



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02219
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: Daniel Meyer, Esq.

11/09/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 18, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. 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) effective on June 8, 2017.

Applicant answered the SOR on January 19, 2023 and requested a hearing before an administrative judge. The case was assigned to me on September 15, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

September 26, 2023. I convened the hearing as scheduled on October 24, 2023. The Government offered exhibits (GE) 1 through 3. Applicant and five witnesses testified on his behalf. He offered Applicant Exhibits (AE) A through F. There were no objections to any exhibits offered, and they were admitted into evidence. DOHA received the hearing transcript on November 1, 2023.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 24 years old. He graduated from high school in 2017 and college in 2020. He is not married and has no children. He has worked for a federal contractor since 2020. (Tr. 106-107; GE 1)

Applicant was employed during the summers as an intern for different companies while he was in college. Since he was a young boy, his dream was to work as an engineer in aerospace and be on the cutting edge of the newest technology. He was focused throughout high school to achieve that goal. He was valedictorian of his class and went on to a prestigious college, where he graduated with a degree in aerospace engineering *Summa Cum Laude*. He did not use drugs in high school and consumed alcohol on a minimal basis. At college, he consumed alcohol in moderation and not to excess. (Tr. 83-GE 3)

Applicant completed a Questionnaire for National Security Positions (SF 86) in January 2020. As part of the process, he participated in a drug test, testing negative. He did not report any drug use in his SF 86. He completed the SF 86 so he could work as an intern for a federal contractor. (Tr. 84; Answer to SOR, Tab C)

In Applicant's SOR answer and his testimony, he stated that during his sophomore year of college he lived with three men, two of whom used marijuana daily. He was offered it daily and declined. He estimated he declined their offers more than 300 times. (GE 2; Answer to SOR, Tab C)

Applicant's sister was using marijuana daily. During his senior year of college in March or April 2020, he and his mother went to visit his sister in another state where she was living. His sister begged him to try marijuana and told him there were no consequences. In an effort to reconnect with his sister, he used marijuana out of curiosity. It was legal in the state where he used it. He did not enjoy it. (Tr. 85-86; GE 3; Answer to SOR, Tab C)

In 2020, Applicant's parents were going through a divorce. Due to the pandemic, they were still living together in the family home. Applicant was also living at home at the time and was unable to escape the conflict because of the lockdown. He felt pressured by each parent. They were in the process of selling the family home where he grew up

and had his childhood memories. He was eager to move back to school and did so in September 2020. He intended on graduating early and because it was difficult to rent a house for less than 12 months, he decided to live in the basement of a friend's house. When he arrived and moved in, sight unseen, he realized he made a mistake. The basement was not finished and had concrete dust raining down from the ceiling, which would wake him as it covered his nose and mouth. He moved out a week later and moved in with a good friend who lived in another town and had three roommates. These roommates used marijuana extensively. About two weeks later, Applicant and his roommates were in lockdown due to one of the roommates testing positive for Covid. Two weeks later another tested positive, another week and a different roommate tested positive. Applicant stated there was nothing to do during lockdown except eat, sleep, study, and hang out. He admitted during this time, he gave into the pressure and used marijuana with varying frequency (12-16 times) for about 13-15 weeks. He again used it one time in December 2020, as he prepared to move to a new state. It was legal in the state where he used it. (Tr. 86-90; GE 3; Answer to SOR, Tab C)

After graduating college in December 2020, Applicant moved to a new state eager to start his career, but he found out that the position he had accepted was no longer available, and he was placed in a different position. He was not provided a workstation and was required to work remotely. He was not given many tasks and was bored. He began to seriously question whether he made the correct career choice and if those avenues even existed for him any longer. While taking full responsibility for his conduct, he stated that these circumstances contributed to his poor judgment when, in July 2021, he used marijuana again with his sister, on her birthday. It was legal in the state where he used it. (Tr. 90-91, 104; Answer to SOR, Tab C)

In October 2021, Applicant contracted Covid. Due to the company's vaccine requirements, he had two weeks to get the vaccine. He attempted to get a medical waiver due to recently having Covid, but it was denied. He got the vaccine but had a serious negative reaction because he got it too close to having the virus. This incident made him question his future with the company and contributed to his stress level. He also had totaled his vehicle while driving from where he worked to his home state, which left him stranded. He explained that these stressors contributed to him using marijuana in December 2021, when he used his sister's marijuana vape pen. (Tr. 104; Answer to SOR, Tab C)

Applicant was granted a secret security clearance in 2020 while he was working as an intern. In late 2021, he was read into a special access program (SAP). At the time he used marijuana in December 2021, he did not officially work in the program, but he testified that the SAP involved access to classified information. He began working in the program in January 2022. (Tr. 90-91)

Applicant's perspective changed once he began to work in a program where he was able to use his skills and was given responsibilities. He was realizing his childhood dreams. He also began to understand the seriousness of handling sensitive and classified information. Before then, he was a young college kid with a clearance, without a true

understanding of its importance. He was now a member of a program with a sworn duty to protect secrets. He testified that once he started working in the SAP, he had a real appreciation for the seriousness and importance of holding a security clearance. This was not something that was emphasized when he was initially granted a clearance. (Tr. 91-94; Answer to the SOR, Tab C)

