



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



In the matter of:	)	
	)	
	)	ISCR Case No. 24-00610
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

11/26/2024

---

**Decision**

---

HOGAN, Erin C., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H, Drug Involvement and Substance Misuse. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 5, 2023. The Defense Counterintelligence & Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) on May 23, 2024, detailing security concerns under Guideline H, Drug Involvement and Substance Misuse. DCSA CAS acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on June 16, 2024, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On July 2, 2024, Department Counsel submitted the Government’s file of relevant material (FORM), including documents identified as Items 1 through 6. Applicant

received the FORM on July 30, 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 any information within the prescribed time period. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted into evidence without objection. The case was assigned to me on November 6, 2024.

### **Findings of Fact**

In Applicant's SOR response, he admitted all SOR allegations. Applicant's admissions are accepted as findings of fact. (Item 2)

Applicant is 29 years old. He has been employed by a defense contractor since June 2021 and is applying for a security clearance. He states he was initially granted a security clearance with another employer in 2018. This is not verified in DISS/CATS. He is a high-school graduate and has some community college credit. He has no military service. He is married and has no children. (Item 3; Item 5)

The SOR alleges under Guideline H that Applicant used marijuana (THC) with varying frequency from about January 2015 to at least January 2024 (SOR ¶ 1.a: Item 4; Item 6); and that he intends to use marijuana in the future. (SOR ¶ 1.b: Item 4)

Applicant listed his illegal marijuana use on his May 2023 SCA in response to Section 23 - Illegal Use of Drugs or Drug Activity. He estimated he used marijuana from January 2015 to April 2023. He has a medical card and uses marijuana in the evening for pain and sleep. He prefers to use it as an alternative to prescription medication. He indicated that he intended to use marijuana in the future. (Item 3 at 28 -29)

In response to DOHA Interrogatories, dated January 3, 2024, Applicant listed that he smoked marijuana or ate THC edibles in the evening before bedtime. He smokes about one gram of marijuana in the evening and takes about 2 mg of THC edibles at bedtime. He obtained a medical marijuana card to treat chronic pain and to help him sleep in 2017. Marijuana helps him relax. He purchases all of his marijuana from a state-licensed dispensary. He acknowledged that marijuana use remains illegal under federal law and that any future use of marijuana may affect his security clearance eligibility. He intends to continue to use marijuana in the future because it helps and he does not need to take prescription drugs. (Item 4)

Applicant's company has a drug-free workplace policy. The policy mentions that all federal state and local laws must be followed. Even if Applicant's state has legalized the use of marijuana/THC, it remains illegal under federal law. (Item 4 at 10-32)

### **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).

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 for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement and substance misuse under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse;

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(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

The record evidence shows Applicant has a history of habitual marijuana and THC edible use from January 2015 to at least January 2024. He admits to purchasing THC edibles and marijuana from state dispensaries every two weeks. He uses marijuana on a daily basis. He smokes one gram of marijuana in the evening and takes a 2 mg marijuana edible before he goes to bed at night. He is aware marijuana use remains illegal under federal law but intends to continue using marijuana in the future. AG ¶¶ 25(a), 25(c), and 25(g) apply.

In addition to the above matters, I note that the Director of National Intelligence (DNI) issued an October 25, 2014, memorandum concerning adherence to federal laws prohibiting marijuana use. In doing so, the DNI emphasized three things. First, no state can authorize violations of federal law, including violations of the Controlled Substances Act, which identifies marijuana as a Schedule I controlled drug. Second, changes to state law (and the laws of the District of Columbia) concerning marijuana use do not alter the national security adjudicative guidelines. And third, a person's disregard of federal law concerning the use, sale, or manufacture of marijuana remains relevant when making eligibility decisions for sensitive national security positions.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

AG ¶ 26(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

AG ¶ 26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence on 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.

Neither mitigating condition applies. Applicant has used marijuana on a daily basis since 2015. He is aware that marijuana remains illegal under federal law even though it is legal in the state where he resides. He is also aware that marijuana use is not compatible with possessing a security clearance. Despite this knowledge, he intends to continue to use marijuana on a daily basis. His actions raise concerns about his judgment, trustworthiness, and reliability. He did not mitigate the concerns under Drug Involvement and Substance Misuse.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 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 and the AG ¶ 2(d) factors in this whole-person analysis.

Applicant illegally used marijuana on a daily basis since January 2015. He intends to continue using marijuana even though he is aware that his marijuana use is in violation of federal law and is not compatible with holding a security clearance. Concerns under Drug Involvement and Substance Abuse are not mitigated.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a – 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 or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

---

Erin C. Hogan  
Administrative Judge