



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



In the matter of:)	
)	
)	ISCR Case No. 23-02326
)	
Applicant for Security Clearance)	

Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

10/30/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant has not used marijuana for nearly two years, and he does not intend to use it in the future. Under these circumstances, I conclude he has mitigated the drug involvement security concerns. Clearance is granted.

Statement of the Case

On February 12, 2024, the Department of Defense Consolidated Adjudications Services (DOD CAS) issued a two-allegation Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H, drug involvement, explaining why it was unable to find it clearly consistent with the national security to grant him security clearance eligibility. The DOD CAS took the action 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

In an undated answer, received on February 15, 2024, Applicant admitted SOR subparagraph 1.a and denied SOR subparagraph 1.b., and he requested a decision based on the evidence on file instead of a hearing. On March 20, 2024, Department Counsel prepared a file of relevant material (FORM), a brief with four attachments supporting the Government's contention that Applicant should not have access to classified information. Applicant received the FORM on March 30, 2024, and was notified that he had 30 days to file a reply. He filed a response on April 2, 2024. The case was then assigned to me that day. Subsequently, I admitted the items in the FORM and Applicant's response.

Findings of Fact

Applicant is a 55-year-old, married man with two adult children. He graduated from college in 1995, earning a degree in construction management. (Item 4 at 6) He works as a chief estimator for a construction company. (Item 3) He has been married since 1996, and he has worked for the same employer for 26 years.

From 1985 to 2018, Applicant used marijuana approximately once every nine to twelve months, either smoking it or eating it in gummy form. (Response at 1) Between 2018 and 2023, he used it two to three times per years in gummy form on ski trips in locations where it was sold legally at the resorts. (Response at 1; Item 1 at 29; Item 4 at 6) Applicant disclosed this marijuana use, as required on a security clearance application, completed in April 2023. He noted that he had stopped using it by January 2023, but would not "confirm or deny" whether he would or would not use marijuana in the future while on vacation. (Item 1 at 29) During an investigative interview in June 2023, Applicant discussed his history of marijuana use and reiterated that he may resume use in the future when he goes skiing. (Item 4 at 5) In Applicant's Response to the FORM, he definitively stated that he would not resume use, and he memorialized his intent not to resume use with a signed statement of intent to abstain in the future. (Response at 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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. 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 to obtain a favorable security decision.

Analysis

Guideline H, Drug Involvement and Substance Abuse

The security concerns about drug involvement and substance abuse are 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.

Applicant’s history of illegal drug use triggers the application of AG ¶ 25(a), “any substance abuse.” His equivocal responses on his April 2023 security clearance application and on his June 2023 sworn statement as to whether he will stop using marijuana use in the future triggers the application of AG ¶ 25(g), “expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.”

Although several states have legalized marijuana use, it remains illegal under federal law as a Schedule I drug under the Controlled Substances Act. (21 U.S.C. § 812(c)) Per Applicant’s April 2024 Response to the FORM, he now unequivocally says that he will not use marijuana again, and he memorialized it in “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(b)(3)) Applicant’s nearly two-year period of abstinence and his execution of a statement of intent not to use marijuana again constitute evidence establishing the mitigating condition set forth in AG ¶ 26(b) “the individual acknowledges his or her drug involvement and substance abuse . . . and has established a pattern of abstinence”

Department Counsel questions the probative value of Applicant’s statement of intent not to use marijuana in the future, given the recency of the statement and given how long he equivocated about resuming use. Applicant was forthcoming about his past marijuana

use. Although he used it over a long period of time, it was infrequent, as he used only a few times each year on ski trips. Moreover, he has not used it in nearly two years. Under these circumstances, I conclude that Applicant's statement of intent not to use marijuana in the future, in tandem with these other facts is sufficient to mitigate the security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Given the length of time that has elapsed since Applicant last used marijuana, I conclude that the likelihood of recurrence is minimal.

Formal Findings

Formal findings for 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 – 1.b: For Applicant

Conclusion

Given the circumstances presented by the record in this case, it is clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Marc E. Curry
Administrative Judge