



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



In the matter of:)	
)	
)	ISCR Case No. 22-01510
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Aubrey M. De Angelis, Esquire, Department Counsel

For Applicant:
Pro se

March 29, 2023

Decision

GLENDON, John Bayard, Administrative Judge:

Statement of the Case

Applicant submitted her most recent Electronic Questionnaire for Investigations Processing (e-QIP) on October 14, 2021. On November 9, 2022, the Department of Defense Consolidated Adjudications Facility (CAF) 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; Department of Defense (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 responded to the SOR (Answer) on December 29, 2022 and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on January 24, 2023. The case was assigned to me on January 31, 2023. DOHA issued a Notice of Hearing on February 16, 2023, scheduling the case to be heard via TEAMS video teleconference on March 9, 2023.

I convened the hearing as scheduled. Department Counsel offered two documents marked as Government Exhibits (GE) 1 and 2, which were admitted without objection. Applicant offered five exhibits, marked as Applicant Exhibits (AE) A through E. I admitted her exhibits without objection. Applicant testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on March 17, 2023. (Tr. at 12-20.)

Findings of Fact

Applicant is 30 years old, has never married, and has no children. She earned a bachelor's degree in 2017. She has worked for a DoD contractor since September 2021. She is a first-time applicant for a security clearance and is seeking to obtain national security eligibility in connection with her employment. (Tr. at 21-23; GE 1 at Sections 2, 12, 13A, 17, 18, 25.)

Guideline H, Drug Involvement and Substance Involvement

The Government alleged in this paragraph that Applicant is ineligible for clearance because she has a history of drug involvement. Specifically, the SOR alleged that Applicant used and purchased marijuana with "varying frequency from about October 2012 to at least September 2021." (SOR ¶¶ 1.a and 1.b.) The SOR also alleged that Applicant "used and purchased the hallucinogenic drug called mushrooms with varying frequency from about February 2015 to about December 2019." (SOR ¶ 1.c.) The SOR further alleged that Applicant intended to continue use of "cannabis" and "mushrooms" in the future. (SOR ¶¶ 1.d and 1.e.) In her Answer Applicant admitted the allegation set forth in SOR ¶ 1.b and admitted with explanations the allegations in SOR ¶¶ 1.a, 1.c, and 1.d. She denied the allegation in SOR ¶ 1.e.

I make the following findings of fact with respect to each of the SOR allegations:

1.a. Marijuana Use. Applicant used marijuana socially when she was in college (2012-2017). Sharing marijuana was a common way for Applicant and her friends to socialize, and she felt she should join them to maintain their friendship. At times, her social use was several times a day. By 2013, her use became frequent. In that year she received a medical marijuana card so that she could buy marijuana in her state legally. She used marijuana "medically" at that time for anxiety and nausea and to help her sleep. (Tr. at 28-31.)

In July 2014, Applicant was injured while wake boarding. She seriously damaged muscles and tendons in her leg. Her leg was put in a cast and when the cast was removed, she experienced searing pain. The use of the cast to immobilize her leg was a mistake and she developed a serious condition called Chronic Regional Pain Syndrome or CRPS. In her accident she had also damaged her leg nerves, and she has been subsequently advised the worst thing to do with damaged nerves is to immobilize the area of the body where the nerves have been damaged. Applicant saw eight doctors before being referred to her current doctor, who is reputed to be the best doctor for treating her rare condition. He treats her with a very high dose of one prescription medication for her nervous system and two other medications. Applicant provided a letter from a pain management doctor who evaluated her. His letter graphically describes the extraordinary level of pain Applicant experiences on a daily basis. She also provided a medical article describing her rare condition. (Tr. at 28-40, 45; AE B; AE C.)

During the period 2019 to 2021, Applicant only used marijuana at night to help her sleep because her condition caused her so much pain. Occasionally, she used marijuana during the day for pain relief. During that period, she underwent multiple surgeries on her leg and foot. When she was prescribed opioids after surgeries, she did not use marijuana at the direction of her doctors. Her current doctor is aware that in the past she used marijuana for her pain in addition to the medications he prescribed. (Tr. at 28-40.)

