



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



In the matter of:	)	
	)	
XXXXXXXXXXXX	)	ISCR Case No. 24-00571
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

12/05/2024

**Decision**

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He failed to mitigate the security concerns stemming from his drug involvement and substance misuse. Accordingly, this case is decided against Applicant.

**Statement of the Case**

Applicant submitted his security clearance application (SCA) on August 24, 2023. The Department of Defense issued Applicant a Statement of Reasons (SOR) on May 21, 2024, detailing security concerns under Guideline H, drug involvement and substance misuse. The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On July 12, 2024, Applicant submitted an answer (Answer) to the SOR and elected a decision on the written record by an administrative judge from the Defense Office of

Hearings and Appeals (DOHA). On July 23, 2024, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6. DOHA sent the FORM to Applicant on July 24, 2024, who received the FORM on July 29, 2024. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a response to the FORM. The SOR and the Answer (Items 1 and 4, respectively) are the pleadings in the case. Items 2 and 3 are a transmittal letter and a receipt, respectively, and have no probative value. Items 5 and 6 are admitted in evidence without objection. The case was assigned to me on November 3, 2024.

### **Findings of Fact**

Applicant is 29 years old, never married, and with no children. He earned his bachelor's degree in May 2018. He has lived with a cohabitant since January 2021. He has worked for a defense contractor since March 2023. This is his first security clearance application. (Item 5.)

Under Guideline H, the SOR alleged that Applicant purchased and used marijuana on various occasions between about September 2013 and October 2023. (Item 1.) He admitted those allegations. He explained:

Yes, my drug use is over a prolonged period, but it was sporadic in nature usually during holidays or special occasions (i.e. my birthday). This claim is supported by being able to obtain employment from numerous companies that required drug testing. Since my last purchase and use in October 2023, I have absconded [*sic*] [abstained from] the purchase, use and environments conducive of marijuana use in order to be eligible for a security clearance. (Item 4.)

Applicant disclosed his marijuana use in his August 24, 2023 SCA, stating: "I intend to use marijuana again because it aids in relaxation and produces no adverse effects, unlike alcohol." (Item 5.)

Applicant's October 26, 2023 personal subject Interview verified on May 6, 2024 (PSI), reported that he began using marijuana in high school (sometime between 2009 to 2013) and continued in college (2013 to 2018). The SOR tracks the frequency of his use between September 2013 and October 2023. He purchased the marijuana from dispensaries or friends. He first learned that marijuana use was federally illegal at a security briefing on October 6, 2023. He used marijuana once more after the briefing, because his clearance had not yet been granted, and he had not yet been interviewed by an agent. (Items 1, 5, and 6.)

The interrogatories asked if Applicant intended to use marijuana in the future. His verified response was "No." He was also asked if he had ever been drug tested by his current employer, and he answered: "Yes. March 2023. Result. Passed." (Item 6.)

## Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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 then 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 in seeking a favorable security decision.

## Discussion

### Guideline H, Drug Involvement and Substance Abuse

Under AG ¶ 24 for illegal drug use, suitability of an applicant may be questioned or put into doubt because drug use can both impair judgment and raise questions about a person’s ability or willingness to comply with laws, rules, and regulations:

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. Controlled substance means any *controlled substance* as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Marijuana is a Schedule I controlled substance, and possession of it is regulated by the federal government under the Controlled Substances Act. 21 U.S.C. § 811 *et seq.* The knowing or intentional possession and use of any such substance is unlawful and punishable by imprisonment, a fine or both. 21 U.S.C. § 844. In an October 25, 2014

memorandum, the Director of National Intelligence (DNI) affirmed that the use of marijuana is a security concern. James R. Clapper, Director of National Intelligence, Memorandum: *Adherence to Federal Laws Prohibiting Marijuana Use* (October 25, 2014). See also <http://www.dea.gov/druginfo/ds.shtml>

More recently, on December 21, 2021, DNI signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior medicinal or recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including . . . purchase . . . ; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant admitted facts that trigger disqualifying conditions AG ¶¶ 25(a), (c), and (g).

The next inquiry is whether Applicant’s security concerns raised by marijuana use have been mitigated. The following mitigating condition under AG ¶ 26(b) for drug involvement is the most appropriate and will be discussed here:

[T]he individual acknowledges . . . his 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.

The initial requirement of AG ¶ 26(b) is that Applicant acknowledges “his drug involvement and substance misuse.” He satisfied this requirement by his Answer, his PSI, and his responses to interrogatories.

Applicant’s Answer and responses to interrogatories evidence that he has abstained from the purchase, use, and environments conducive to marijuana use in order to be eligible for a security clearance. He also stated that he has no intent to use marijuana in the future. This satisfies AG ¶ 26(b)(1), (2), and (3).

The next requirement is to show a “pattern of abstinence.” Applicant admittedly had a prolonged period of marijuana use beginning in September 2013 until October 2023. His last use of marijuana was *after* his October 6, 2023 security briefing when he learned it was federally illegal. That last usage was ill-advised but candidly admitted. Therefore, his abstinence began sometime after that last usage. His period of abstinence is just over one year. That is far less than the period of abstinence warranted by his more than a decade of marijuana use. This element of AG ¶ 26(b) is not satisfied.

### **Whole-Person Concept**

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9) potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For those reasons, I conclude that Applicant has not mitigated the security concerns arising under Guideline H, drug involvement and substance abuse. I find against him on SOR ¶ 1.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. National security eligibility for access to classified information is denied.

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Philip J. Katauskas  
Administrative Judge