



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 22-01902 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

12/04/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Guideline H, drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

**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. 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 March 6, 2023, and elected to have his case decided on the written the record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on May 11, 2023. He was afforded an opportunity to file objections and submit material in refutation,

extenuations or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 5 (Item 1 is the SOR). Applicant provided a response to the FORM that is marked as Applicant Exhibit (AE) A. He did not object to any of the Government's evidence but provided explanations and comments. All exhibits are admitted into evidence. The case was assigned to me on August 23, 2023.

### **Findings of Fact**

Applicant denied the SOR allegations in ¶¶ 1.a and 1.b. He admitted the SOR allegations in ¶¶ 1.c and 1.d. 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 36 years old. He earned associates degrees in 2006 and 2013 and a bachelor's degree in 2016. He married in 2010 and has three minor children. He has worked for his current employer, a federal contractor, since July 2020. (Item 3)

In January 2022, Applicant completed a Questionnaire for National Security Positions (SF 86). Section 23 asked about prior illegal drug use or drug activity. Applicant disclosed that he used marijuana daily from May 2001 to January 2022. In response if he intended to use this drug or controlled substance in the future, he responded "yes." He provided comments as follows:

I have been smoking for a long time. I have the ability to stop smoking when needed and can go without but I like the calming feeling in the evening after a stressful day. It also greatly helps me sleep.

This is the only section of the entire process I am worried about. I understand how my choice to smoke will weight [sic] in as part of the decision. To be 100% honest, I would like to continue to smoke as I believe it does not affect my integrity or patriotism. (Item 3)

Section 23 also asked if, in the past seven years, Applicant had been involved in the illegal purchase of a drug or controlled substance. He responded that he purchased marijuana from September 2001 to November 2021 every few months. He said his reason for purchasing it was because, "To get marijuana to smoke to help stress and sleep." Section 23 also asked if Applicant intended to engage in this activity in the future, and he responded, "yes." He said, "I would like to continue smoking so I would have to continue to purchase." (Item 3)

Applicant disclosed that he participated in counseling as a result of his illegal use of drugs or a controlled substance. He reported he was ordered by his employer to complete an online drug course. He stated, "After a positive random test at my previous employer, I had to take an online course about drugs. I completed the course and no further action was needed." (Item 3)

Applicant disclosed on his SF 86 that he was arrested in 2005 for possession of marijuana. He pleaded guilty and served a week in jail. He completed the terms of his sentence. (Items 3, 4)

Applicant was interviewed under oath by a government investigator in March 2022. In his response to government interrogatories in November 2022, he authenticated his statement to the government investigator. (Item 4)

Applicant told the investigator that he began using marijuana in May 2001 and has used it almost daily since then. He likes the way it makes him feel. From May 2001 to 2010 he used it with a friend and other random people at parties. From 2010 to the date of his interview, he used it by himself or with his wife or half-brother. His mother also smokes marijuana, and he uses it with her. He does not use it with any others. He explained he uses it nightly to relax and aid with sleep. He believes it helps him sleep and alleviates some of his asthma symptoms. (Item 4)

Applicant further disclosed that he purchases about an ounce of marijuana from his half-brother every two months for about \$200. His last purchase, at the time of the interview, was February 2022. He explained his half-brother is not a marijuana dealer but buys it for personal use and sells it to him. (Item 4)

Applicant does not believe he experiences any specific stressors that cause tension and does not believe he suffers from any anxiety or other condition which could be treated by a medical professional in lieu of marijuana. He has not attempted to try other techniques to help him relax because marijuana is effective. He is not specifically anxious without using marijuana but enjoys the relaxation he gets from using it. (Item 4)

Applicant explained that his prior place of employment conducted a random drug test in February 2019, and he tested positive for marijuana use. He admitted his use when the positive results were reported. His supervisor expressed surprise at the positive results. He took an online drug education course required by his employer because he was worried he would be fired. He completed the course, and no further action was taken by his employer. He has never received any drug treatment. The course he took did not include a drug assessment, counseling, or treatment. (Item 4)

Applicant told the investigator that he does not use any other illegal drugs, except marijuana. He does not associate with any other illegal drug users, except his family members. Marijuana use has not negatively impacted his work, even when he tested positive at his work. It does not impact his physical or emotional health, judgment, or reliability. He has never been diagnosed as drug dependent and has never felt dependent on marijuana and he can stop when he wants to with no difficulties. (Item 4)

Applicant further reported that he has stopped using marijuana on multiple occasions for approximately three months, specifically when he was changing jobs because of the potential he would have to participate in a drug screening. He told the investigator that he stopped using marijuana for seven to eight months before accepting

his current employment. Once he obtains the employment and successfully passes the drug screen, he resumes his marijuana use. (Item 4)

Applicant told the investigator that he would like to continue his marijuana use while holding a security clearance, as he does not use it during the day and has never used it in the workplace. If he was required to choose, he would cease using it to obtain a security clearance. He said his wife would also stop using it, as she only occasionally smokes marijuana with him. He would ensure he was not in the presence of his mother or half-brother when they used it but would continue to interact with them because of his family relationship. (Item 4)

Applicant said that he has considered whether he should stop using marijuana due to his age and because his children are getting older, and the potential health risks. He said he may stop using marijuana at some point in the long-term future but he did not have a date or a plan to actually stop. He is aware that his use and purchase of marijuana are illegal, but he continues use and purchase marijuana because he likes the feeling he gets from smoking it. (Item 4)

