



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 24-00656

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

12/30/2024

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**Decision**

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WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate drug involvement and substance abuse concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

**Statement of the Case**

On May 13, 2024, the Defense Counterintelligence Security Agency (DCSA) Consolidated Adjudications Service (CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and substance misuse guideline the DSCA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, Department of Defense (DoD) Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on May 17, 2024, and requested her case be decided on the written record. The case was assigned to me on December 3, 2024. Applicant received the File of Relevant Material (FORM) on August 17, 2024, and was instructed to file any objections to the FORM or supply additional information for consideration within 30 days of receipt. Applicant did not file objections to the FORM or supply new information.

### **Summary of Pleadings**

Under Guideline H, Applicant allegedly (a) used marijuana from about April 2020 to the present; (b) purchased marijuana from June 2020 until at least February 2024; and expressed an intent (as of May 2024) to continue using marijuana. Allegedly, Applicant used marijuana with varying frequency during her period of use.

In Applicant's response to the SOR, she admitted each of the allegations covered by SOR ¶¶ 1.a through 1.c. She added no explanations or clarifications.

### **Findings of Fact**

Applicant is a 29-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married in February 2022 and has no children from her marriage. (Item 3) She earned a high school diploma in August 2013 and a bachelor's degree in May 2017. She reported no military service.

Since August 2017, Applicant has worked for her current employer as a business process day specialist. She has held a public trust position with another federal agency since August 2017. (Item 3)

### **Applicant's drug history**

Between April 2020 and at least February 2024, Applicant purchased and used marijuana gummies with varying frequency recreationally in her own home environment in her state of residence. (Item 3) In her convened November 2023 personal subject interview (PSI) with an investigator from the Office of Personnel Management (OPM) she expressed her intention to continue purchasing and using marijuana at the same rate of frequency unless her job requires her to abstain from illegal drugs. (Item 5) Her stated motivation for using marijuana is that the drug helps her relax. Applicant told the OPM investigator that her marijuana use is legal in her state of residence and has not caused her any problem. (Item 3)

Applicant does not associate with people who use drugs illegally. While she has not stopped or reduced her use of marijuana, she would do so if required by her job.

(Item 5) Her spouse is aware of her marijuana use. She made no claim of unawareness of marijuana's status as a federally controlled Schedule 2 drug.

Asked about her marijuana use in follow-up interrogatories propounded to her in February 2024, Applicant confirmed her monthly recreational use of the drug in her home (in a state where marijuana is legalized) in gummy edible form with roughly 15 mgs of THC per occasion. (Item 4) She claimed a last use of marijuana in January 2024. Acknowledging her understanding that marijuana remains illegal under both federal law and her own employer's drug policy, she attached her employer's anti-drug policy. (Item 4)

Responding to questions posed to her in a second set of interrogatories propounded to her in May 2024, Applicant reported she last used and purchased marijuana in February 2024. (Item 5) She also confirmed her intent to continue using marijuana in the future. (Item 5)

### **Policies**

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." As Commander in Chief, "the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

### **Drug Involvement**

*The Concern:* The illegal use of controlled substances, to include the misuse of 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.

### **Burdens of Proof**

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be "in terms of the national interest and shall in no sense be a

determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S.518, 531, *supra*. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S 518, 531; *supra*; see AG ¶ 2(b).

### **Analysis**

Security concerns are raised over Applicant’s lengthy history of purchases and use of federally illegal marijuana. Considered together, Applicant’s involvement with illegal drugs raises security concerns over whether her use of illegal drugs reflect actions incompatible with the good judgment, reliability, and trustworthiness requirements for gaining access to classified information.

### **Drug involvement concerns**

Applicant’s admissions to using illegal drugs raise security concerns over judgment and risks of recurrence. On the strength of the evidence presented, three disqualifying conditions (DCs) of the AGs for drug involvement apply to Applicant’s situation: DC ¶¶ 25(a), “any substance misuse”; 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of illegal drugs or drug paraphernalia”; and 25(g), “expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.”

Disqualifying drug use is particularly serious when it continues to occur with persons who have or seek access to classified information and who are aware that marijuana use violates both federal law and the employer’s drug policy. See ISCR Case No. 06-18270 at 3 (App. Bd. Nov. 7, 2007) (drug use in violation of an employer’s drug policy) Applicant’s continued use of marijuana even after completing her e-QIP and becoming aware of both federal and employer bans on marijuana use is considered

reckless and incompatible with an applicant's claim of either intended future avoidance or conditional use of marijuana. See ISCR Case No. 19-00540 at 2 (App. Bd. Dec. 13, 2019).

In Applicant's case, her expressed intent to continue her marijuana use in the future is not only recent, but it is accompanied by a condition that any intended cessation of marijuana use is a requirement of her job. So, not only is Applicant's willingness to cease her marijuana use a conditional one (only if her job requires it), but it is a commitment that is undercut by her still recent use of federally illegal marijuana. See ISCR Case No. 11-04395 (App. Bd. Oct. 5, 2012).

Without a more lengthy time of sustained abstinence from marijuana use and a firmer commitment to sustained abstinence of use of the drug, none of the mitigating conditions are available to Applicant at this time. A recurring cycle of illegal drug use following the completion of a security clearance application (as in Applicant's case) is more predictive of the future and incompatible with the application of any of the mitigating conditions covered by Guideline H. See, e.g., ISCR Case No. 11-00193 (App. Bd. Jan. 24, 2013). Applicant's continued use of marijuana makes it too soon to absolve her of risks of recurrence.

While this is not a close case, even close cases must be resolved in the favor of the national security where doubt exists. See *Dept. of Navy v. Egan*, *supra*. Quite apart from any judgment reservations the Government may have for the clearance holder employed by a defense contractor, the Government has the right to expect the keeping of promises and commitments to drug use abstention (free of expressed conditions) from the trust relationship it has with the clearance holder. See *Snepp v. United States*, 444 U.S. 507, 511n.6 (1980).

### **Whole-person assessment**

From a whole-person perspective, Applicant has failed to establish enough independent probative evidence of her overall trustworthiness, reliability, and good judgment required of those who seek eligibility to hold a security clearance or sensitive position. She lacks enough positive reinforcements and time in abstinence from active use of federally controlled marijuana to facilitate safe, risk-free predictions.

Considering the record as a whole at this time, there is insufficient evidence of sustainable mitigation in the record to make safe predictable judgments about Applicant's trusted ability to avoid illegal drugs in the foreseeable future. Overall, she does not mitigate security concerns with respect to the allegations covered by SOR ¶¶ 1.a-1.c.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person, I conclude drug involvement security concerns are not mitigated. Eligibility for access to classified information is denied.

### **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:

GUIDELINE H (DRUG INVOLVEMENT):      AGAINST APPLICANT

Subparagraphs 1.a-1.c:      Against Applicant

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

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Roger C. Wesley  
Administrative Judge