Applicant has a new perspective and understanding of the highs and lows of a career path. He believes a myriad of circumstances negatively influenced him which contributed to him using poor judgment. He never had a desire to use marijuana, but circumstances influenced him. He is now in a position where he has more control over where he lives and who he associates with. He credibly testified that he is shocked that he used marijuana without considering the consequences. He has participated in therapy regarding his parents' divorce. He felt like he was the glue holding his family together when they were all living together during the pandemic. Both parents were leaning on him and relying on him, which was stressful. (Tr. 94-97, 104-105; Answer to the SOR, Tab C)

Applicant's sister stopped using marijuana when she became pregnant and has not resumed since giving birth. He testified that she has abstained from drugs, alcohol, and nicotine for over two years. His current roommate is also an employee with the same federal contractor and holds a security clearance. His roommate does not use illegal drugs and has not witnessed Applicant using any. Applicant started an initiative to cease consumption of alcohol for an extended period and did so for eight months. It was an exercise in discipline. He did not overindulge before but wanted to challenge himself. He sought drug counseling to evaluate whether he had any drug or alcohol-related issues. None were detected and he was advised that no further treatment was recommended. Most of his friends work for federal contractors and do not use illegal drugs. His few close friends from high school do not use illegal drugs. He credibly testified that he never intends to use illegal drugs again. (Tr. 97-98, 100-101, 108-112; Answer to SOR, Tabs D and E)

In January 2022, Applicant completed another SF 86. In it he disclosed his prior marijuana use. After submission of the SF 86, on his own volition, he took a drug test to demonstrate his level of commitment to remain drug-free. The test was negative. Applicant was unaware that he was required to report his drug use. Once he became aware, he notified his security manager. (Tr. 85, 99; GE 1; Answer to SOR, Tab E)

Five witnesses testified on behalf of Applicant. They were his current roommate, one whom he currently works for, and two with whom he has worked with, and a friend. They have known him both professionally and personally. Essentially, they all provided the same positive comments, noting he is reliable, trustworthy and exercises good judgment and provided examples. There is no evidence that he currently associates with known drug users. They reported that he works well under pressure and manages stress on the job by working hard to find a solution to the problem. All, except one, holds a security clearance. All recommended Applicant retain his. (Tr. 23-81, 99-101)

Applicant provided character letters, which stated he was a good citizen, patriot, intelligent, mature, respectful, and trustworthy. He follows rules and regulations and is a person of integrity. (Answer to SOR, Tab D)

Applicant provided a signed statement of intent not to use any illegal drugs in the future and any violation will constitute grounds for automatic revocation of his security clearance. (Tr. 101-102; Answer to SOR, Tab E).

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 relating to the guideline 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (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 with varying frequency from April 2020 to December 2020. He used it again in July 2021 and December 2021. His use in December 2021 was after being read into a SAP and he had access to classified information. He did not begin to work in the program until January 2022. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 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 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 being 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 voluntarily disclosed his past illegal drug use in his January 2022 SF 86, and he reported it to his security manager when he learned he was required to do so. His testimony was candid and forthcoming. He recognizes his errors in judgment. Applicant's use of marijuana from April 2020 to December 2020 occurred while he was still in college and worked as an intern in the summer. He signed a statement to abstain from all drug involvement, acknowledging that any future involvement will result in revocation of his clearance. The evidence strongly supports that Applicant's marijuana use was infrequent. In addition to being a young college student, the pressures of being in lockdown during the pandemic and minimal options of where he could live, being put in a different job than what was promised and being bored, along with the stressors associated with his parents' divorce all were unique circumstances that contributed to his poor decisions.

Applicant takes full responsibility for his conduct. He candidly testified that until he began to work in a program that required him to have actual access to classified information, he did not have an appreciation for the responsibilities and duties required of those holding a security clearance. He does now. His conduct can be characterized as youthful indiscretions. Despite only being 24, he has grown and matured. Future drug use is highly unlikely to recur. His conduct does not cast doubt on his current reliability, trustworthiness, or judgment. He is no longer in an environment where drugs are being used and he does not associate with known drug users. His sister has been abstinent for more than two years. Although he used marijuana after being granted a security clearance and access to classified information, a serious transgression, I find the above mitigating conditions apply.

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

AG ¶ 15 expresses the security concerns for 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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

(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 group. Such conduct includes: (1) engaging in activities which if known, could affect the person's personal, professional, or community standing.

Applicant used marijuana with varying frequency from April 2020 to December 2020. He used it again in July 2021 and December 2021. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(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 acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressor, 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 the vulnerability to exploitation, manipulation, or duress.

The drug involvement security concerns discussed above were cross-alleged under the personal conduct security concerns. The same facts and analysis apply. In addition, use of drugs while holding a security clearance is not a minor offense. I believe future misuse of drugs is unlikely to recur and Applicant has taken steps to reduce vulnerability, exploitation, or duress through his commitment to remain drug-free. I find there is sufficient evidence to apply the above mitigating conditions.

### **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 the 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. In my whole-person assessment, I find the record evidence does not leave me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline H, drug involvement and substance misuse, and Guideline E, 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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

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

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Carol G. Ricciardello  
Administrative Judge