Applicant last used marijuana in August 2021, just before she was hired for her current position in September 2021. She stopped using marijuana at that time because she knew it was not legal federally and she did not want to risk losing her job opportunity to work for a federal contractor. (Tr. at 24-27.)

At the hearing, Applicant candidly admitted that she purchased and used marijuana once after she was hired by her current employer. She had temporarily run out of her prescription medication for her nerve pain and needed help to relieve her pain at night so she could sleep. The lack of medication during that period of about six nights also put her at risk of having seizures. One of the uses of her medication is to prevent seizures. By running out of the medication, which she takes in very high doses, she increases her risk of seizures. Marijuana reduced that risk because it calms the nervous system like her medication. (Tr. at 30-40.)

Applicant is required to refill her prescriptions for the pain medication every three months and must see her doctor in person to receive the refill prescription. She has difficulty scheduling an appointment with him because he has a busy practice. On this one occasion, she made a mistake and called a little too late to receive a timely appointment. Once she received the new prescription, it took a few more days for the pharmacy to mail her the medication. She legally purchased the marijuana under her state law for the limited purpose of filling in the gap due to her lack of medication. She does not anticipate having a problem like this in the future. She felt too much anxiety about risking her job by using marijuana during that week to ever permit herself to be in that position again. Her job is too important to her. She is anxious to maintain a happy and healthy

trajectory in her life after so many years of misery due to her condition. (Tr.at 28, 30-33., 38-40.)

At the time Applicant ran out of medication, she was driving two hours each way to commute to work. This daily routine made her more susceptible to even greater pain without her medication. After eight months, she relocated to a new home near her job to avoid the excessive wear on her fragile condition. (Tr. at 44.)

Applicant is comfortable with her prescription medications now. She is reducing the amounts of the medication using alternative strategies to relieve her pain. She lives by herself with her dog. She is not surrounded by people who use marijuana as she was during her college and subsequent years. She never finds herself in the company of others using marijuana. (Tr. at 32- 35, 37.)

1.b. Marijuana Purchases. See discussion under 1.c, below.

1.c. Mushroom Use and Purchases. Applicant wrote in the Answer that she purchased and used mushrooms “inconsistently between [about February 2015 and about December 2019] to help with the tough emotional and spiritual part of chronic pain at 21 years old.” Her last use of mushrooms was in or about December 2019. When she was diagnosed with CRPS just before her 22nd birthday, she was devastated and at a loss receiving such bad news about her health at her young age. At times, she wanted to end her life because her pain was unbearable. She used mushrooms when she was desperate, such as after a failed surgery for her condition. She used mushrooms about five times over nine years. She has no intention to use or purchase mushrooms in the future, noting in the Answer that she was “doing much better, thankfully.” Applicant is very happy with her life now and the direction it is going. (Answer at 2; Tr. at 27, 35-36.)

1.d. Intent to Use Cannabis in the Future. In the Answer, Applicant wrote that, “I admit medical cannabis helps my pain and the struggles my pain puts me through, but if it means putting my job at risk then I wont use cannabis unless it becomes federally legal.” She credibly testified that she has no future intent to use cannabis. She explained her position further and clarified her statement in her security interview on the subject of her future intent to use cannabis. She said that in the event that cannabis became legal at the federal level in the future, she would use cannabis again for her medical condition. If there is no change in federal law, then she has no intention to use marijuana in the future. (Answer at 2; Tr. at 23-24, 44.)

1.e. Intent to Use Mushrooms in the Future. At the time of her security interview, Applicant candidly commented that she may use cannabis and mushrooms occasionally when necessary due to pain or for celebratory purposes. She denied in the Answer any future intent to use mushrooms. She credibly testified that she now has no future intent to use mushrooms. (Answer at 2; Tr. at 23-24, 50; GE 2 at 13.)

Mitigation and Whole-Person Evidence

Applicant is an independent, disabled person serving our military servicemembers and working a full-time job. She has an emotional support dog. She rescues injured and lost pets and finds them good homes. She is the best condition she has been in for nearly a decade. She is determined to do what she needs to do to maintain this trajectory and has been extremely honest about her past. She has received a coin of appreciation for her excellent work. She describes her job as the culmination of nearly 10 years of hard, very painful work. She is dedicated to maintaining her improved health and her journey to an even higher level of recovery. (Tr. at 49-50.)

