



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02191
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro Se*

03/30/2023

**Decision**

DAM, Shari, Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (drug involvement and substance misuse). Eligibility for access to classified information is denied.

**Statement of the Case**

On December 1, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. Applicant responded to the SOR on December 6, 2022, and requested a decision based on the written record in lieu of a hearing.

On December 27, 2022, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM) containing six Items was sent to Applicant and received by him on January 3, 2023. The FORM notified him that he had an opportunity to file objections and submit information in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant did not submit any documents or file objections to the Government's evidence. Hence, Items 1 through 6 are admitted into evidence. I received the case file on March 27, 2023.

## Findings of Fact

Applicant admitted the sole allegation in the SOR that he used marijuana with varying frequency from January 2003 to October 2022. His admission is incorporated into the findings of fact. (Item 2) After a thorough and careful review of the pleadings and Items submitted, I make the following findings of fact:

Applicant is 31 years old. He earned a General Education Development (GED) certificate in 2008 and a Certificate of Electrical Technician in 2010. He is divorced and has two children, ages 12 and 15. He and his girlfriend have lived together since 2020. In August 2020, he started a position with his current employer, a defense contractor. Previously, he worked from August 2012 to August 2020 for a different defense contractor. In April 2022, he completed his first security clearance application (SCA). In May 2022, he was granted an interim secret security clearance. (Items 3, 6)

In June 2022, a government investigator interviewed Applicant. During that interview, Applicant disclosed that he started using marijuana in 2002 when he was in eighth grade. He used it with friends and has continued to use it since then. He uses it every other day or twice a week to help him sleep, relax, or relieve a headache. He said he did not disclose this information in his SCA because marijuana is legal in his home state. When he turned 18 in 2006, he began purchasing marijuana at a dispensary with the medical marijuana card he obtained for headaches. He also purchases it from friends. He said marijuana does not affect his personality or judgment. (Item 4)

While discussing Applicant's history of marijuana use, the investigator informed him that using marijuana is considered an illegal drug for purposes of a security clearance. Applicant told the investigator that he intended to continue using it. (Item 4 at 3)

In November 2022, Applicant completed interrogatories regarding his history of marijuana use. He estimated that he started using it in January 2003 and used it once a week or more up to October 16, 2022. He stated he did not intend to use it in the future because having a security clearance was more important than smoking marijuana. He did not want to miss an opportunity to obtain a security clearance. (Item 5)

## Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 AG ¶ 2 describing 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**

The security concern 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. 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 describes conditions that could raise security concerns under AG ¶ 25. Two may be potentially disqualifying in this case:

- (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.

Applicant illegally possessed and used marijuana from at least January 2003 to October 2022 in violation of federal law. AG ¶¶ 25(a) and 25(c) are applicable.

AG ¶ 26 includes conditions that could mitigate security concerns arising under this guideline. The following 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;
- (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.

Applicant's long history of illegal possession and use of marijuana spans from 2003 to 2022. It did not, allegedly, end until about three weeks before he submitted interrogatories about his use. He stated in his interrogatories that he intended to stop using it. His extensive history of using marijuana casts doubt on his current reliability, trustworthiness, good judgment, and willingness to comply with laws, rules, and regulations. The evidence does not establish mitigation under AG ¶ 26 (a). Applicant acknowledged his long-term use but has not established a pattern of abstinence. In fact, he asserted that his frequent use of marijuana does not affect his reliability or judgment. AG ¶ 26 (b) does not apply. Despite his frequent marijuana use, he has not been evaluated for substance abuse or addiction or participated in a treatment program and he has not received a favorable prognosis from a duly qualified medical professional, as required to establish mitigation under AG ¶ 26 (d).

### **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 have incorporated my comments under Guideline H in my whole-person analysis. Applicant has a long history of using marijuana, which may be legal in his state, but is illegal under Federal law for individuals working for the government and for those pursuing a security clearance. At this time, he has not established a sufficient period of abstinence and only recently decided to quit using marijuana. Overall, the record evidence leaves me with significant questions and doubts about Applicant's eligibility and suitability for a security clearance. Applicant did not mitigate the security concerns 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
Subparagraph 1.a:	Against Applicant

## **Conclusion**

It is not clearly consistent with the national interests to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

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Shari Dam  
Administrative Judge