



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-02378
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

07/12/2024

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

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

**Statement of the Case**

On December 15, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse security concerns. 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 December 20, 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 February 13, 2024. 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 4 (Item 1 is the SOR). Applicant provided a response to the FORM and documents that were marked as Applicant Exhibit (AE) A and B. Additional documents were submitted regarding verification of Applicant's request to have his case decided on the written record. They are marked as Administrative Exhibit (ADM EX) I. There were no objections to any of the evidence submitted and all exhibits are admitted into evidence. The case was assigned to me on June 12, 2024.

### **Procedural Matter**

In the FORM, the Government amended SOR ¶ 1.a by deleting the words, "while holding a sensitive position, i.e., while holding a security clearance."

### **Findings of Fact**

Applicant admitted the sole SOR allegation. His admission is 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 48 years old. He earned two associate degrees in 2008 and other certifications in 2011. He was briefly married in 2022 and is divorced. He has one minor child. He has worked for his present employer, a federal contractor, since 2021. In approximately March 2023, he transferred within the company from a consulting team to a government team, thereby requiring him to hold a security clearance. (Item 3)

Applicant completed a security clearance application (SCA) in March 2023. He did not disclose any prior illegal drug use. He was interviewed by a government investigator in April 2023. He was asked to confirm his response in the SCA that he had not used illegal drugs in the past seven years. He volunteered that he had taken gummy infused marijuana in the past. The investigator explained to him that use of marijuana was illegal under federal law. Applicant indicated that his use was in a state where marijuana is legal. He changed his answer and responded positively regarding his past use of marijuana. He said he used it in about January or February 2023. He consumed it no more than once a month until a month ago. He used it at home with his ex-girlfriend, who provided the marijuana. He has no interest or desire to use marijuana in the future now that he realizes it is illegal. He does not socialize with anyone who uses marijuana. He no longer has contact with his ex-girlfriend. (Item 4)

Applicant completed government interrogatories in December 2023. He affirmed his responses to the government investigator were accurate. He stated in the interrogatories that he used marijuana twice in February 2023, and he has no intention to use it or other drugs in the future. (Item 4)

In Applicant's SOR answer he confirmed that he used two marijuana gummies and clarified he used them on the same day in February 2023 and not on two separate occasions as alleged in the SOR. During the time he used the marijuana he was not

working on the government team for his employer but rather was working on the consulting team. He stated his use was a one-time occurrence and he has no intention of taking any controlled substance in the future. (Item 2)

In Applicant's March 2024 response to the FORM, he again affirmed that he used a controlled substance, two marijuana gummies, on the same day in February 2023. He was not employed on the government team of his employer but rather was working on the consulting team. He did not hold a security clearance at the time because it was the private sector side of his employer. He reiterated that his use was a one-time occurrence with a woman he no longer associates with, and he has no intention to associate with her in the future. He said he has never had a history of drug use in the past, and he has no intention of taking any controlled substance in the future. He offered to be drug tested. (AE A, B)

### **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; and
  
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant used marijuana on one occasion in February 2023. 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's marijuana use was legal in the state where he used it. He was unaware it was illegal under federal law until the investigator told him. He volunteered his drug use to the investigator. He told the investigator his ex-girlfriend gave it to him. He no longer associates with her. He told the investigator he does not intend to use any controlled substance in the future. He repeated this declaration in his SOR answer and his response to the FORM. He said he does not have a history of drug use. I find his use of marijuana happened under circumstances that are unlikely to recur and do not cast doubt on his current reliability, trustworthiness, or good judgment. He has disassociated himself from his ex-girlfriend who supplied the marijuana and repeatedly indicated he does not intend to use any controlled substance in the future. I find AG ¶¶ 26(a) applies and 26(b) partially applies.

### **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 has met his burden of persuasion. The record evidence leaves me with no questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated 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: FOR APPLICANT

Subparagraph 1.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