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 three 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; and

- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant's admissions in her Answer, and her detailed testimony regarding her history of drug use, establish AG ¶¶ 25(a) and (b). She also used marijuana for about a week after submitting her e-QIP. Applicant's credible denial of any intent to use marijuana

in the future during her hearing testimony renders AG ¶ 25(g) inapplicable. Overall, the record evidence shifts the burden to Applicant to mitigate the security concerns raised by her conduct.

The guideline includes two conditions in AG ¶ 26 that could mitigate the security concerns arising from Applicant's alleged drug involvement and substance misuse:

(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 the 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.

In my analysis, I have taken administrative notice of the Security Executive Agent (SecEA) "Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position," dated December 21, 2021. (Guidance.) In her Guidance, the SecEA noted the increased number of states that have legalized or decriminalized the use of marijuana and issued the Guidance to "provide clarifying guidance." She reaffirmed the previous SecEA's 2014 memorandum regarding the importance of compliance with Federal law on the illegality of the use of marijuana by holders of security clearances. She provided further clarification of Federal marijuana policy writing that this policy remains relevant to security clearance adjudications "but [is] not determinative." She noted that the adjudicative guidelines provided various opportunities for a clearance applicant to mitigate security concerns raised by his or her past use of marijuana.

Applicant has fully established mitigation under AG ¶¶ 26(a), 26(b)(1) and (b)(2). Her illegal drug use since her accident in 2014 occurred under such unique circumstances that it is unlikely to recur. Her painful chronic condition had caused her to seek any relief possible, and for her the relief came in a combination of prescription medication for her severely damaged nerves and marijuana to help her sleep at night. Since the prospect of gaining full-time employment in her field with a federal contractor in 2021, she established an extended pattern of abstinence.

The one exception to her abstinence was due the unusual circumstances created by a timing issue that delayed the delivery of a refill of her most important prescription medication. Applicant has credibly testified that those circumstances will not be repeated in the future and that even if she does experience a timing gap in the delivery of her medication, she is equipped today to handle such an emergency without resorting to marijuana. The key difference between then and now is that she no longer spends four hours a day in her car commuting to and from her workplace. Without that strain on her disabled body, she is confident that she can treat herself using lawful alternative medications in the event she finds herself without her prescription medications.

Moreover, Applicant experienced serious anxiety when she broke her abstinence for six nights. Her job and the recovery her employment represent to her is too important to her to ever put herself at risk of losing her job in the future. She is committed to never repeating that experience with marijuana. Also, she is committed to never allowing herself to run out of medication. Under all of the circumstances presented in this case, Applicant's behavior does not cast doubt on her current reliability, trustworthiness, or good judgment.

Applicant has an even longer period of abstinence in the use of mushrooms. She used mushrooms a limited number of times in the past when she felt despair over her condition and her future of living with severe chronic pain. She found that mushrooms gave her the perspective and the courage to continue with her struggle. Now that her life has never been better with her job and her independent lifestyle, she has no use for mushrooms and will never risk her employment by using them. She has no intention of ever using mushrooms again.

In addition, AG ¶¶ 26(b)(1) and (b)(2) are applicable. Applicant no longer associates with drug-using friends or contacts and has relocated to a residence where she lives alone and has complete control over the persons with whom she associates. None of her current associates use illegal drugs.

Overall, Applicant has worked hard to mitigate the security concerns raised by her past use of marijuana to relieve her chronic pain and mushrooms to manage her rare moments of extreme crisis. She has carried her burden of persuasion and mitigated the security concerns raised by her conduct.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility 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 considered the above whole-person factors and the potentially disqualifying and mitigating conditions, as well as the SecEA's Guidance, in light of all pertinent facts and circumstances surrounding this case. Applicant has fully mitigated her past drug use. Her recent forthright disclosures of her history of drug use have minimized or eliminated the potential for pressure, coercion, or duress. It is unlikely that she will have any recurrence of similar drug use in the future. Overall, the record evidence does not raise any questions or doubts as to Applicant's present 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:	FOR APPLICANT
Subparagraphs 1.a through 1.e:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

JOHN BAYARD GLENDON
Administrative Judge