



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



In the matter of: )  
)  
) ISCR Case No. 21-02450  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly Folks, Esq., Department Counsel,  
For Applicant: Daniel P. Meyer, Esq.

03/31/2023

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the security concerns involving drug involvement and substance misuse and personal conduct. Eligibility for access to classified information is granted.

**Statement of the Case**

On December 27, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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 DOD on June 8, 2017.

Applicant responded to the SOR on March 2, 2022 (Answer), and she requested a hearing before an administrative judge. The case was assigned to me on November 3, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 8, 2022, scheduling the matter for a hearing on December 6, 2022. I convened the hearing as scheduled.

At the hearing, I admitted in evidence, without objection, Government's Exhibits (GE) 1 through 3 and Applicant's Exhibit (AE) A. Applicant testified and did not call any witnesses. DOHA received the hearing transcript (Tr.) on December 14, 2022.

### **Findings of Fact**

Applicant admitted all the SOR allegations. She is 41 years old. She married in 2001, divorced in 2011, and remarried in 2015. She has one child from her current marriage. She previously lived in state A until December 2021, when she and her family moved to state B. (Answer; Tr. at 15, 28, 48, 63; GE 1-2; AE A)

Applicant earned a bachelor's degree in electrical engineering in 2009. She previously worked for two defense contractors in state A from May 2008 to August 2015. She then worked for her current employer, another defense contractor, in state A from September 2015 to December 2021. Since December 2021, she was a program manager for her employer in state B. She was first granted access to classified information in 2008. (Answer; Tr. at 5-6, 14-17, 21, 25, 33-35, 48-49, 63, 68-70; GE 1-2; AE A)

The SOR alleged under Guideline H, and cross alleged under Guideline E, that Applicant used marijuana, with varying frequency, from approximately May 2020 to at least April 2021. (SOR ¶ 1.a) It also alleged that her use of marijuana from approximately May 2020 to at least April 2021 occurred while she was granted access to classified information. (SOR ¶ 1.b)

Applicant used marijuana approximately twice monthly from May 2020 to April 2021, during the COVID-19 pandemic. She maintained that she did not use marijuana recreationally, but to manage her anxiety from the impact the pandemic had on her, her family, and her employment. She did not find her prescription medication helpful in managing her anxiety, and she did not want to go through the process of seeking medical help during the pandemic. She used marijuana in edible form at night as a sleep aid. Her spouse obtained it from his mother, who had a medical marijuana card in state A, or he purchased it from a legal marijuana dispensary when they visited family and friends in state C. She stopped using marijuana in April 2021, when she received her COVID-19 vaccination. (Answer; Tr. at 17-47, 49-65, 68-70; GE 1-3; AE A)

Applicant acknowledged that her decision to use marijuana to manage her anxiety was a bad one. She understood that her use of marijuana while holding a security clearance was unwise, against the rules, and jeopardized her ability to continue to hold a clearance. She self-reported her marijuana use on her May 2021 security clearance application and she discussed it during her July 2021 background interview. (Answer; Tr. at 17-47, 49-65, 68-70; GE 1-3; AE A)

Applicant has no future intention to use marijuana or other illegal drugs. She sought medical help with managing her anxiety in state B in February 2022, and she has since been under her doctor's care for anxiety and insomnia. Her doctor prescribed her a different medication for managing her anxiety and helping her sleep. She also exercises and has developed hobbies to further manage her anxiety. She and her spouse do not

have any marijuana in their home. She indicated during her July 2021 background interview that she had never tested positive for illegal drugs. She is subject to random drug testing by her employer. As of the date of the hearing, her employer had not yet selected her to report for such a test. In March 2022, she signed a statement of intent not to illegally use any drugs, to include marijuana, and that any violation would be grounds for automatic revocation of her security clearance. (Answer; Tr. at 17-47, 63-68; GE 1-3; AE A)

Applicant provided letters of support from her spouse as well as three friends she has known for over 10 years. Each of them attested to her trustworthiness, integrity, reliability, and judgment. Her employer has favorably rated her performance annually and has awarded her for her performance in 2020 and 2021. As of the date of the hearing, she was in a pool of candidates for promotions for management and director-level positions. (Answer; Tr. at 68-70; AE A)

### **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(a), 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 Exec. Or. 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* Exec. Or. 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 notes the following applicable conditions that could raise security concerns under AG ¶ 25:

- (a) any substance misuse . . . ;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana from May 2020 to April 2021. Her use of marijuana from May 2020 to April 2021 occurred while she was granted access to classified information. AG ¶¶ 25(a), 25(c), and 25(f) are established.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided under AG ¶ 26. 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; 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.

I find that AG ¶¶ 26(a), 26(b)(1), 26(b)(2), and 26(b)(3) are established. Applicant acknowledged that she exercised poor judgment when she chose to manage her anxiety with marijuana during the COVID-19 pandemic while holding a security clearance. She stopped using marijuana as soon as she received her COVID-19 vaccination, she sought medical help, and she has been managing her anxiety under her doctor's care. She disclosed information about her marijuana use on her SCA and during her background interview. She testified that she had no intention to use illegal drugs in the future, and she signed a statement of intent to abstain from illegal drug use and any violation would be grounds for automatic revocation of her security clearance. The record evidence resolves doubts about Applicant's reliability, trustworthiness, and judgment. I found Applicant to be remorseful, candid, and credible at the hearing. She has taken responsibility for her past drug use while holding a security clearance.

#### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing . . . .

Applicant displayed untrustworthiness, questionable judgment, and unreliability when she chose to use marijuana from May 2020 and April 2021 while possessing a clearance. AG ¶ 16(e)(1) is established.

I have considered all of the mitigating conditions under ¶ AG 17 and considered the following relevant:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

For the same reasons set forth above in my Guideline H analysis, I find that ¶¶ AG 17(c), 17(d), and 17(e) are 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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. I had the opportunity to observe Applicant's demeanor during her hearing and found that she was credible, candid, and remorseful. Overall, the record

evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns involving drug involvement and substance misuse and personal conduct.

### **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: Subparagraphs 1.a - 1.b:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a:	FOR APPLICANT For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge