



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



In the matter of:	)	
	)	
	)	ISCR Case No: 22-01689
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubey M. De Angelis, Esquire, Department Counsel  
 For Applicant: *Pro se*  
 03/30/2023

**Decision**

WHITE, David M., Administrative Judge:

Applicant failed to mitigate the security concerns raised under the guideline for drug involvement and substance misuse, relating to her purchase and use of marijuana from January 2010 through at least January 2022, and her expressed intent to continue using marijuana in the future. Based upon a review of the pleadings and exhibits, national security eligibility is denied.

**Statement of Case**

On September 16, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H (Drug Involvement and Substance Misuse). (Items 1, 2.) Applicant responded to the SOR on October 7, 2022, and requested that her case be decided by an administrative judge on the written record without a hearing. (Item 3.)

On October 26, 2022, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing five Items, was mailed to Applicant, and received by her on November 28, 2022. The FORM notified Applicant that she had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not

respond to the FORM or object to Items 1 through 5 within the time provided, nor did she request an extension of time to do so. Hence, all five Items in the FORM are admitted into evidence. On January 26, 2023, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me.

### **Findings of Fact**

Applicant admitted the three SOR allegations contained in SOR Paragraph 1, without further elaboration or explanation. (Item 3) Her admissions are incorporated into these findings of fact.

Applicant is 31 years old. She is unmarried and has no children. She earned a high school diploma in June 2010 and has taken some community college courses. She has no record of military or federal civil service, and has never held a security clearance. She is sponsored to seek national security eligibility in connection with possibly obtaining a position at a professional services Government contracting company. (Items 2, 4.)

Applicant completed her Electronic Questionnaires for Investigations Processing (e-QIP) on January 21, 2022. In response to questions in Section 23 regarding illegal use of drugs or drug activity, she disclosed that she had illegally used THC/marijuana/cannabis from January 2010 to January 2021, at which point she obtained a Medical Cannabis Card from her state and continued “legally” using it until January 2022. She further declared that she intended to continue using the drug in the future, and tended to use it only when she had trouble sleeping or eating. (Item 4.)

On April 26, 2022, Applicant was interviewed by an investigator for the Office of Personnel Management (OPM). She confirmed the accuracy of her e-QIP statements concerning drug use, and added that she had been spending about \$150 per month on marijuana or THC vaping products until January 2022, and smoking several times each week. She said that she stopped purchasing and using medical marijuana at that point since she was unsure how it would affect her pending job application and national security eligibility. She said she had purchased marijuana from licensed dispensaries after obtaining her Card in January 2021, and illegally obtained it from friends, acquaintances, or off the street before that. Once she started buying medical marijuana, her association and contact with many of those acquaintances became less frequent. (Item 5.)

Applicant also said that her present employer is aware of her use of medical marijuana since she tested positive on a February 2021 random drug test. She expressed to the OPM investigator that she would like to go back to using medical marijuana because it benefits her health greatly, but she would also like to secure her pending employment with the Federal contractor. She said that if the employer prohibits medical marijuana use even with her state-issued Card, then she would not be engaged with it any longer and would have to find alternatives to assist with her health concerns. (Item 5.)

The record contains no evidence concerning Applicant's recent job performance, trustworthiness, character in a professional setting, or track record with respect to handling sensitive information and observation of job-related security procedures. There is no indication that she was ever evaluated for, or diagnosed with, a substance use disorder, or participated in a treatment program. I was unable to evaluate her credibility, demeanor, or character in person, since she elected to have her case decided without a hearing.

### **Policies**

The national security eligibility 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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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, 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 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. 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, an "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 applying for national security eligibility seeks to enter 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 *a/so* 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**

AG ¶ 24 describes the security concerns related to this guideline:

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 sets out conditions that could raise security concerns and may be disqualifying. Four are established in this case:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant purchased and used marijuana and cannabis-derived THC products on a regular basis from January 2010 until at least January 2022, and expressed her intention to continue doing so. She tested positive for marijuana on a random urinalysis conducted by her employer in February 2021. Her statement to the OPM investigator, that she would stop using marijuana if she needed to for her potential job or to get a security clearance, does not constitute a clear and convincing commitment to discontinue her long-term substance misuse. The evidence raised the above disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

AG ¶ 26 lists three conditions that could mitigate security concerns raised under this guideline:

(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; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

The record evidence does not support mitigation under any of these conditions. Applicant's illegal drug use began when she was 17 years old, and continued on a regular basis until at least January 2022. Her claimed intent to stop violating Federal drug laws, if her potential job warranted that, was tentatively expressed to the OPM investigator three months after her e-QIP declaration to the contrary. She has not changed her association with the environment where her drug use occurred, and only partially reduced her contacts with the friends and acquaintances involved. No mitigation under AG ¶¶ 26(a) or 26 (b) was established. Applicant has neither sought nor participated in any drug treatment, rehabilitation, or aftercare program; and no medical professional supplied a favorable prognosis. There is no evidence to establish mitigation under AG ¶ 26(d).

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's 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.

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant's lengthy pattern of illegally purchasing and using controlled substances leaves me with significant doubts as to her eligibility for a security clearance. Her statement to the OPM investigator that she would stop using illegal drugs if she needed to for her job or to obtain a security clearance is neither convincing nor mitigating. Her regular violations of Federal and, until 2021, state criminal laws for her personal benefit and enjoyment preclude a reasonable conclusion that she could be relied upon to comply with security-related requirements for the protection of classified and sensitive information that she might find to be inconvenient or burdensome. She did not meet her burden to mitigate the security concerns arising under the guideline for drug involvement and substance misuse.

## 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 access to classified information. National security eligibility for a security clearance is denied.

DAVID M. WHITE  
Administrative Judge