



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



In the matter of:)	
)	
)	ISCR Case No. 24-00457
)	
Applicant for Security Clearance)	

Appearances

For Government: Cassie L. Ford, Esq., Department Counsel
For Applicant: Patrick K. Korody, Esq.

12/13/2024

Decision

MURPHY, Braden M., Administrative Judge:

On April 9, 2024, the Department of Defense (DOD) issued a Statement of Reasons to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse) and Guideline J (criminal conduct). The DOD issued the SOR 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 National Security Adjudicative Guidelines (AG), which became effective within the DOD on June 8, 2017.

Applicant answered the SOR on April 19, 2024, and requested a hearing. Following a request from her counsel for expedited processing, the case was assigned to me on October 16, 2024. The hearing was held as scheduled on November 20, 2024, by video-teleconference. Applicant, her husband, and three other witnesses testified. The Government submitted three exhibits (GE 1-GE 3). Applicant submitted Applicant's Exhibits (AE) A – K. All of the submitted exhibits were admitted without objection. The record was held open for submission of additional information. The next day, Applicant's counsel submitted three documents for administrative notice (AN I – AN III), all of which he had cited in closing argument. (Tr. 130-131) He subsequently submitted four

additional exhibits (AE L, M, N, and O), all of which were admitted without objection. The record closed on December 2, 2024. DOHA received the hearing transcript (Tr.) the same day.

On December 10, 2024, I proposed to the parties that this case was appropriate for a summary disposition in Applicant's favor. The next day, Department Counsel indicated that the Government did not object.

Amendment to the SOR

The original SOR alleged a Guideline H security concern (cross-alleged under Guideline J) due to Applicant's alleged use of marijuana "from about July 2020 to about March 2022, while employed in a sensitive position" at a former employer, contractor C. (SOR ¶¶ 1.a, 2.a). Applicant denied both allegations, asserting that she had been unemployed when she used marijuana for medical purposes to treat chronic back and neck pain, and that she used the drug from about July 2020 to April 2021, not the dates alleged.

The evidence corroborated Applicant's assertions that her marijuana use and purchases were solely for medical purposes under her state's medical marijuana law. The evidence also showed that her marijuana use took place for a limited period (and to little effect) while she was unemployed. Being unemployed, she was not in a sensitive position at the time and did not have access to classified information (though her most recently granted secret clearance was still "active.")

At the end of the hearing, Department Counsel conceded that the Government could not meet its burden of establishing SOR ¶ 1.a, as alleged. (Tr. 125-126) Further, *sua sponte* and without objection from either party, I amended the SOR to conform to the record evidence, by adding the following allegation:

¶ 1.b: You used medical marijuana from about July 2020 to April 2021 and purchased marijuana for medical purposes between about June 2020 and February 2021. (Tr. 123-126)

Findings of Fact

Applicant is 49 years old. She was born in the United States of Canadian parents. She was raised in Canada and enlisted in the U.S. Air Force at age 18, in 1996. She served for about 22 years and retired honorably as a senior master sergeant (E-8) in December 2018. Her husband is a retired chief master sergeant (E-9). They met in the Air Force and retired together. They have been married for more than 20 years. They have two teenage children together and two children from his prior marriage, both now adults. (Tr. 71-73, 107, 121-122; GE 1; AE J)

Applicant was healthy and athletically active until late in her Air Force career, when she was injured while working out. This led to chronic back and neck pain, and other health issues. (Tr. 27-29, 76-77) She has a 100% service-connected disability as

rated by the Department of Veterans Affairs (VA) and receives \$4,544 in monthly benefits. (Tr. 107; AE O) She has tried many avenues of treatment for her conditions, including special beds, therapies, multiple surgeries, and prescription medications. These treatments continue. (Tr. 98, 107-114, 117-; AE L, AE M)

After retiring from the Air Force, Applicant worked for contractor 1, from January 2019 to May 2020. In January 2020, she obtained a medical marijuana card, under her state's medical marijuana program. She did so in anticipation that she would leave employment with contractor 1 in March 2020 when the contract ended. In fact, the contract was extended until May 2020, and she left the workforce when it ended. (Tr. 27, 77-79, 108-110)

