



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-00586
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government:  
Gatha Manns, Esquire, Department Counsel

For Applicant:  
*Pro Se*

March 3, 2023

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**Decision**

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GLENDON, John Bayard, Administrative Judge:

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on August 6, 2021. On June 3, 2022, the Department of Defense (DoD) 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; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective within DoD after June 8, 2017.

Applicant answered the SOR in writing on July 6, 2022 (Answer), and requested his case be decided on the written record in lieu of a hearing. (Item 2.) In his Answer, he

admitted the three SOR allegations. On September 2, 2022, Department Counsel submitted the Department's written case. A complete copy of the File of Relevant Material (FORM), consisting of Items 1 through 5, was provided to Applicant, who received the FORM on September 16, 2022.

Applicant was given 30 days from receipt of the FORM to raise objections and submit material in refutation, extenuation, or mitigation. Applicant submitted a written response to the Government's FORM on September 17, 2022 (Response). Department Counsel did not object to Applicant's submission. In the Response, Applicant asserted no objections to the Government's evidence (Items 3 to 5) attached to the FORM. Department Counsel's Items 3 through 5 are admitted into evidence. The case was assigned to me on November 29, 2022. Based upon a review of the pleadings and exhibits as well as the arguments set forth in the FORM and the Response, national security eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 69 years old, married for the third time, and has one adult child and five adult stepchildren. He served 22 years as an Enlisted member in the active duty U.S. Navy, honorably retiring in 1995. He earned an associate's degree in 2001. Applicant has worked as an engineer with Federal contractors since 2000 and has been with his sponsoring employer since January 2020. He was granted a security clearance for the first time in 1973, which he held throughout his Navy career. He was granted a security clearance again in 2001 as a contractor and has maintained his clearance up to the present. He seeks to retain his national security eligibility in connection with his current employment. (Item 3 at Sections 2, 12, 13A, 17, 18, 25; Item 4 at Sections 13A, 25.)

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

The Government alleged in the SOR that Applicant is ineligible for a security clearance because of his illegal use of a controlled substance (marijuana). The three SOR allegations are supported by Applicant's admissions in his Answer. The allegations are also evidenced by Applicant's statements in his e-QIP and his comments made during an interview with an investigator from the Office of Personnel Management held on October 28, 2021. (Items 2, 3, and 5.)

The details regarding the three SOR allegations and Applicant's admissions are as follows:

SOR ¶ 1.a. Marijuana use from July 2019 to at least August 2021 while granted access to classified information. Applicant disclosed in his e-QIP that he used marijuana a small number of times while on vacation in July 2019. He held a security clearance at that time. He experimented with marijuana to see if it helped him manage his pain from illness. He further disclosed that he began using marijuana again in February 2020. He

did not want to use an opioid because he thought it would become addictive. He commented that he started using marijuana “several times a day on a daily basis.” The period of his use continued up to the month he certified the e-QIP, *i.e.*, August 2021. He also wrote, “Per discussion with my medical provider, I intend to smoke marijuana to address Anxiety and Pain Management as well as [an] appetite stimulant in support of my Stage 4 Prostate Cancer.” He commented further that his prostate cancer “has metastasized to his bones.” He avoids using marijuana during the workday. Applicant has not reported to his security officer or anyone else at his employer that he is using marijuana because he knows that it is a security violation. (Item 2 at 1; Item 3 at 39-42; Item 5 at 1.)

SOR ¶ 1.b. Purchase of marijuana from February 2020 to at least July 2021 while granted access to classified information. Applicant purchased marijuana in 2019 in a state where it was legal to do so. When he began using marijuana daily in 2020, he purchased the drug from his grandson and continues to do so because it is illegal to purchase marijuana in his home state. He also intends to cultivate marijuana for his personal use, which he asserts is legal under the laws of his state. (Item 2 at 1; Item 3 at 41; Item 5 at 1.)

SOR ¶ 1.c. Intent to continue to purchase and use marijuana in the future. Applicant intends to continue using marijuana because it provides the best management of his pain. He stated in his security clearance interview that he would consider ceasing his illegal drug use if he has to stop in order to keep his security clearance. He said that he would need to discuss his options with his doctors. His doctors are aware that he uses marijuana for pain management. There is no updated information in the record, including in the Response, as to whether Applicant has ever engaged in the cultivation of marijuana. (Item 2 at 1; Item 3 at 40; Item 5 at 1.)

## **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**

### **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;
- (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.

The admitted facts in this case establish all of the above disqualifying conditions and shift the burden to Applicant to provide mitigation of the Government's security concerns. Guideline H lists four conditions in AG ¶ 26 that could mitigate security concerns raised by the potentially disqualifying conditions set forth above. The following condition has possible application to the facts in this case.

- (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.

AG ¶ 26(a) is not established. Applicant's use of marijuana has occurred under unusual and sympathetic circumstances. However, the circumstances do not make it unlikely that his use of marijuana will not recur. Applicant had the opportunity before submitting his Answer and again before submitting his Response to consult with his medical providers about alternatives to marijuana use for pain management and to cease using marijuana, but the record closed without any such actions. Even if he had ceased his illegal drug use at some point, it may not have mitigated all of the security concerns raised by his recent drug use while holding a security clearance. Notably, he failed to disclose his illegal drug use to his Facility Security Officer or anyone at his employer because he knew that his drug use was a violation of his responsibilities as a clearance holder. Applicant's behavior casts doubt on his current reliability, trustworthiness, and judgment. He has not mitigated the security concerns raised by his use of marijuana while holding a security clearance, his purchase of marijuana, and his stated intent to continue using marijuana in the future. Paragraph 1 is found against Applicant.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's potential 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 have considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Further comments are warranted. I have weighed Applicant's lengthy service in the Navy and his honorable discharge and retirement from the Navy. I have also weighed the difficult choice Applicant has had to make between addressing his pain from a serious illness and his obligations to safeguard classified information and comply with Federal drug laws. The record contains no information about any efforts Applicant has made with the advice of his medical providers to eliminate marijuana as a pain management drug and find a suitable legal alternative in the form of prescription medication. As noted, his failure to report his drug use is an aggravating factor raising doubts about his reliability and trustworthiness. Overall, the record evidence leaves me with questions and doubts as to Applicant's 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

## **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 Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON  
Administrative Judge