



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



In the matter of: )  
)  
) ISCR Case No. 21-01744  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*  
09/19/2022

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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 his eligibility for a security clearance to work in the defense industry. Applicant has a history of illegal drug use that is not mitigated by his short period of abstinence. Although his statements to abstain from cocaine use are credible, his state intention to abstain from marijuana is not. He has relied on marijuana to treat ongoing medical issues. He has failed to pursue other treatment options or coping mechanisms. He has not made changes to his lifestyle or social circle to support abstinence. Clearance is denied.

**Statement of the Case**

On October 21, 2021, the DOD issued a Statement of Reasons (SOR) detailing security concerns under the drug involvement and substance misuse guideline. This action was taken 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, implemented on June 8, 2017. 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 an administrative judge for a determination whether to deny his security clearance.

Applicant answered the SOR and requested a decision without a hearing. (Government Exhibit (GE) 2) The Government submitted its written case on February 28, 2022. Applicant received a complete copy of the file of relevant material (FORM) on March 7, 2022. He did not respond. The documents appended to the FORM are admitted as GE 1 through 5, without objection. The cover letter prepared by Department Counsel that accompanied the FORM is appended to the record as Appellate Exhibit (App. Ex. I). Applicant's signed FORM receipt is appended to the record as App. Ex. II.

### **Findings of Fact**

Applicant, 33, has worked for his current employer, a federal contracting company, since February 2016. He completed his first application for access to classified information in March 2021. He disclosed a history of marijuana use and purchase between May 2007 and March 2021, a history of cocaine use between January 2008 and February 2021, and counseling for marijuana use between July and August 2009. Applicant confirmed the details of his past illegal drug use and history in a March 2021 background interview with an OPM agent and in August 2021 responses to DOHA interrogatories. These admissions serve as the basis for the SOR allegations. (GE 4-5)

Applicant began using marijuana and cocaine recreationally while in college between 2007 and 2011. He reports using cocaine recreationally no more than five times. He denied ever purchasing the drug, but only used it as was provided by friends in social settings. Applicant does not foresee using cocaine in the future because he is prescribed a stimulant medication for another medical condition and does not want to mix the two drugs. He reported his last use as being in February 2021. (GE 4-5)

In 2009, Applicant's parents took him to see a substance abuse counselor about his marijuana use. Through those sessions, which took place between July and August 2009, Applicant was not diagnosed with a substance abuse disorder, but realized that he used the drug to address anxiety and pain. Since then, Applicant has continued to use marijuana to self-medicate. (GE 4-5)

Applicant was interviewed by a background investigator in March 2021. In his response to DOHA interrogatories in August 2021, Applicant reviewed and made minor changes to the report of investigation prepared by the background investigator. The changes included corrections to misspelled names of family members and a correction to information about his employment history. He did not make any corrections to the disclosures he made about his history of illegal drug use or his statements of intent regarding his future use of marijuana. Applicant reported to the background investigator that he used marijuana eight to twelve times a week and that he purchased the drug monthly at a local dispensary. He conveyed his intent to use marijuana in the future to alleviate his ongoing issues with pain and anxiety. While he stated that he would stop using the drug if it were necessary to obtain a security clearance, he admitted that he

would resume use if federal policy on the issue changed. Applicant told the investigator that he continued to associate with friends who used marijuana and admitted that he had not made any changes to his lifestyle to encourage abstinence. (GE 5)

In his answer to the SOR, Applicant reported his last use of marijuana as being in March 2021, the month he completed his security clearance application. He also provided a drug screen report dated January 2022, showing that he tested negative for both cocaine and marijuana. Applicant did not offer any current information either in response to the SOR or the FORM about an alternate treatment for his pain and anxiety issues or changes in his life to support abstinence from illegal drug use. He did not provide a signed statement of intent to abstain from illegal drug use in the future. However, he volunteered to submit to random drug testing. (GE 3)

### **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(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.

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 illegal use of controlled substances can raise questions about an individual’s reliability and trustworthiness 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 ¶ 16) The record contains evidence to support the Government’s *prima facie* case that Applicant engaged in disqualifying conduct under the drug involvement and substance misuse guideline.

Applicant admits using cocaine between 2008 and February 2021. He also admits to using and purchasing marijuana between May 2007 and March 2021, the month he completed his security clearance application. He indicated his intent to use marijuana in the future to address ongoing medical issues. The following disqualifying conditions apply:

AG ¶ 17(a) any substance misuse; and

AG ¶ 17(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

None of the applicable mitigating conditions apply. Even though Applicant’s last reported illegal drug use occurred in March 2021, the conduct is not mitigated by the passage of time. This period of abstinence is not sufficient given his long history of drug use. Furthermore, Applicant’s use of marijuana, in particular, did not occur under unusual circumstances that are unlikely to recur. He admits that he uses marijuana to self-medicate ongoing medical issues. Although Applicant stated that he would abstain from marijuana use if required to obtain a security clearance, his promise to abstain is not clearly convincing. He has not sought alternative medical treatments or other coping mechanisms to treat these issues. His social circle still consists of individuals who use marijuana recreationally, and he has not made any changes to support prolonged abstinence from the drug. He has not proffered a written statement of intent to abstain from illegal drug use.