Applicant testified credibly that she waited until leaving that job (a job in a sensitive position with a clearance) before either purchasing or using medical marijuana. She first purchased marijuana at a dispensary in June 2020 and began using it to treat her back pain, neck pain, insomnia, and other conditions, in July 2020. Applicant used marijuana about three to four times a week. She kept the marijuana outside (on the property) and away from her children. She only used it outside as well. Her husband was aware of her actions. (Tr. 27-34, 78-81, 93) Applicant used medical marijuana in this manner until April 2021. She purchased medical marijuana on nine occasions between June 2020 and February 2021. (AE N) She renewed her medical marijuana card one time. She found that the marijuana was not effective, so she stopped using it. Her medical marijuana card expired in January 2022 and has not been renewed. She only used medical marijuana when she was unemployed and she never used it while in a sensitive position, though her clearance was still "active" from her time in the Air Force. (Tr. 74, 86-87, 90-91, 97, 104-110) She was unemployed from May 2020 until October 2021 when she returned to work, for contractor 2. (AE E; Tr. 92-93)

Applicant began working for her current employer, contractor 3, in December 2022. She submitted a security clearance application (SCA) in May 2023. She credibly testified that the dates of use she disclosed on her SCA (July 2021 to March 2022) were off by about a year. (GE 1 at 38, Tr. 81-83, 94-95, 101) The correct dates of her use were between July 2020 and April 2021, as she had clarified in her background interview and confirmed in her interrogatory response. (GE 2 at 2, 18; Tr. 87, 97-100) She clarified that she also erred in stating on her SCA that she used marijuana 10 times, when she meant to indicate that she purchased it 10 times. (GE 1 at 38; Tr. 95-97, 106, 117) She also confirmed that, while her most recent clearance from her Air Force service was "active" when she was using medical marijuana, she was unemployed and not in a cleared or sensitive position at the time. She acknowledged knowing that marijuana remained illegal under federal law when she used it and purchased it. (Tr. 75-78, 81-86, 101, 106-107)

Applicant has never used marijuana for any purpose other than medicinally as discussed. She has never used any other illegal drug for any other purpose. She has not used marijuana for any purpose since early April 2021, because she found it was not effective and because she would never use marijuana while in a cleared or sensitive position. While her medical conditions are chronic, she is pursuing medical treatment

with her physicians. She is on appropriate prescription medications for pain and follows their instructions. She is currently scheduled for additional neck surgery. Applicant provided a sworn statement of intent to abstain from illegal drugs and has no intent to use marijuana in the future. (Tr. 74, 81-84, 90-91, 93, 98-101, 116-117; AE G)

Applicant's husband testified credibly on her behalf, as did a former co-worker and two retired Air Force senior NCOs, both of whom served with her at various times in her career and remain close friends. All of Applicant's character witnesses testified credibly and consistently to her judgment, trustworthiness, reliability, work ethic, dedication, commitment to excellence, and fine moral character both personally and professionally. (Tr. 23-40, 42-48, 51-59, 61-70) Applicant is active in her community and with a charity that provides scholarships to local students. (Tr. 89-90)

Analysis

The disqualifying conditions under Guideline H AG ¶¶ 25(a) (illegal use) and 25(c) (purchase) and Guideline J AG ¶ 31(b) are raised by the evidence. Applicant used marijuana frequently, but only for a limited period and only for medicinal purposes, in an attempt (largely unsuccessful) to treat her painful conditions, three to four years ago. She was retired from the Air Force and unemployed at the time. Although she still held an active clearance from her time in the Air Force, when she used medical marijuana, she was no longer in a sensitive position and did not use illegal drugs "while granted access to classified information." Guideline H AG ¶ 25(f) does not apply.

Applicant has no desire or future intention to use illegal drugs and understands that to do so is unacceptable for someone entrusted with access to classified information. She is treating her chronic medical conditions through responsible and legal means, under her physicians' care. I find that she has abstained from illegal drug use for an appropriate period, and that she is unlikely to use illegal drugs in the future. The mitigating conditions under AG ¶¶ 26(a), 26(b), 32(a) and 32(d) are applicable.

The security concerns over Applicant's medical marijuana use no longer create doubt about her current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered that the favorable evidence outweighed the unfavorable evidence. I also gave due consideration to the whole-person concept, including Applicant's Air Force career and strong character evidence. Accordingly, I conclude that she has met her ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant her eligibility for access to classified information. This case is decided for Applicant.

Braden M. Murphy
Administrative Judge