



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



In the matter of:)	
)	
)	ISCR Case No. 23-02555
)	
Applicant for Security Clearance)	

Appearances

For Government: John Hannink, Esq., Department Counsel
For Applicant: *Pro se*

11/06/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 27, 2024, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant 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) implemented by the DoD on June 8, 2017.

Applicant submitted a response to the SOR (Answer) on February 29, 2024, and she elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on April 25, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the

security concerns. Applicant received the FORM on May 2, 2024, and she did not respond. The case was assigned to me on September 4, 2024. The Government's documents identified as Items 1 through 4 are admitted in evidence without objection.

Findings of Fact

Applicant admitted the sole SOR allegation in her Answer. She is 27 years old. As of her July 2023 background interview, she was engaged to be married and she did not have any children. She has lived with her parents since 2011. (Items 1-4)

Applicant graduated from high school in 2015. She attended community college from 2016 to 2017 but did not earn a degree. She worked for various non-defense contractors from 2013 to 2022. She has worked part-time as a restaurant server and a medical receptionist for two employers since January 2022 and November 2022, respectively. She has never held a security clearance. (Items 1-3)

Applicant used marijuana, with varying frequency, from about May 2012 to at least January 2024, and she intends to continue to use marijuana in the future for medical purposes. (SOR ¶ 1.a) She disclosed information regarding her marijuana use on her May 2023 security clearance application (SCA), during her July 2023 background interview, and in her January 2024 response to interrogatories. (Items 1-4)

Applicant used marijuana socially with friends when she was in high school from 2012 to 2015. She used it one to two times on the weekends or every other weekend. It made her feel relaxed. It was provided by her friends, and she did not purchase it. (Items 1-4)

Upon being diagnosed with a chronic disease in 2013, Applicant has used marijuana daily to medicate. Other prescribed medications made her feel worse. She usually smokes half a marijuana cigarette nightly before bed as it helps relieve her pain and inflammation associated with her disease and helps her sleep. It also relieves her nausea and allows her to eat better. She was issued a medical marijuana card from the state in which she lives in 2019, and she has renewed the card yearly. She purchases approximately an eighth of an ounce of marijuana every other week from a legal marijuana dispensary in the state in which she lives using her medical marijuana card. She intends to continue using marijuana for medicinal purposes. She informed her employers, family, friends, and fiancé of her marijuana use. She affirmed that although her medicinal use of marijuana was legal in the state in which she lives, she was aware that marijuana remains federally illegal. (Items 1-4)

Policies

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

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse as:

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 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant: “(a) any substance misuse . . . ;” “(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;” and “(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.”

Applicant used marijuana from May 2012 to at least January 2024 and she intends to continue to use marijuana in the future for medical purposes. AG ¶¶ 25(a), 25(c), and 25(g) are established.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

(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.

Applicant self-reported information about her marijuana use on her SCA. She acknowledged that her use of marijuana violated federal law, despite its legality in her state and her possession of a medical marijuana card. She expressed her intent to continue to use marijuana in the future for medical purposes, despite her awareness that it is federally illegal. She did not provide a statement of intent to abstain from all drug involvement and substance misuse. None of the mitigating conditions are established.

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 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 this whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the drug involvement and substance misuse security concern.

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

Conclusion

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

Candace Le'i Garcia
Administrative Judge