



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



In the matter of: )  
)  
) ISCR Case No. 23-00539  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey De Angelis Esq., Department Counsel  
For Applicant: Louis Kosnett, Esq., The Kosnett Law Firm

11/13/2023

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

On June 8, 2017; and November 5, 2021, Applicant submitted security clearance applications (e-QIPs). (Government Exhibits 1 and 2.) On April 4, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued 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 10865 (EO), *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), effective within the DoD after June 8, 2017.

Applicant answered the SOR on June 4, 2023, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on August 9, 2023, and the hearing was convened as scheduled on October 4, 2023. At the hearing, the Government offered three exhibits, referred to as Government Exhibits 1 through 3,

which were admitted without objection. The Applicant offered four exhibits, referred to as Applicant's Exhibits A through D, which were admitted without objection. He called one witness. He also testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 12, 2023.

### **Findings of Fact**

Applicant is 32 years old. He is unmarried with no children. He has a Master's degree. He holds the position of Engineer. He is seeking to obtain a security clearance in connection with his employment.

#### **Guideline H - Drug Involvement and Substance Misuse** **Guideline E - Personal Conduct**

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose; and that he has engaged in conduct involving questionable judgment, which can raise questions about an individual's reliability and trustworthiness.

Applicant obtained a Bachelor's degree in 2013, and a Master's degree in 2016. In April 2017, he was hired to work for defense contractor (A) as a Mechanical Engineer. During the interview process, Applicant was told that the position would require a security clearance. He was also told that the company had a zero-tolerance substance abuse policy, and that any use of an illegal substance could result in strict disciplinary action. Applicant was also given written notification reiterating the company policy prohibiting illegal drug use. On June 8, 2017, Applicant applied for a security clearance. Applicant was granted a security clearance.

While working for defense contractor (A), and after completing his security clearance application on June 2017, Applicant used THC with varying frequency from about January 2018 to about September 2020. Applicant stated that he used marijuana about three to four times in 2018. (Tr. p. 32.) He does not recall if he ingested marijuana in 2019. (Tr. p. 32.) In 2020, he believes he used it two to three times. (Tr. p. 32.) He stated that he has never purchased THC, as it has always been provided to him by friends. He stated that he used marijuana in the form of gummies. He would use it at friend's homes, or at social events, such as game nights or movie nights. (Tr. p. 34.) At this time, Applicant held a security clearance, and was employed in a sensitive position. (Government Exhibit 1.)

Applicant testified that his use of THC has usually coincided with his high levels of anxiety and stress. He has also used it socially, recreationally, and to help him relax. He stated that when he moved from New York to Arizona he had a particularly difficult time. During the pandemic he lost a family member, and was isolated from family and friends. The extended period of isolation affected him. (Tr. p. 36.) Stressful life moments such as these and lifestyle changes and transitions have caused him to

experience depression, anxiety, and sleepless nights. He has found that that the use of THC/marijuana has been helpful to sleep and relax.

In the summer of 2020, and while still working for defense contractor (A), Applicant started looking for other employment opportunities. He was hired by defense contractor (B) in October 2020. He was again reminded by this defense contractor of their zero-tolerance substance abuse policy, which is DoD wide, and that his job required a security clearance. Applicant started as a Packaging Engineer. On November 5, 2021, Applicant completed another security clearance application. (Government Exhibit 2.)

While working for defense contractor (B), and after completing his security clearance application in November 2021, Applicant used THC with varying frequency from about September 2020 to about May 2022. Applicant stated that he used marijuana on two occasions in 2021, and on two occasions in 2022. (Tr. pp. 35 and 38.) On each occasion of use, he ingested one marijuana gummie. (Tr. p. 39.) At this time, Applicant was employed in a sensitive position. (Government Exhibit 2.)

Applicant testified that in June 2022, after his interview with the DoD investigator, he reported his use of THC for that year. (Tr. p. 51.) He told the investigator that he used THC only two times between November 2021 to May 2022. In a Statement of Mitigating Conditions he provided dated June 4, 2023, he stated that he used THC a total of three times between January 2018 and November 2021; and from November 2021 to May 2022, he used THC two times. (Applicant's Exhibit A.)

Since May 2022, Applicant has taken steps to alleviate the factors that contributed to his use of THC. He has received eight sessions of psychological counseling and therapy to improve his mental health through his Employee Assistance Program. (Applicant's Exhibit C.) He has also obtained a membership in a martial arts academy for physical exercise and self-development.

A fraternity brother from college, who is an attorney, testified on Applicant's behalf. He stated that he has never seen Applicant use any illegal drug or any prescription medication that was not prescribed to him. He has never seen him act in a way that would display moral turpitude or a defect in character. He stated that Applicant was always the mentor and role model for others. (Tr. pp. 14 - 23.)

Applicant underwent a THC drug screening with negative results dated June 3, 2023. (Applicant's Exhibit B.)

A letter of recommendation from a college roommate and friend of the Applicant attests to his integrity and selflessness. Applicant is further described as intelligent, hardworking, responsible, and a leader and model citizen. (Applicant's Exhibit D.)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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. 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. 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 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 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 as to 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 relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (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
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns:

- (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.

None of the mitigating factors are applicable. Applicant deliberately used THC, (marijuana), while possessing a security clearance, and while employed in a sensitive position. Applicant states that he has sought out psychological counseling to avoid future THC use, and is no longer using THC, and has no intentions to use it again. However, his actions are not mitigated.

### **Guideline E - Personal Conduct**

The security concern for Personal Conduct is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a while-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of;

(2) any disruptive, violent or other inappropriate behavior; and

(3) a pattern of dishonesty or rule violations.

The guideline at AG ¶ 17 contains conditions that could mitigate security concerns. Two of the conditions are potentially applicable:

(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.

Whether Applicant used THC five times, or ten times, the number of times he used it is irrelevant here. What is relevant is the fact that he used it during employment with two defense contractors, while either possessing a security clearance, and/or while employed in a sensitive position. Applicant knew that the use of THC is against Federal law, and clearly prohibited by the Department of Defense. Applicant also knew that the use of marijuana is illegal while possessing a security clearance. His conduct shows immaturity, poor judgment, unreliability and untrustworthiness.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations and policies that apply to them. Applicant did not follow the rules. Instead, he chose to live his life to his convenience, and disregarded the law. Applicant's deliberate use of THC while employed in a sensitive position and/or while holding a security clearance is immature, irresponsible, inappropriate behavior, that shows questionable judgment. Under the particular facts of this case, Applicant does not show the maturity level, integrity, and reliability necessary to access classified information. At this time, Applicant does not meet the eligibility qualifications for a security clearance.

### **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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant has not demonstrated the level of maturity needed for access to classified information.

Applicant understands the requirements associated with holding a security clearance and knows that marijuana use is not tolerated. Applicant is not an individual in whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse, and Personal Conduct security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.g.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge