



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00844
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicholas Temple, Esq., Department Counsel  
For Applicant: *Pro se*

01/19/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Guideline H, drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 15, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective on June 8, 2017.

Applicant answered the SOR on June 6, 2022, and elected to have his case decided on the written the record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on August 22, 2022. He was afforded an opportunity to file objections and submit material in refutation,

extenuation or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 4 (Item 1 is the SOR). Applicant provided a response to the FORM that is marked as Applicant Exhibit (AE) A. There were no objections to any of the evidence submitted and all exhibits are admitted into evidence. The case was assigned to me on October 20, 2022.

### **Findings of Fact**

Applicant admitted both SOR allegations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 62 years old. He graduated from high school and completed various certifications. He never married and has no children. He has been employed by a federal contractor since December 2020.

Applicant completed a security clearance application (SCA) in September 2021. In it, he disclosed that from 1975 until April 2021 he used marijuana about once a week. He stated, "Used for pain relief, about ½ oz. per year in use." He stated he did not intend to use marijuana in the future because "could effect working on the Fed side of [X] business." (Item 3). X is Applicant's present employer.

Applicant also disclosed in his SCA that he used cocaine periodically from 1975 to June 2017. He also said in his SCA that he quit using cocaine three years ago, which is inconsistent with the dates he provided. He used it weekly in the 1970s. He said, "quit for many years then [sporadic]. I have quit with no plans to start again." (Item 3). He said the reason he stopped using cocaine was because it is "bad for your health and it is bad for your career." (Item 3)

Applicant was interviewed by a government investigator in October 2021. He told the investigator that he used marijuana from 1975 to 1985 and then resumed using it in 2010 until April 2021. For the past ten years he used marijuana at home and before then he used it while out with friends. His more recent use consisted of taking "a hit" before bed if he could not sleep. He purchased marijuana in the past seven years and his last purchase was June 2020. He purchased it through a friend. He purchased it so he could use it to help him sleep. He said he did not intend to purchase marijuana in the future. He continues to socialize with friends who use marijuana, but said he does not use it with them. He uses it alone. He told the investigator he stopped using it to keep his job. (Item 4)

Applicant told the investigator that he used cocaine monthly or quarterly. He would use up to maybe half of a gram. It made him happy. He would use it at his house or his friends or hanging out at a party. He has not purchased cocaine in the last seven years. He explained his motivation was for acceptance. It was around him so he used it too. He used it with his brother and a friend. He said he no longer associates with those he used cocaine with. He did not elaborate on whether he no longer has contact with his brother.

He said he has changed his behavior to prevent future use. He did not explain what behavior he changed or how. He said he quit using cocaine because he has grown “too old” to continue using it. (Item 4)

In Applicant’s response to the FORM, he provided details about the type of work he does for his employer. He explained he does not talk about his work to anyone outside of work. He was willing to submit to random drug testing. He said his trustworthiness and reliability has never been questioned. He would never do anything to jeopardize his career, country, or family. He noted his willingness to comply with laws, rules, and regulations. He stated, “I am a law abiding citizen and although I have had issues in the past, I have worked very hard to turn those issues around. This includes going to AA meetings, talking with professionals, seeking professional help as needed.” He further stated that he does not intend to travel outside of the country. (AE A)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes, but may be considered when applying the mitigating conditions and in a whole-person analysis.

### **Policies**

When evaluating an applicant’s national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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**

### **Guideline H: Drug Involvement and Substance Misuse**

The security concern relating to the guideline for drug involvement and substance misuse is set out in AG ¶ 24:

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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse; and
  
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant possessed and used marijuana with varying frequency from about 1975 to April 2021. He possessed and used cocaine with varying frequency from about 1975 to June 2017. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 are potentially applicable:

(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 to overcome the problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were being used; and (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.

Applicant has a long history of using marijuana and cocaine. In his answer to the SOR and his FORM response, he did not provide significant amplifying information about his marijuana and cocaine use and recent commitment to abstinence. He explained that he quit using marijuana in April 2021 after moving to the federal side of employment in order to avoid adverse employment consequences. AG ¶ 26(b) does not apply because Applicant has been using marijuana for 47 years and has only abstained for about 18 months. He said he stopped using marijuana for a period and then resumed in 2010 and used it as a sleep aide. He did not offer any evidence as to what he is using as an alternative sleep aide. I am not convinced, based on his past history, that he will not resume using marijuana. Applicant also continues to socialize with friends who use marijuana.

Applicant stated in his response to the FORM that he is a law-abiding citizen and one who willingly complies with laws and regulations. Although in some states marijuana has recently been legalized, use and possession of it was illegal for most of the 47 years he was regularly using it. His illegal use of cocaine over a 40-year period certainly contradicts his claim of willingly complying with rules and regulations. Based on Applicant's long history of illegal drug use, I am unable to find that his use was infrequent, or happened under circumstances that are unlikely to recur. His significant history of using illegal drugs cast doubt on his current reliability, trustworthiness and good judgment. AG ¶ 26(a) does not apply.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all the 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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis.

Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H, drug involvement and substance misuse.

### **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, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge