



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



In the matter of: )  
)  
) ISCR Case No. 23-01671  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

05/21/2024

**Decision**

DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On September 6, 2023, the Department of Defense (DOD or Government) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement and substance misuse. Applicant responded to the SOR on October 13, 2023 (Answer) and requested a hearing before an administrative judge. On November 6, 2023, the Government issued an SOR Amendment that added an additional allegation under Guideline H. On November 26, 2023, Applicant responded to the SOR Amendment (Amendment Answer). The case was assigned to me on February 20, 2024.

The hearing was convened as scheduled on May 2, 2024. I admitted Government Exhibits (GE) 1 through 3 in evidence without objection. Applicant testified but did not present any documentary evidence other than the Answer and the Amendment Answer, which are already part of the record. At Applicant's request, I left

the record open until May 9, 2024, to allow the parties an opportunity to provide post-hearing documents. Applicant timely provided Applicant Exhibits (AE) C and D, which I admitted in evidence without objection. I received a transcript (Tr.) of the hearing on May 9, 2024.

### **Findings of Fact**

Applicant is a 30-year-old employee of a government contractor for whom she has worked since November 2016. She earned an undergraduate degree in May 2016, with a 3.86 grade point average (GPA), and a master's degree in May 2020. She has never married and has no children. (Tr. 25, 37, 64-65; Answer; GE 1, 2)

From about September 2012 until about May 2015, Applicant used marijuana with varying frequency while she was in college. She disclosed this marijuana use on an Electronic Questionnaires for Investigations Processing (e-QIP) that she completed in 2017 (2017 e-QIP). In about July 2015, she signed a classified information nondisclosure agreement (NDA), and in September 2017, the DOD awarded her a security clearance. From about January 2021 until April 2022, after marijuana became legal pursuant to state law in State A, where she resided, she used marijuana again. She estimated that she used it socially with friends about 20 to 30 times by either vaping it or ingesting edibles. At all times relevant to this security clearance investigation, marijuana purchase and possession (and therefore its use) have been illegal under federal law, regardless of its legality under state law. (Tr. 25-36, 38-50; Answer; GE 3)

Applicant credibly testified that she did not know possessing and using marijuana was illegal because of its legality under state law. She did not report her more recent marijuana involvement on a subsequent e-QIP that she completed in June 2022 (2022 e-QIP) because of her misunderstanding of its illegality, but she volunteered this involvement when a DOD investigator asked her about it during her January 2023 security interview. She also credibly testified that she did not know she had an active security clearance when she used marijuana from January 2021 until April 2022. She thought her clearance was inactive because she did not access classified material until June 2022. In June 2022, she determined that her security clearance was active because she had to check its status to attend a meeting where such information would be discussed. While she may have been unaware that she held an active security clearance, as evidenced by the NDA, she held a sensitive position while she used marijuana. (Tr. 25-35, 37-48, 50-54, 56-60; Answer; Amendment Answer; GE 1-3)

Applicant continued to believe that her marijuana use was legal and not a security concern until she attended training her employer offered in late September 2022. During that training, she learned that federal law superseded state law, and that her possession and use of marijuana was illegal and was also a security concern. Within days, she spoke to her facility security officer and on October 3, 2022, she volunteered her 2021 to 2022 marijuana use in writing. Applicant now understands that marijuana involvement is illegal and is not compatible with holding a security clearance. She has no future intent to purchase, possess, or use marijuana or other illegal drugs.

She provided a signed statement of intent to that effect, acknowledging that future drug involvement is grounds for revocation of her national security eligibility. I observed her testify and found her to be credible. (Tr. 25-29, 31-35, 37, 50-61, 65-66; Answer; Amendment Answer; GE 2; AE C, D)

Applicant provided character-reference letters from colleagues who hold security clearances. They wrote that she is intelligent, hard-working, trustworthy, and shows good judgment. They believe she should be entrusted with a security clearance. She also provided documents from her employer that show it has consistently promoted her over the course of her tenure with it. (Tr. 36; Answer)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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."

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 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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 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. 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 notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable 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
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana, an illegal drug, with varying frequency from September 2012 until about May 2015, and from January 2021 until April 2022. She held a sensitive position while she used marijuana from January 2021 until April 2022. The above listed disqualifying conditions are established.

AG ¶ 26 provides conditions that could mitigate security concerns. The following 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 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.

It has been a little over two years since Applicant last used an illegal drug. Her September 2012 until about May 2015 use was while she was in college and before she joined the workforce. With respect to her January 2021 until April 2022 marijuana use, she did not understand the distinction between federal and state law and which controls. In September 2022, by which time she had already stopped using marijuana for several months, she learned that marijuana possession and use is illegal and not compatible with holding a security clearance or a sensitive position. She had already stopped using marijuana by then and has not used an illegal drug since. She credibly testified that she will not use illegal drugs in the future. She provided a signed statement of intent to abstain from all drug involvement and substance misuse. Her disclosure of her marijuana use to her FSO and during her security interview bolster her credibility.

Applicant acknowledged she made mistakes by being involved with marijuana, but those mistakes were partially mitigated by her misunderstanding of the contradiction between state and federal law. She now understands that marijuana is illegal, and that she holds a position where she cannot be involved with illegal drugs. She has not used an illegal drug since she became aware of these facts. For these reasons, I find that her drug involvement is unlikely to recur, and she has provided evidence of a sufficient pattern of abstinence. AG ¶ 26(a) and AG ¶ 26(b) fully 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 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 have incorporated my comments under Guideline H in my whole-person analysis. I have also considered Applicant's education and excellent GPA, her positive character references, and her exceptional record of promotion at work.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the drug involvement and substance misuse security concerns.

### **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.c:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Benjamin R. Dorsey  
Administrative Judge