



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



In the matter of: )  
)  
) ISCR Case No. 22-01942  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

03/21/2023

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H (drug involvement). Eligibility for access to classified information is denied.

**Statement of the Case**

On October 26, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on November 2, 2022, and he elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on December 15, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security

concerns. Applicant received the FORM on January 6, 2023. He did not respond to the FORM. The case was assigned to me on March 9, 2023. The Government's documents identified as Items 1 through 5 are admitted in evidence without objection.

### **Findings of Fact**

In his Answer, Applicant admitted both SOR allegations. He is 22 years old, unmarried, and he does not have any children. He graduated from high school in 2018, and he earned a bachelor's degree in May 2022. He has worked as an associate for his employer, a DOD contractor, since June 2022. He has never held a security clearance. (Items 1-5)

Applicant used marijuana with varying frequency from approximately October 2017 to January 2022. (SOR ¶ 1.a) He used it recreationally, and he estimated that he used it approximately 75 times. He obtained it from and used it with friends. (Items 1-5)

Applicant also used nitrous oxide, with varying frequency from approximately February 2020 to July 2021. (SOR ¶ 1.b) He used the inhalant, also known as "whippets," recreationally approximately four to five times over the course of several months. He used it with his stepbrother, who purchased it. It made him feel semi-euphoric. (Items 1-5)

Applicant stated in his SCA and indicated during his background interview that he may use marijuana again if it becomes legal under federal law. He stated in his May 2022 security clearance application (SCA), "I do not find myself in a situation where I would want to use this drug [nitrous oxide] in the future." He indicated during his background interview that he did not currently use illegal drugs or misuse prescription drugs, but that he might use drugs again if they became legal. He indicated that he did not socialize with individuals who use drugs illegally. (Items 4-5)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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.” 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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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**

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse as:

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 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant: “(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 used marijuana with varying frequency between 2017 and 2022. He also used nitrous oxide with varying frequency between 2020 and 2021. He stated in his SCA and indicated during his background interview that he would likely use marijuana

and drugs again in the future if they became legal. AG ¶¶ 25(a) and 25(c) are established.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

(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;

(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.

Applicant indicated during his background interview that he no longer associated with the individuals with whom he previously used drugs illegally. AG ¶ 26(b)(1) is established. However, he did not provide a signed statement of intent to abstain from all drug involvement and substance misuse. He also kept open the possibility of using drugs again in the future if they were legal. Further, Applicant last used nitrous oxide less than two years ago, and last used marijuana as recently as January 2022. His use is recent enough that I cannot find that it is unlikely to recur. I find that AG ¶¶ 26(a), 26(b)(2), and 26(b)(3) are not established.

### **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

