



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



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| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 20-00421 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government:  
Adrienne M. Driskill, Esquire, Department Counsel

For Applicant:  
Troy Nussbaum, Esquire

January 19, 2023

**Decision**

GLENDON, John Bayard, Administrative Judge:

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on July 30, 2018. On February 11, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H (Drug Involvement and Substance Misuse). 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 (DoD) after June 8, 2017.

Applicant responded the SOR (Answer) on August 24, 2022, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on September 22, 2022. The case was assigned to me on September 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on November 2, 2022, scheduling the case to be heard via TEAMS video teleconference on December 6, 2022.

I convened the hearing as scheduled. Department Counsel offered two documents marked as Government Exhibits (GE) 1 and 2. GE 1 was admitted without objection. Applicant's attorney objected to the admission of GE 2, which is a summary of Applicant's background interview conducted by a U.S. Government investigator on September 11, 2018. I sustained counsel's objection. Applicant offered six exhibits, marked as Applicant Exhibits (AE) A through F. I admitted his exhibits without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on December 13, 2022. (Tr. at 9-12.)

### **Findings of Fact**

Applicant is 37 years old, married and has one young child. He and his wife are expecting a second child. He earned a bachelor's degree in 2008 and a master's degree in 2015. He has worked for a major DoD contractor for the last 14 years. Applicant's employer has promoted him five times, and he is presently a manager. He received a security clearance in 2009 and is seeking to renew his eligibility in connection with his employment. (Tr. at 15-23; GE 1 at 12-20; AE A at 1-2.)

### **Guideline H, Drug Involvement and Substance Involvement**

The Government alleged in this paragraph that Applicant is ineligible for clearance because he has a history of drug involvement. Specifically, the SOR alleged that Applicant used marijuana with "varying frequency" from about September 2015 to at least September 2017. The SOR also alleged that Applicant used marijuana after he had been granted access to classified information (SOR 1.a). The SOR further alleged that Applicant intended to continue using marijuana in the future (SOR 1.b). In his Answer, Applicant denied SOR 1.a "due to the term 'varying frequency,' which is ambiguous." He commented further that he "will explain more at the hearing." He also denied SOR 1.b without comments.

In his e-QIP, Applicant disclosed that he used marijuana occasionally during the period September 2015 to September 2017. At the hearing, he testified that those dates were incorrect. He said that his first use was in or about September 2017 and his last use was sometime in the first half of 2018. The basis of this adjusted timeline is the fact that he only purchased medical marijuana, actually "edibles" containing THC (Edibles), in his state of residence from medical marijuana dispensaries using a process that requires a doctor's medical marijuana "recommendation." His purchases and uses of medical marijuana, including Edibles, pursuant to this process are legal in the state in which

Applicant resides. He first received a recommendation letter from a doctor in his state on September 20, 2017. He had never used marijuana in any form prior to obtaining this recommendation. He also testified that he stopped using Edibles prior to submitting his e-QIP in July 2018. He estimated that he used Edibles less than 15 times during a period of about nine months. Applicant acknowledged that he held a security clearance at the time he used Edibles. (Tr. at 24-28, 48-50.)

Applicant sought a recommendation from a doctor to use medical marijuana because he believed it would help reduce his “debilitating” symptoms of Attention Deficit Hyperactivity Disorder (ADHD) and anxiety. Applicant’s psychiatrist has given him a diagnosis of ADHD and Generalized Anxiety Disorder. For a year or two Applicant followed the advice of his psychiatrist and followed his treatment plan for Applicant, which included taking medication for his ADHD condition. Over that period, the psychiatrist adjusted Applicant’s medication a number of times in an attempt to reduce his symptoms as much as possible with the medication. The medication never provided sufficient relief, and it had significant side effects that bothered Applicant. Prior to September 2017, Applicant was also under the care of a therapist. (Tr. at 27-33, 48-50.)

Applicant asserted that his condition interfered with both his professional life and his marriage. While searching for a better cure of his condition, he read about medical studies that showed that marijuana could provide relief for individuals with ADHD or anxiety. He decided to seek the advice of a physician about the possibility of treating his condition with marijuana. The physician gave him the recommendation letter that was required for Applicant to purchase marijuana at a state-licensed dispensary where his purchases would be legal under state law. He used the marijuana in the form of Edibles and found that the drug relieved his symptoms “to a degree.” It was more effective than the medication prescribed by his psychiatrist, but it did not resolve his symptoms completely. It had the benefit of eliminating the side effects of the prescribed drug. (Tr. at 31-35.)

