



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



In the matter of: )  
)  
) ISCR Case No. 24-00006  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

12/18/2024

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate security concerns under Guideline H (Drug Involvement and Substance Misuse). National security eligibility for access to classified information is not granted.

**Statement of the Case**

On January 11, 2023, Applicant submitted a security clearance application (SCA), also known as the Electronic Questionnaires for Investigation Processing. On May 31, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AG) effective within the DOD on June 8, 2017.

On July 3, 2024, Applicant provided a response to the SOR. (Answer) He requested a hearing before an administrative judge, and the case was assigned to me on August 21, 2024. On September 10, 2024, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing by video teleconference scheduled for October 2, 2024. The hearing was convened as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 4, and Applicant offered Applicant's Exhibit (AE) A. There were no objections, and all proffered exhibits were admitted into evidence. DOHA received the transcript (Tr.) on October 9, 2024.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a, 1.b, and 1.c under Guideline H. (Answer) Having thoroughly considered the evidence in the record, I make the following findings of fact:

Applicant is 25 years old. He is single and does not have any children. He earned a bachelor's degree in January 2022. Since May 2022, he has been employed as an engineer by a federal contractor. This is his first application for a DOD security clearance. (GE 1; Tr. 13-14)

SOR ¶ 1.a alleges that Applicant used marijuana, with varying frequency, from about July 2022 to about May 2024. SOR ¶ 1.b alleges that Applicant purchased marijuana during that same period. SOR ¶ 1.c alleges that Applicant used and purchased marijuana, with varying frequency, from about February 2023 to at least May 2024, while holding a sensitive position, i.e., one in which he held (an interim) security clearance. (Answer; Tr. 23; GE 4)

Applicant stated that he started using marijuana in July 2022 to help with his insomnia, a condition he has suffered with since college. He decided to obtain a medical marijuana card in his state of residence so he could use marijuana in conjunction with melatonin to get a good night's sleep. He did not go to his primary doctor, but in July 2022, he found a company on the Internet that connected him to another doctor, who later prescribed him medical marijuana. He did not disclose his marijuana usage on his January 2023 SCA because he stated he did not understand that his use was considered "illegal" since he had a valid prescription to use it. He renewed his medical marijuana prescription in August 2023, after he had been granted an interim security clearance in February 2023. He admitted that he had access to classified information after he received his interim security clearance. He purchased about an ounce of marijuana every month from a dispensary. Applicant stated that his prescription expired in either April or May 2024, which would have also been his last use and purchase of marijuana. (Tr. 14-17, 23; GE 1, 2, 4)

Applicant participated in a background interview in March 2023. He disclosed his use of medical marijuana and provided his medical marijuana card to the investigator. Applicant was made aware that marijuana use was inconsistent with individuals who

possessed security clearances, and this would likely be an issue for him in the future. (GE 3)

Applicant responded to interrogatories in September 2023. He listed that he smoked marijuana in the evenings to ease soreness from exercise and as a sleep aid in conjunction with melatonin. He admitted that he understood marijuana use remains illegal under federal law, and that any future use of marijuana may affect his security clearance. He was also asked if he had ever possessed a security clearance at any time he used an illegal drug, and his response was “no.” Another question queried, “Do you intend to illegally use drugs or controlled substances in the future?” He replied, “no.” During the hearing he explained he was confused about using medicinal marijuana legally in his state, and not fully understanding that he was simultaneously violating federal law. He continued to use marijuana after completing the interrogatory. (Tr. 17-19, 23; GE 2, 4)

Applicant responded to a second interrogatory in May 2024. Therein he disclosed that he had used marijuana nightly from July 2022 to May 2024. He listed that he would discontinue the use of marijuana in order to be in compliance with the guidance issued by the Director of National Intelligence, the responsible party for issuing direction and instructions to heads of federal agencies to ensure appropriate uniformity in the process relating to the determination of eligibility for access to classified information or eligibility to hold a sensitive position. The guidance, which was attached to the interrogatory, detailed the federal law’s prohibition of marijuana use and specified that federal law supersedes even if state law has legalized the use of marijuana. (GE 1, 3)

Applicant said even though he was aware using marijuana could adversely affect his security clearance, he stated, “No time beforehand was I explicitly told to stop, and I was waiting for the moment when I was told to stop because medical marijuana at the time had helped me sleep and I wanted to continue those benefits while possible.” He testified that the second interrogatory he completed in May 2024 finally made him aware that he could not continue using marijuana for medical reasons and maintain a DOD security clearance. (Tr. 18-23)

Applicant clarified during the hearing that since July 2022, he understood the principle under current federal law, and that any use of marijuana is inconsistent with holding a security clearance, but he had hoped for a medical exception. He was also made aware from his March 2023 background interview and from the first interrogatory that his continued use of medical marijuana would most likely be an issue for him in the future. He anticipated that the federal government would see his use of medical marijuana as a mitigating circumstance and make an exception for him. With this thought in the back of his mind, he continued his use of marijuana until May 2024. He stated, “I was holding out in the hopes that it being a, at least legal in the state medical products, [it] would be a circumstance that might be overlooked by the government.” He realized after the second interrogatory that there would be no waiver given by the federal government. He has not used or purchased marijuana since May 2024, and he provided a negative drug test from a urine screening that took place on May 7, 2024. (Tr. 18-23, 28; AE A)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 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 forth at AG ¶ 24:

The illegal use of controlled substances . . . 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.

The guideline at AG ¶ 25 contains the following conditions that could raise a security concern and may be disqualifying:

- (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
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used and purchased marijuana, with varying frequency, from about July 2022 to May 2024, to include while in possession of an interim security clearance that was issued in February 2023, and while holding a sensitive position. The record evidence and Applicant's admissions support the disqualifying conditions listed in AG ¶¶ 25(a), 25(c), and 25(f), above.

The burden has shifted to Applicant to rebut or prove mitigation of the resulting security concerns. AG ¶ 26 provides conditions that could mitigate security concerns in this case:

- (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;

(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; and

None of the above mitigating conditions apply to the facts of this case. Applicant provided some inconsistent explanations. He stated that he was confused about the state law making medicinal marijuana legal, and the prohibition of marijuana under current federal law. However, he also admitted that before he completed his January 2023 SCA, he understood the principle under current federal law, and that any use of marijuana is inconsistent with holding a security clearance, but he had hoped to be considered a medical exception by the federal government.

Applicant used marijuana while he was employed in a sensitive position. He continued to use marijuana following his March 2023 background interview, and after he completed interrogatories in September 2023. He acknowledged that he was made aware that continued marijuana use would likely be a problem for him maintaining a security clearance. It was not until he completed the second interrogatory in May 2024, that he realized that he would never be granted a waiver from the federal government, which would allow him to continue using marijuana for his insomnia. Applicant was slow to accept that his use of marijuana was inconsistent with individuals granted access to classified information or holding a sensitive position. His illegal use of marijuana is recent and not enough time has passed to demonstrate rehabilitation. Applicant failed to mitigate the drug involvement and substance misuse security concerns.

### **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.

Applicant was aware that using medicinal marijuana was inconsistent with his job responsibilities in a sensitive position, but he chose to continue using marijuana in the hopes that he may be granted a waiver from the federal government. This conduct demonstrates unreliability, poor judgment, and an unwillingness to follow laws, rules, and regulations. As such, the record evidence leaves me with questions and doubts about his eligibility and suitability for a security clearance.

### **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.b, and 1.c:	Against Applicant

### **Conclusion**

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

Pamela C. Benson  
Administrative Judge