



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



In the matter of:)	
)	
)	ISCR Case No. 22-00590
)	
Applicant for Security Clearance)	

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Pro se

January 3, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on October 10, 2019. On April 1, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines H (Drug Involvement and Substance Misuse) and I (Psychological Conditions). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017. Applicant answered the SOR in an undated response (Answer), and requested a hearing before an administrative judge.

Department Counsel was prepared to proceed on August 2, 2022. The case was assigned to me on August 16, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on September 12, 2022, scheduling the case to be heard via video teleconference on October 4, 2022.

I convened the hearing as scheduled. Department Counsel offered five documents, identified as Government Exhibits (GE) 1 through 5. I admitted GE 1 and 3 through 5 without objection. Applicant objected to GE 2, a psychological evaluation report prepared at the request of the CAF. I overruled his objection and admitted the document into evidence. Applicant testified on his own behalf, but offered no documentary evidence. DOHA received the transcript of the hearing (Tr.) on October 12, 2022. (Tr. at 12-19.)

Findings of Fact

Applicant is 65 years old. He has married four times. His first three marriages ended in divorce. He and his first wife had two children. Applicant's adult son died in an accident in 2015. His other child is an adult. Applicant and his fourth wife married in 2016. He graduated from high school and earned an Associate's degree. He served in the U.S. Navy for four years and was honorably discharged in 1979 with a disability. Applicant has been employed by a defense contractor as a technician since July 2019 and seeks to obtain national security eligibility and a security clearance in connection with his employment. The e-QIP is his first application for a clearance. In 2014 the Defense Department granted Applicant eligibility to receive a Common Access Card. (Tr. at 22-25, 27, 39; GE 1 at 7, 12, 13, 24, 26-30, 37-38.)

Paragraph 1 - Guideline H, Drug Involvement and Substance Involvement

The Government alleges that Applicant is ineligible for a security clearance because he has used marijuana since 2015 and intends to continue to do so in the future (SOR 1.a and 1.b). The Government further alleges that a psychologist (the Psychologist) who conducted a psychological evaluation diagnosed Applicant as having Unspecified Cannabis-Related Disorder and concluded that his condition could pose a risk to his judgment, reliability, or trustworthiness concerning classified information at this time (SOR 1.c). In his Answer Applicant admits the first two SOR allegations and provides some additional information. He denies the third allegation stating that he does not meet the criteria of the diagnosis provided by the Psychologist and questions whether the Psychologist is competent.

Applicant smoked marijuana before his children were born in the mid-to-late 1980's. As a parent he decided to stop using illegal drugs to set an appropriate example. In 2015 after the death of his son, Applicant began using edibles containing marijuana or THC (Edibles). Applicant was suffering severely from grief. He was having difficulty sleeping. A doctor diagnosed that Applicant was experiencing post-traumatic stress disorder (PTSD) and provided him with a medical marijuana card that permitted him to

purchase marijuana, including Edibles with THC, to help him with his PTSD. He uses Edibles because they gave him some relief from his “emotional trauma” and help him sleep. He presently uses them three or four nights per week. The anniversary of his son’s death was during the period just before the hearing, and he used Edibles more frequently to help him get through a period he described as “hell.” He only takes Edibles after he experiences something that triggers his intense feeling of grief. He acknowledged that he experiences triggers every day, even “24/7.” He never takes Edibles during the day. He is opposed to any prescription drugs that are typically used to reduce anxiety or depression. He “avoid[s] them like the plague.” He intends to continue using Edibles in the future because “the pain never goes away.” He acknowledged that he is aware that THC is an illegal drug under Federal law. He views his only alternative to THC is the use of opioids, which he dislikes because they are addictive. (Tr. at 28- 31, 39-45.)

Applicant candidly testified that he uses Edibles because without them he will “cry himself to sleep every night.” He suffers from sadness and depression every day, but only uses the Edibles at night because they help him sleep. He finds it overwhelming to deal with so much grief every day. His plan for the future is to continue focusing on his work, which he asserts he performs well. He will also continue surfing on the weekends and after work. When he needs the relief provided by the Edibles, he will continue to take them to help him sleep. He commented that he will “not be a free man until the day I die. There is no resolution.” (Tr. at 46-49.)

Applicant disagrees with the Psychologist’s evaluation of his condition because he does not believe he is dependent on marijuana or THC (collectively, THC). He views the Psychologist’s diagnosis of Unspecified Cannabis-Related Disorder as concluding that Applicant is dependent on THC. Applicant testified about his recent experience of taking a two-week vacation with his wife when he could not travel with Edibles to other states. During that vacation, he was comfortable not using Edibles because there were few situations that triggered intense grief. He experiences those triggers regularly when he is at home where he keeps his son’s ashes. He acknowledged that the Psychologist’s conclusion that Applicant is reliant on THC to stabilize his mood is “60% accurate.” He engages in other activities to remain calm, like surfing. (Tr. at 31-33, 43.)

Paragraph 2 - Guideline I, Psychological Conditions

The Government alleges in this paragraph that Applicant is ineligible for a security clearance because he has a psychological condition that raises security concerns. Specifically, the SOR alleges the Psychologist gave Applicant a guarded prognosis due to Post-Traumatic Stress Disorder (PTSD) that is untreated other than a prescription for marijuana. In his Answer Applicant denies this allegation and provides additional information and opinions regarding his view that the Psychologist’s opinion is erroneous.