Applicant then switched to a new therapist who treated patients with Cognitive Behavior Therapy (CBT). Using the CBT techniques, Applicant learned from his therapist that he could stop the cycle of his symptoms seriously interfering with all aspects of his life. He decided to continue with CBT therapy, and he stopped using Edibles. Since he began with CBT therapy in 2018 after he prepared his e-QIP, he has not had an experience of having his symptoms of ADHD or anxiety becoming “out of control.” As a result, he does not intend to use marijuana in the future and has signed a statement confirming that commitment. At the hearing, he retracted his statement in his July 2018 e-QIP that he may need to rely on marijuana in the future. He believes that his use of CBT techniques is a much more effective coping mechanism than prescription drugs or marijuana. It is also important to him that CBT techniques have no side effects. (Tr. at 33-36; AE E.)

Applicant also is planning to avoid marijuana in the future for two other significant reasons. One is that he became a father and wanted to become a proper role model for

his child. He wants his home to be drug-free. The other reason is that he is aware that under Federal law his use of Edibles is illegal. At the time he used Edibles, he was aware that their use was inconsistent with the responsibilities of a security clearance holder. He used Edibles only because he was afraid that his worsening condition, particularly his anxiety disorder, would seriously damage his marriage and his career if he did not get his mental health condition under control. He was hoping that marijuana would give him the relief he needed. He understands that he exercised poor judgment. He testified that his judgment was “probably clouded by the feeling that I needed to do something quickly.” He acknowledged that he “failed to consider the consequences of [his] actions while [he] was desperate to regain control of his mental health.” He is committed now to complying with his legal responsibilities. If he ever felt desperate again, he would take time off from work and consult with his new psychiatrist and therapist. Moreover, he stated that he has faith in his current psychiatric care team. (Tr. at 36-41.)

### **Mitigation and Whole-Person Evidence**

As noted, Applicant has had a highly successful career working for his employer since graduate school. He has advanced in the company more quickly than most of his peers. He has been selected for several special advancement programs and has received certifications following his completion of specialized courses. (Tr. at 17-18; AE A at 2; AE D at 1-15.)

Applicant submitted eight reference letters from a supervisor, co-workers and family members. All of his references praise Applicant’s intelligence, skills, and dedication to his employer and the United States. They attest to his integrity, reliability, and trustworthiness. He also submitted several performance reviews in which he was highly rated and praised for his excellent leadership skills, work ethic, and accomplishments. In one review, he is described as one of the company’s “superstars.” (AE B; AE E.)

### **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 three conditions that could raise security concerns and may be disqualifying in this case:

- (a) any substance misuse (see above definition);
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; 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 drug use, establish AG ¶ 25(a) and (f). The record evidence, including Applicant’s credible denial of any intent to use marijuana in the future, renders AG ¶ 25(g) inapplicable. This evidence shifts 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 alleged drug involvement and substance misuse:

- (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 the problem, and has established a pattern of abstinence, including, but not limited to:
  - (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.

Both of the above mitigating conditions fully apply. Applicant’s last drug use occurred more than four years ago and was under unusual circumstances. His psychiatrist’s treatment plan and prescribed medications were failing Applicant. He became desperate for an effective treatment of his disabling anxiety and ADHD. He feared that his condition was damaging his career and his marriage. Now that he has found a drug-free alternative that is effective and legal under Federal law, his relatively brief experimentation with Edibles has ended. It is highly unlikely that he will ever again use an illegal drug for any reason. His past actions consuming Edibles was “clouded” by

his condition, and his actions do not cast doubt on his current reliability, trustworthiness, or judgment. He has acknowledged the error in his behavior and has taken actions to overcome his problem with anxiety by seeking treatment that has proven to be effective. He has established an extended pattern of abstinence and provided a signed statement of his intent to continue abstaining from all substance misuse in the future. His statement acknowledges that any future involvement with drugs will be grounds for the revocation of his national security eligibility.

In my mitigation analysis, I have also taken administrative notice of the Security Executive Agent “Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position,” dated December 21, 2021 (Guidance). In her Guidance, the Security Executive Agent (SecEA) noted the increased number of states that have legalized or decriminalized the use of marijuana. She reaffirmed SecEA’s 2014 memorandum regarding the importance of compliance with Federal law on the illegality of the use of marijuana by holders of security clearances. She provided further clarification of Federal marijuana policy writing that this policy remains relevant to security clearance adjudications, “but [is] not determinative.” She noted that the adjudicative guidelines provided various opportunities for a clearance applicant to mitigate security concerns raised by his or her past use of marijuana. (Guidance at 1.)

### **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, as well as SecEA’s Guidance, in light of all pertinent facts and circumstances surrounding this case, including the whole-person factors quoted above. I note that Applicant’s use of Edibles was knowingly inconsistent with Federal law and raises concerns about his behavior at that point in time. I conclude, however, that Applicant has met his burden to mitigate the

security concerns raised by his past use of Edibles. His permanent behavioral changes have eliminated the potential for coercion or duress, and demonstrated the unlikelihood of recurrence. Overall, the record evidence does not raise any questions or 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:  | FOR APPLICANT |
| Subparagraphs 1.a and 1.b: | For Applicant |

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is 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 granted.

JOHN BAYARD GLENDON  
Administrative Judge