



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 22-02632  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

11/29/2023

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant has not mitigated the security concerns arising from the guidelines for drug involvement and substance abuse. Eligibility for a security clearance is denied.

**Statement of Case**

On June 2, 2022, Applicant certified and signed his most recent Electronic Questionnaire for Investigations Processing (e-QIP) (Item 3) to obtain or retain a security clearance required for employment with a defense contractor. He certified and earlier e-QIP (Item 2) on March 5, 2020. In April 2020 and August 2022, he provided personal summary interviews (PSI) to an investigator from the Office Personnel Management (OPM). After examining the background investigation, the Department of Defense Consolidated Adjudications Facility (the DoD CAF, predecessor to the Defense Counterintelligence Security Agency (DCSA), Consolidated Adjudications Services (CAS)) could not make the affirmative findings necessary to issue a security clearance. On April 6, 2023, the DCSA CAS issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guidelines for drug involvement and substance misuse (Guideline H). The action was taken pursuant to Security Executive Agent

Directive 4, establishing in Appendix A the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), made effective in the DOD on June 8, 2017.

On April 11, 2023, Applicant provided an answer to the SOR. He decided to have his case evaluated administratively on the written record in lieu of a hearing. On May 11, 2023, the Government sent a copy of its File of Relevant Material (FORM), the Government's evidence (four items of evidence identified and attached to the FORM) in support of the allegations in the SOR, to Applicant. The ten pages of Item 4 are numbered in the lower right-hand corner of the exhibit. He received the FORM on May 22, 2023. He was provided 30 days after receipt of the FORM to submit a response. DOHA received no response by the deadline date of June 21, 2023.

### **Findings of Fact**

The SOR alleges under paragraph 1.a - that Applicant used marijuana at different frequencies from January 2019 to June 2022; 1.b - that he used marijuana while granted access to classified information from June 2020 to June 2022; 1.c - that he stated an intention to discontinue use of marijuana in his April 2020 PSI, but continued using marijuana until June 2022; 1.d - that during a PSI in August 2022, he expressed his intention to continue using marijuana in the future. Applicant admitted the four allegations.

Applicant is 40 years old and single with an 18-year-son. After obtaining his high school diploma in 2001, he attended a technical college for three years, but did not receive a diploma. He earned his associate's degree in December 2019, and is taking courses for his bachelor's degree. He has been employed by a defense contractor as a configuration analyst since February 2020. From July 2005 to February 2020, he was a shipping loader for a nationwide discount department store.

In his March 2020 e-QIP, Applicant indicated that in the last seven years, he used marijuana one or two times a week from January 2019 to October 2019. He started using the drug because he wanted to relieve his back pain with a natural drug rather than medicine. He purchased and used a vaporizer dispensing pen (Item 2 at 32) for ingesting the marijuana. On the next page of the March 2020 security clearance application, Applicant explained that the marijuana relieved his anxiety. However, he stopped using the drug in October 2019 because it was against the law in the state where he lives and works. He acknowledged that he would continue using marijuana if it was legal and not prohibited by his employer. (Item 2 at 33) In his April 2020 PSI, he declared he would never use marijuana while working for the federal government or if he had a government security clearance. (Item 4 at 4) He was granted a security clearance in June 2020.

Applicant certified a second e-QIP in June 2022. As he had explained in the March 2020 e-QIP, his first use of marijuana was in January 2019. However, he admitted that he continued to use the drug beyond the October 2019 date, with his most

recent use in May 2022. He obtained a medical cannabis card to legally use marijuana for his random back pain and sleeping problems. He admitted using marijuana after he had been granted a security clearance. He acknowledged that he would use the drug in the future. (Item 3 at 33)

In his August 2022 PSI (Item 3), Applicant acknowledged that his statements in his June 2022 e-QIP about using marijuana after being granted a security clearance were true. He was spending about \$60 a month on the drug. His justification for continuing to use marijuana was that he did not know it was still considered illegal under federal law. (Item 4 at 9)

Applicant indicated that he socializes with people who use drugs. He predicted that it was likely he will continue to use “drugs” in the future and will use “marijuana” in the future to manage his back pain. He has made no attempt to reduce or stop his marijuana use. (Item 4 at 10) After making one minor change in the April 2020 and the August 2022 PSI, Applicant swore that both PSIs were accurate. He signed the PSI interview summaries on March 28, 2023.