At the hearing Applicant acknowledged that he is not currently participating in any treatment. He does not find grief counseling useful. He participated in grief counseling for two years after his son’s death and found that discussions about the seven stages of grief

to be repetitive and unhelpful. He believes that “nothing resolves the grief of a lost child. Nothing.” He believes that there are no answers. (Tr. at 34-36.)

The Psychologist’s report, dated January 6, 2022, is part of the record. In his report, the Psychologist noted that three counselors have treated Applicant in the past and that Applicant advised that he had been diagnosed with PTSD. Applicant has only received treatment during a six-month period. The Psychologist’s test results confirmed this diagnosis. He also affirmed a prior diagnosis of Applicant of Unspecified Cannabis-Related Disorder. The Psychologist gave Applicant a “guarded” diagnosis. He wrote that Applicant “seems reliant on the substance [THC] to maintain a stable mood.” His ultimate conclusion was that Applicant’s “PTSD and marijuana use could pose a significant risk to his judgment, reliability or trustworthiness concerning classified information at the present time.” (GE 2 at 8-9.)

Mitigation

Applicant honorably served in the Navy for four years and was discharged with a disability. In 2015 he suffered the tragic loss of his only son with whom he was very close. Seven years later he continues to grieve, kissing the urn holding his son’s ashes before he retires for the night. He sleeps poorly and thinks of his son and the loss of his son every day. He is opposed to using prescription medications to treat his suffering and strongly believes that his use of Edibles is the best treatment option. He complied with the laws of his state to obtain a prescription authorizing him to purchase and use Edibles. He believes that he would be a greater risk to national security if he used opioids to manage his PTSD and grief. He describes his honesty as his strength and his fault, noting that he could have lied in his e-QIP and his use of Edibles would never have become an issue. (Tr. at 49.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 - Guideline H, Drug Involvement and Substance Misuse

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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 four conditions that could raise security concerns and may be disqualifying in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical or mental health professional (e.g. physician, clinical psychologist, psychiatrist, or licensed social worker) of substance use disorder; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant's admissions in his Answer, and his detailed testimony regarding his history of using Edibles and his intent to continue to do so, as well as the Psychologist's report, establish all of the above disqualifying conditions and shift the burden to Applicant to mitigate the security concerns raised by his conduct.

The guideline includes two conditions in AG ¶ 26 that could mitigate the security concerns arising from Applicant's drug involvement:

- (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
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended.

AG ¶ 26(a) is not established. Applicant illegal drug use is current, frequent and is likely to recur. Also his behavior casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is only partially established. It is arguable that Applicant suffers from a severe and prolonged mental illness during and that a doctor gave him a medical marijuana card that permitted him to legally purchase Edibles under the law of his state of residence. That type of drug is not, however, within the normally accepted meaning of the term "prescription drugs" under this mitigating condition. Moreover, Applicant's use of Edibles has not ceased. Paragraph 1 is found against Applicant.

Paragraph 2 - Guideline I, Psychological Conditions

The security concern under this guideline is set out in AG ¶ 27 as follows:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counselling.

AG ¶ 28 describes one condition that could raise a security concern and may be disqualifying in this case:

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness.

The Psychologist's report establishes the above condition and shifts the burden of proof to Applicant to mitigate the security concerns raised by the report. AG ¶ 29 lists the following five conditions under Guideline I that could mitigate the security concerns arising from the opinions of the mental health provider in the record evidence:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

None of the above mitigating conditions have been established by the facts of this case. Applicant's "treatment plan" involves the use of a controlled substance that is not legal under Federal law. Accordingly, the treatment plan cannot be viewed under Federal law as a legitimate plan. Applicant is not currently participating in a counseling or a treatment plan utilizing prescription drugs that are legal under Federal law. In addition, his current diagnosis is guarded. Applicant has not submitted a recent opinion of a duly qualified medical profession to rebut the recent opinion of the Psychologist. Applicant's psychological condition is not temporary or resolved, and according to the Psychologist, Applicant continues to show indications of emotional instability. Moreover, his psychological condition can be expected to continue in the future unless he agrees to participate in appropriate counseling and a legal treatment plan, including taking drugs that are prescribed for his condition and are lawful under Federal law. Paragraph 2 of the SOR is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility by considering the totality of the applicant's conduct and all relevant 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 national security 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 pertinent facts and circumstances surrounding this case, including the whole-person factors quoted above. Applicant has to face daily a significant emotional problem due to the sudden and premature death of his son. He suffers greatly from the emotional trauma arising from this tragedy. He has not, however, successfully confronted his condition, and he is not under the treatment of mental health professionals. He has not provided satisfactory evidence in mitigation of the security concerns raised by his continued use of Edibles to maintain a degree of emotional stability. He continues to suffer from a mental health condition that could pose a significant risk to his judgment, reliability, and trustworthiness concerning classified information at the present time. Overall, the record

evidence raises serious questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	Against Applicant
Paragraph 2, Guideline I:	AGAINST APPLICANT
Subparagraph 2.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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge