



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01728
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Cassie Ford, Esq., and John Lynch, Esq., Department Counsel  
For Applicant: Samir Nakhleh, Esq.

11/27/2024

**Decision**

BENSON, Pamela, C., Administrative Judge:

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

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on December 9, 2022. On January 22, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant 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; 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 responded to the SOR on February 8, 2024, and requested a hearing before an administrative judge (Answer). The case was assigned to me on May 8, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 17, 2024, setting the hearing for August 26, 2024. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3 and requested that I take Administrative Notice of facts provided in the U.S. Department of Justice, Drug Enforcement Administration's (DEA) drug fact sheet on marijuana/cannabis use. Applicant testified and offered Applicant Exhibits (AE) A through H. I admitted all proffered exhibits into evidence without objection. Applicant did not object to the Government's administrative notice request of factual information contained in the DEA document, now appended to the record. The Government's April 2024 disclosure letter is marked as Hearing Exhibit (HE) 1. DOHA received the hearing transcript (Tr.) on September 3, 2024.

### **Findings of Fact**

Applicant admitted SOR ¶ 1.a, with clarification, and admitted SOR ¶ 1.b, in his Answer to the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 24 years old. He has never married and has no children. He earned a bachelor's degree in May 2022. In March 2023, he started working for a DOD contractor as a software engineer. He was required to submit to a drug test before he was hired. He was granted an interim secret security clearance on January 11, 2023. (Tr. 15-22, 41, 43; GE 1, 3)

SOR ¶ 1.a alleges that Applicant used marijuana with varying frequency, from February 2019 to about April 2023, while holding a sensitive position, i.e., while he possessed a security clearance.

Applicant testified that he used marijuana infrequently. He stated, "over this span of time, there were effectively two short instances where I did use this substance. There was a short period in time where I used it in college, and then a singular instance many years later where I tried it again." Applicant estimated that he used marijuana three times in 2019 while enrolled in college during the second semester of his freshman year. Marijuana use was not legalized in his state of residence during college. He was experimenting with marijuana while in college, and he discovered that he did not enjoy it, and he did not develop a connection with the individuals who shared the marijuana with him. He did not use marijuana during the next three years of college.

A few months after he filled out his December 2022 SCA, Applicant moved to a state that had legalized the recreational use of marijuana. He was curious about it, and he decided to purchase a single edible-form of marijuana from a dispensary in April 2023. About a week after this purchase, he consumed the edible alone at his apartment while watching a movie. He admitted he held a DOD security clearance at that time. (Tr. 24-29, 37)

Applicant did not fully understand the significance of using marijuana in his new state of residence where marijuana was considered legal, and whether his action would negatively impact his current DOD security clearance. He stated, "at this time, I had a bit of a misunderstanding about the criteria of holding this clearance. I recognized that there was a -- a large stipulation about illegal drug usage. I had a misunderstanding

about whether or not the legality of these drugs [was] based off of a state level or a federal level, which led me to the misunderstanding about whether or not I would be allowed to use the substance while I was working at [DOD contractor] with this clearance.” (Tr. 29)

Applicant testified that, during his background interview in June 2023, a DOD investigator explained how federal law supersedes state law and is the basis for the DOD’s prohibition of all illegal substances for individuals possessing a security clearance. At that time, Applicant was very candid about the four times he had used marijuana. The investigator then provided information about the DOD’s requirements in the context of obtaining or possessing a DOD security clearance. Applicant admitted to the investigator that he had no intent to use illegal drugs in the future. He testified during the hearing that he found marijuana use to be “unpleasant.” His future employment career is much more important to him, and he intends to make the right choices to keep his career path moving in a positive direction. (GE 2; Tr. 44-48)

Applicant has not used marijuana since April 2023. He provided a signed statement of intent to not use any illegal drugs, to include marijuana, in the future. He now understands that all illegal drug use is prohibited by federal law, and there are no exceptions, even if an individual’s state of residence has legalized marijuana. The use of illegal drugs is incompatible with an individual possessing a DOD security clearance. Applicant provided a June 2024 drug test result that showed he tested negative for all illegal substances. He also submitted a certificate dated July 17, 2024, which showed he had successfully completed an online drug course entitled “The Truth About Marijuana.” (AE B, C, H; Tr. 30-34)

### **Character Evidence**

Applicant submitted positive employee evaluations dated June 2023 and December 2023 from his team leader and work mentor. He also provided documentation that he was awarded an “Academic Excellence Scholarship” in 2018 to attend college after graduating from high school. In May 2022, he graduated cum laude with his Bachelor of Science degree. He recently volunteered for a local organization that provides packaged meals to the underprivileged. (AE E, F, G; Tr. 23-24)

### **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 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;
- (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.

The record evidence and Applicant's admissions support the disqualifying conditions listed above.

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 used marijuana three times in 2019 during his freshman year in college, and his fourth and last use of marijuana occurred in April 2023, more than 19 months ago. He filled out his December 2022 SCA and was granted an interim secret security clearance the following month. When he used marijuana in a new location where the state had legalized the use of marijuana, he was unaware at the time that the prohibition under federal law superseded his current resident state law. It was not until his June 2023 background interview when he discovered under federal law, marijuana use was prohibited and incompatible with individuals possessing DOD security clearances. He voluntarily and candidly disclosed his April 2023 use and purchase of marijuana to the investigator. He decided to abstain from marijuana use, even prior to

his comprehension of the DOD security standards, for the simple reason that he does not like using marijuana. He submitted a signed statement of intent to abstain from marijuana, acknowledging that any future misuse is grounds for revocation of national security eligibility.

Applicant's last use of marijuana in April 2023 is not recent. He was candid about his marijuana use and commitment to abide by federal law and DOD regulations, especially once he understood the security significance of illegal drug use and the incompatibility with security clearance eligibility standards. The Directive does not define "recent," and there is no "bright-line" definition of what constitutes "recent" conduct. ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006). The Judge is required to evaluate the record evidence as a whole and reach a reasonable conclusion as to the recency of an applicant's conduct. ISCR Case No. 03-02374 at 4 (App. Bd. Jan. 26, 2006).

I found the Applicant to be candid and sincere during the hearing. He does not associate with anyone who uses illegal drugs, and I find that future illegal drug use is unlikely to recur. His strong desire to succeed in his career and the positive record evidence provides me with confidence as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant successfully mitigated the security concerns arising under Guideline H, drug involvement and substance misuse. AG ¶¶ 26(a) and (b) 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 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. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant's use of marijuana while holding a sensitive position places a heavy burden on him to establish mitigation. After considering the record as a whole, to include the circumstances surrounding Applicant's limited use of marijuana, his full disclosure of his marijuana involvement, and his remorse for his actions, I conclude that Applicant has met his heavy burden of proof and persuasion. Overall, his conduct and continued abstention of marijuana upon learning of its security significance show his reliability, trustworthiness, and good judgment. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline H.

### **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 and 1.b:                           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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson  
Administrative Judge