## **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines, which should be applied with common sense and the general factors of the whole-person concept. All available and reliable information about the person, past and present, favorable and unfavorable, should be carefully reviewed before rendering a decision. The protection of the national security is the paramount consideration. AG ¶ 2(d) 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 applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

## **Analysis**

### **Drug Involvement and Substance Misuse**

The security concern under the Drug Involvement/Substance Abuse Guideline is set forth 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.

In my analysis of this case, I have taken administrative notice of the Director of National Intelligence Memorandum Adherence of Federal Laws Prohibiting Marijuana Use, (October 25, 2014), *Adherence to Federal Laws Prohibiting Marijuana Use*, which clearly states that state laws do not authorize persons to violate federal law, including the Controlled Substances Act (21 U.S.C. §§ 801-971 (1970)), which identifies marijuana as a Schedule 1 controlled drug.

Changes in state laws or the District of Columbia, pertaining to marijuana use do not change the existing National Security Adjudicative Guidelines (Security Executive Agent Directive 4, effective June 8, 2017). An individual's disregard of the federal law pertaining to marijuana involvement remains adjudicatively relevant in national security determinations.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to illegal use, possession, production, and distribution of marijuana. Disregard of federal law relevant to marijuana (including prior recreational marijuana use) remains relevant, but not determinative to adjudications of security clearance eligibility. Agencies are required to employ the "whole-person concept" stated under SEAD 4, to determine if an applicant's behavior raises a security concern that has not been mitigated.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

- (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;
- (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 commit clearly and convincingly to discontinue such misuse.

Applicant's illegal use of marijuana from January 2019 to the present, corroborated by his 2020 and 2022 e-QIPs, his March 2020 and his August 2022 PSIs, his interrogatory answers in March 2023, and his answers to the April 2023 SOR, establish the four disqualifying conditions identified above. Applicant's illegal marijuana use is aggravated by the fact that he received a security clearance in June 2020, after he declared three months earlier that he stopped in October 2019, and would not use illegal drugs as long as he worked for the federal government if he had a security clearance. Finally, he confirmed that he will continue to use marijuana and continue socializing with his drug using friends.

AG ¶ 26. Conditions that could mitigate security concerns include:

(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.

AG ¶ 26(a) is unavailable for mitigation as Applicant has admitted that he will use marijuana in the future. Accordingly, his admission continues to cast doubt on his trustworthiness and good judgment.

Though Applicant admits his involvement with marijuana, he has furnished no independent evidence of action taken to overcome his illegal drug use, with the objective of abstaining from all future drug use.

Because Applicant maintains ties with his friends who use drugs, there is no basis to find that he has attempted to avoid or change the environment where drugs are used. AG ¶ 26(b)(1) and 26(b)(2) do not apply. Applicant has not submitted a signed statement of intent to forgo future use of all drug involvement, acknowledging that any

future use is grounds for revocation of national security eligibility. AG ¶ 23(b)(3) does not apply.

### **Whole-Person Concept**

I have examined the evidence under the guideline for drug involvement/substance misuse in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 40 years old. He has an 18-year-old son. He has been working as a configuration analyst for a February 2020.

Holding a security clearance is a 24-hour-responsibility which requires compliance with all federal laws at work and after work, or even when the clearance is inactive, and regardless of the amount of classified information the holder may handle at a given time. Even though some states have decriminalized marijuana use, it is still illegal at the federal level for federal contract employees. Medical marijuana assigns no special status under the adjudicative guidelines. See ISCR Case No. 20-02794 at 5 (App. Bd. Feb.1, 2022) In sum, an individual who has been granted access to classified information cannot use illegal drugs under any circumstances. Thus, medical issues do not create an exception to the federal Government's policy against illegal drug use. Having weighed and balanced the record from a whole-person point of view, Applicant's evidence in mitigation does not overcome the security concerns based on the drug involvement.

### **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

Subparagraphs 1.a-1.d:

Against Applicant

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

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Paul J. Mason  
Administrative Judge