



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



In the matter of:	)	
	)	
	)	ISCR Case No. 24-00214
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Troy Nussbaum, Esq., Department Counsel  
For Applicant: *Pro se*

12/19/2024

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**Decision**

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GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, drug involvement and substance misuse, regarding her use of marijuana. Applicant’s eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted security clearance applications (SCA) on November 29, 2021, and July 7, 2022. On March 11, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (drug involvement and substance misuse). The CAS issued the SOR under Executive Order 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 25, 2024 (answer). In her answer, she requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge.

On May 6, 2024, the Government was ready to proceed to hearing. On October 23, 2024, the case was assigned to me. On October 25, 2024, DOHA issued a notice scheduling a hearing for December 4, 2024. The hearing proceeded as scheduled. The Government proffered four exhibits, which I admitted as Government Exhibits (GE) 1 through 4, without objection. Applicant testified, but called no witnesses and presented no documents. At Applicant's request, I held the record open until December 17, 2024, to provide her an opportunity to supplement the evidentiary record. DOHA received the hearing transcript (Tr.) on December 16, 2024. On December 17, 2024, Applicant submitted Applicant Exhibits (AE) A through C, which I admitted without objection.

### **Findings of Fact**

The SOR alleged that Applicant used marijuana with varying frequency from about December 2018 to about July 2022 (SOR ¶1.a). It also alleged that Applicant's July 2022 marijuana use occurred while she occupied a sensitive position (SOR ¶1.b). In Applicant's answer to the SOR, she denied SOR ¶ 1.a in part, admitting her marijuana use occurred with varying frequency between December 2018 and August 2020, and again in July 2022. She fully admitted ¶ 1.b. Her admissions are included in the findings of fact. After a thorough and careful review of the pleadings and exhibits, I make the following findings of fact.

Applicant is 27 years old. At the age of 12, Applicant was placed in the foster-care system. She lived in approximately ten different foster homes between the ages of 12 to 18. Her mother and father were both drug addicts throughout Applicant's entire life. Her father died due to a drug overdose on September 3, 2022. She graduated with a master's degree in business administration in May 2022. She has worked for a government contractor full time for two years. She also performed an internship with the same contractor while in graduate school. (GE 1, GE 2; AE A; Tr. 28)

Applicant disclosed her marijuana use from about December 2018 to about July 2022 on the first SCA and indicated that she did not intend to use THC or any other controlled substance in the future. She was granted eligibility to occupy a sensitive position on April 15, 2022, and signed a nondisclosure agreement (NDA) on June 22, 2022, the same month she started her full-time position. She completed a second SCA on July 7, 2022, because her company wished to sponsor her for a higher-level clearance. She disclosed her July 4, 2022 marijuana use on her July 7, 2022 SCA. (GE 1, GE 2, GE 3, GE 4)

Applicant began using marijuana to help with depression and anxiety in December 2018. Over the next two years, she used it approximately 100 times. Mid-2020, she started graduate school and "realized that [marijuana use] was not a productive coping

mechanism” for her. She stopped communicating with the individuals that provided her the marijuana at that time. (GE 1, GE 2, GE 3, GE 4; Tr. 24-27)

Applicant did not use marijuana again until July 4, 2022. She had just moved away from her home state for her current job. At the same time, her father experienced serious health issues. These two coinciding events caused her significant stress. She and her father had recently started to repair their relationship, and she was excited be part of his life. On July 4, 2022, she went to brunch with a new friend, who gifted her a joint. She temporarily reverted to her old way of dealing with anxiety and smoked the marijuana. She has not used marijuana since that day and no longer associates with the individual that gave it to her. (Tr. 28-32)

Knowing that she needed to find a better way to deal with stress, Applicant started attending therapy in fall of 2022. She has attended therapy sessions once a month. She testified that she has learned coping mechanisms like meditation, exercise, and talking out her problems. (AE B; Tr. 23, 39-40)

Applicant presented letters of support from multiple sources. The letter from the father of her half-sister documents the adversities she struggled with as a child and how she has matured into a responsible adult despite those adversities. Her program lead highlighted her “attention to detail and adherence to established policies exemplify her dedication to maintaining the highest standards of national security.” Her supervisor during her internship wrote of her honesty and integrity. Her career coach from her graduate school also wrote a letter of support noting the significant efforts she has put into achieving her professional and company goals. Two of her kickball teammates wrote letters of support based on their personal friendships. One highlighted that Applicant volunteers in local urban communities; the other discussed her commitment to personal and professional growth, her trustworthiness, and that she recently purchased her first home. (AE A) Applicant’s performance evaluations reflect growth and that she is maturing in her position. (AE C)

## **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court has 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).

The adjudicative 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(a), 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 access to classified information 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. Under 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.

## **Analysis**

### **Guideline H, Drug Involvement and Substance Misuse**

AG ¶ 24 expresses the security concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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 under Federal law pursuant to Title 21, Section 812 of the United States Code. Schedule I drugs are those which have a high potential for abuse; have no currently accepted medical use in treatment in the United States; and lack accepted safety for use of the drug under medical supervision. Section 844 under Title 21 of the United States Code makes it unlawful for any person to knowingly or intentionally possess a controlled substance not obtained pursuant to a valid prescription.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25, and the following are potentially applicable: AG ¶ 25(a) (any substance misuse (see above definition)); AG ¶ 25(c) (illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia); and AG ¶ 25(f) (any illegal drug use while granted access to classified information or holding a sensitive position). Applicant's use of marijuana from 2018 to 2020, and again in 2022 establishes AG ¶¶ 25(a) and 25(c). Further, she admitted using marijuana while holding a sensitive position on July 4, 2022. AG ¶ 25(f) is applicable.

I have considered the mitigating conditions under AG ¶ 26. The following 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 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 is grounds for revocation of national security eligibility.

Both mitigating conditions apply. Applicant's illegal marijuana use was limited to two distinct periods: use during graduate school, and in reaction to her father's illness. She was only 25 years old during her most recent use and she has not used marijuana in the past two years. While she had previously expressed intent to discontinue marijuana use stated on her SCA and then used it again on July 4, 2022, she has matured and can be trusted to abide by her written promise not to use it. Her willingness to disclose her marijuana use on two separate SCAs is evidence of her trustworthiness. Her 2022 marijuana use occurred under unusual circumstances surrounding her father's illness. Her willingness to abstain from marijuana use is not just tied directly to her clearance eligibility. It also comes with a new level of maturity. Moreover, the death of her father due to substance abuse appears to have helped cement her decision to avoid drugs. She has disassociated from drug-using associates and contacts, and avoids environments where drugs are used. She is engaged in therapy and is discovering healthy ways to manage her anxiety and depression. Her current reliability, trustworthiness, and good judgment is documented in the letters of support and her performance reviews. She is unlikely to use marijuana again. AG ¶ 26(a) or AG ¶ 26(b) provide full mitigation.

## **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 my whole-person analysis. Additionally, I had the opportunity to observe her testimony. Her demeanor conveyed honesty. She was both sincere and remorseful. She owned up to her mistake and did not attempt to minimize or explain away her conduct. The details about her childhood and her parents in the findings of fact were not provided as an excuse for her conduct, but rather as context in response to questions from Department Counsel. I conclude Applicant provided sufficient evidence to mitigate the security concerns about her drug involvement and substance misuse. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

## **Conclusion**

Considering all of the circumstances, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

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Jennifer I. Goldstein  
Administrative Judge