



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01262
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Department Counsel  
For Applicant: *Pro se*

February 15, 2023

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

On November 16, 2021, Applicant submitted a security clearance application (e-QIP). (Item 3.) On August 8, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse. The action was taken under Executive Order 10865 (EO), *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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on August 24, 2022. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On September 15, 2022, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing four Items, was mailed to Applicant and received by him on October 11, 2022. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant submitted no response to the FORM. Applicant did not object to Government Items 1 through 4, and they are admitted into evidence, referenced hereinafter as Government Exhibits 1 through 4.

### **Findings of Fact**

Applicant is 27 years old. He is unmarried with no children. He has a Bachelor's degree. He holds the position of Associate Software Engineer. He is seeking to obtain a security clearance in connection with his employment.

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

The Government alleges that Applicant has engaged in the use of controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose; and can raise questions about his reliability, trustworthiness, and ability or willingness to comply with laws, rules, and regulations.

The SOR alleges that from May 2019 to January 2022, Applicant has used marijuana with varying frequency. Applicant stated that he would use marijuana about eight to nine times a month. He would use it with his brother and their friends. Marijuana would make him feel calm and less irritated. From about November 2021 to about January 2022, Applicant has used marijuana about seven times after completing his security clearance application dated November 16, 2021. Applicant usually obtained marijuana from co-workers, or at school, and when it became legal in his state, he purchased it at a dispensary. Applicant has never received any treatment for drug abuse. People who know about his marijuana use are the people he smokes with. Applicant admits each of the allegations set forth in the SOR. (Government Exhibit 2.)

In his security clearance application dated November 16, 2021, Applicant explained that he uses marijuana for anxiety purposes induced by stress. He normally uses it on weekends about twice a day. Sometimes he over thinks situations and marijuana helps to prevent this. He stated that he has no intent to use marijuana in the future. (Government Exhibit 3.)

During an interview with a Federal investigator on January 27, 2022, Applicant confirmed his use of marijuana between May 2019 and January 22, 2022. He stated that he last used it at a techno concert. He also disclosed that since completing his security clearance application on November 16, 2021, he has continued to use marijuana, at least seven times total. (Government Exhibit 4.)

In response to the Government's interrogatories dated July 21, 2022, Applicant stated that he had no intent for future use of marijuana due to the nature of the job he enjoys. His job brings less stress to his life. He is also motivated to live a healthier life. (Government Exhibit 4.)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 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 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. 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 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 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 as to 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

### Guideline H - Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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. *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.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

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

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns:

- (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 this 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 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.

None of the mitigating factors are applicable. Applicant has a history of marijuana use from May 2019 to at least January 2022. In his security clearance application dated November 16, 2021, Applicant stated that he has no intent to continue using marijuana in the future. Despite being on notice that use of illegal drugs is a security concern, Applicant continued to use marijuana. He used it approximately seven times per month after completing his security clearance application at least up until January 2022. While talking with the Federal investigator, Applicant was asked why he wrote in the security clearance application that he intends to stop using marijuana, and he responded, "that was the plan and he did not follow through with it." Applicant continues to socialize with people who use marijuana. Although he has indicated a desire to stop using marijuana, he has not demonstrated that he can stop using it. He understands that it is illegal and prohibited by the Department of Defense, but has disregarded Federal law for his convenience. Applicant's recent actions cast doubt on his current reliability, trustworthiness and good judgment.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations and policies that apply to them. Under the particular facts of this case, Applicant does not show the maturity level, integrity, and reliability necessary to access classified information. Applicant does not meet the eligibility qualifications for a security clearance.

### **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 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 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Applicant understands the requirements associated with holding a security clearance and knows that marijuana use is not tolerated. Applicant is not an individual in whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a. and 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 interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge