally in college. He continued to use marijuana after he graduated from college in February 2011. His frequency of use varied based on the availability of the drug in social settings. He explained that he also engaged in periods of abstinence from marijuana, but would resume use. When he applied for public trust eligibility in 2018, he had not used marijuana in the preceding year. However, he resumed use after the contract he was supporting ended and he believed he no longer maintained public trust eligibility. (Tr. 16, 18-9, 25-26, 31)

At the time he completed his security clearance application in January 2020, Applicant disclosed that he continued to use marijuana on a regular basis. In a February 2020 subject interview with a background investigator, Applicant stated that he continued to use marijuana on a daily basis with friends and to self-medicate anxiety and depressed moods. He denied seeking help for the underlying mental-health issues, and reiterated his intent to use marijuana in the future. Over a year later, in April 2021, Applicant answered a set of interrogatories from DOD regarding his drug use. He reported that he continued to use marijuana several times each week with intent to continue use the future. Applicant admitted that he purchased the drug on occasion, but had not done so since at least 2018 or 2019. He reported using the drug when it was provided by friends. He disclosed that he still associated with friends who used the drug on a regular basis. He also admitted that he had not made any changes to his life to support abstinence to include substance abuse counseling or seeking treatment for his anxiety and depression. (GE 1, GE 3; Tr. 20, 26)

Applicant used marijuana daily until he received the SOR in April 2021, when he stopped. In his response to the SOR, he stated that he would not use the drug in the

future. One witness, a close friend, testified that he was aware of Applicant's marijuana use, but had not seen him use the drug in social settings over the past year. He also stated that Applicant expressed his desire to stop smoking marijuana. Applicant testified that marijuana use is no longer compatible with his lifestyle and that the demands of his career are paramount. He reinforced his intention to abstain from drug use in the future. However, Applicant's two roommates, one of whom is his girlfriend, continue to use marijuana. His girlfriend, who has a medicinal marijuana card, uses the drug regularly. Applicant testified that he has asked her not to use the drug in the same room as him. His social circle still consists of regular marijuana users. He stated that he does not use the drug when his friends use it in his presence. (Answer; Tr. 29. 37-43, 47-52)

At the hearing, Applicant admitted that he had not made any specific changes to his lifestyle to support abstinence. He testified that at an unspecified time before 2019, he attended therapy to work through some personal issues. Although he touched on his anxiety and depression issues, they were not the focus of the sessions. He continued to use marijuana while he was in therapy. He did not make any connections between his history of marijuana use and his feelings. He concluded that he was not using the drug to self-medicate but because he enjoyed the effects of it. (Tr. 31-37)

Applicant explained that he understood that even though recreational marijuana use has been decriminalized in his state of residence, that marijuana use remains illegal there and that it is illegal under federal law. (GE 3, 21)

### **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 guideline. The government has established a *prima facie* case.

#### **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 that began in 2007 and continued until he received the SOR in April 2021. On three occasions during the adjudication of his national security eligibility, Applicant expressed his intent to use marijuana in the future. The following disqualifying conditions apply.

AG ¶ 25(a) any substance misuse;

AG ¶ 25(g) expressed intent to continue drug involvement and substance misuse, or failure to clearance and convincingly commit to discontinue such use.

None of the relevant mitigating conditions apply. Applicant has a 14-year history of marijuana use. Given his multiple statements of intent to use in the future, his

promise to abstain from use in the future is not credible. His last reported use occurred only 18 months ago, which is not sufficient evidence of habit change especially given his history of use after periods of abstinence. Furthermore, he has not made changes to his lifestyle to support prolonged abstinence. Given the regular marijuana use that occurs in his home and social circle as well as his untreated depression and anxiety issues, potential for relapse remains high.

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). 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, his marijuana use is too recent and his period of abstinence too short to mitigate the concerns raised by his 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.b	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