Applicant updated his responses regarding his marijuana use and purchase in his government interrogatories of November 2022. He was asked if he had used marijuana since March 16, 2022. He stated he had used marijuana from that date to mid-June 2022 almost daily. He then reported he used marijuana from September 23, 2022, to the present (November 3, 2022). He disclosed that on September 23, 2022, he purchased marijuana from a legal dispensary in another state while visiting there. He said he stopped purchasing marijuana over the summer for three and a half months because he did not want to make illegal purchases anymore. A question asked if he had in his possession any marijuana? His response was that he had "some flower and a bowl in my garage." He confirmed that he has been with his wife, mother, and half-brother, who all continued to smoke marijuana. (Item 4)

Applicant's interrogatory responses also included his present employer's drug policy that employees shall not be under the influence or in possession of a controlled substance while on the job or on company property. He also disclosed he was drug tested by his current employer as a new hire. He said he was not informed as to the results of the test. (Item 4)

In Applicant's answer to the SOR, he said he stopped smoking marijuana in November 2022. He disputed that he had access to classified information. He stated at that time a decision had not been made about his security clearance eligibility. If he had been granted a clearance, he would have stopped smoking immediately. He stated he had stopped smoking for four months and did not plan to continue to use marijuana in the future. He further stated he made marijuana purchases over the years and the last was in September 2022 from a legal dispensary. He said he did not intend to purchase marijuana in the future. (Item 2)

Marijuana was illegal in the state where Applicant lived and purchased it. In the November 2023 election, the state voted to make it legal for recreational use beginning in 2024. ([State] Revised Code Section 3780)

In Applicant's response to the FORM, he denied having access to classified information. He stated he has been open and honest about his past marijuana use. He said that during his interview process he expressed that he would stop smoking marijuana as a condition of his security clearance decision. He stated that he stopped using marijuana in November 2022. He stated, "The combination of this process and my kids getting older has brought much-needed awareness to my use. Also, not smoking for several months has made me realize I don't need it." He further stated, "I feel my past use will not affect the future of my ability to handle secure information or my allegiance to my country." (AE A)

### **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;
- (b) testing positive for an illegal drug;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant possessed and used marijuana with varying frequency from about May 2001 to November 2022. In his SF 86 and in his background interview, he expressed his intention to continue to use marijuana. In February 2019, he tested positive for marijuana during a random drug screen by his employer. He was charged with possession of marijuana in 2005, pleaded guilty, and was sentenced. AG ¶¶ 25(a), 25(b), 25(c) and 25(g) apply. There is insufficient evidence that Applicant had access to classified information or held a sensitive position while he was using marijuana, as alleged, in part, in SOR ¶ 1.a. AG ¶ 25(f) does not apply.

The guideline also includes conditions that could mitigate the security concerns regarding Applicant's drug involvement. 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;

(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; 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 has a long history of using and purchasing marijuana when it was illegal in the state where he lived. I will not consider this fact for disqualifying purposes but may consider it in the application of the mitigating conditions, in making a credibility determination, and in my whole person analysis. Applicant willingly violated the law for more than 20 years. He also admitted to basically gaming the system by refraining from his regular daily marijuana use before he would start a new job where he knew he would be drug tested. After he took the test, he would resume his marijuana use. This does not bode well for considering someone's trustworthiness for eligibility for access to classified information or a sensitive position. After completing his SF 86 in January 2022, he continued to use marijuana. After being interviewed by a government investigator in March 2022, he continued to use marijuana. He last purchased it in September 2022 from a state where it is legal. Based on his admissions, he continued to use marijuana almost daily until he completed his government interrogatories in November 2022. In his response to the FORM, he indicated that he stopped using marijuana in November 2022 and does not intend to use it in the future.

Applicant's long history of use and relatively recent statement of abstinence is insufficient to apply AG ¶ 26(a). He admitted that in the past, he would stop his marijuana use so he could secure employment and then resume using marijuana. I am not convinced based on his daily use for more than 20 years that it is unlikely he will use marijuana again. In addition, based on his long history of daily marijuana use, even if he has abstained from use since November 2022, it is an insufficient period to conclude that he is totally committed to abstaining from future marijuana use. His conduct casts doubt on his current reliability, trustworthiness, and good judgment.

Applicant admits his drug involvement and states he does not intend to use marijuana in the future but has not provided evidence of actions to overcome his habitual use of marijuana. He claims to have established a pattern of abstinence, but also admits that his wife, mother, and half-brothers are users with whom he associates. He has not provided any corroborating evidence to conclude that marijuana is no longer part of his life, that he no longer associates with those who use drugs, that he has changed his environment to avoid where drugs are being used, or that he has participated in a drug treatment program. I understand the obstacles of having close family members who use drugs and the reality of attempting to disassociate with them. However, Applicant has offered no independent evidence of any efforts he has made to create a drug-free environment. Based on his history, I am not confident that when relatives are present and using marijuana, Applicant will not participate. AG ¶¶ 25(b) and 25(d) do not apply.

### **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 Guideline H in my whole-person analysis.



Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security concerns arising 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 except for the language "including while granted access to classified information" |
| Subparagraphs 1.b-1.d:    | Against Applicant  |

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge