



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



In the matter of: )  
)  
) ADP Case No. 23-01324  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Patrica M. Lynch-Epps, Esq., Department Counsel  
For Applicant: *Pro Se*

02/20/2024

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**Decision**

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BORGSTROM, Eric H., Administrative Judge

From July 2015 until about July 2023, Applicant used marijuana, with varying frequency. He repeatedly expressed his intent to continue using marijuana, acknowledging that his possession and use violated Federal drug laws. Eligibility for access to sensitive information is denied.

**Statement of the Case**

Applicant is requesting a trustworthiness determination for access to sensitive information, also known as a "public trust" determination, to occupy an automated data-processing (ADP) position. On August 25, 2023, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline H (drug involvement and substance misuse). The CAS acted under Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

In Applicant's July 12, 2023 response to the SOR (Answer), he denied SOR ¶ 1.a. and admitted SOR ¶ 1.b. He did not attach any documentary evidence. He requested a decision by a Defense Office of Hearings and Appeals (DOHA) administrative judge based upon the written record in lieu of a hearing. (Answer) On October 30, 2023, Department

Counsel amended the SOR to substitute "marijuana" for "cocaine" in the second sentence of SOR 1.a. (Amended SOR) On November 1, 2023, Applicant admitted the SOR 1.a. as amended. (Amended Answer)

On November 20, 2023, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM includes Government Exhibits (GE) 1 through 6. In the FORM, Department Counsel provided Applicant notice that failure to respond to the FORM may be considered a waiver of any objections to the admissibility of GE 1 through 6.

On December 4, 2023, Applicant received the FORM and its attachments. He did not submit a response to the FORM within 30 days of receipt or raise any objections to the admissibility of any of the FORM exhibits. This case was assigned to me on February 1, 2024. GE 1 through 6 are admitted without objection.

### **Findings of Fact**

Applicant is 28 years old. He graduated from high school in May 2014, and he earned a bachelor's degree in May 2019. Since June 2019, he has been employed as a technical-solution analyst for a DOD contractor. He has never married, and he does not have any children. (GE 4)

On August 18, 2022, Applicant completed and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 23 - Illegal use of Drugs or Drug Activity, he reported that he used marijuana on a weekly basis from July 2015 until July 2022. He further reported that he was an amputee, used marijuana to alleviate pain, and intended to use marijuana in the future. (GE 4)

On October 4, 2022, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, he explained that he had last used marijuana three years prior and that he had used a Delta-8 THC variant instead of marijuana for the last three years. He did not have a medical marijuana card at the time of the interview, but he intended to apply for one to manage his pain. At the time of the interview, he was aware that the use of marijuana was illegal under Federal law. (GE 5)

On April 15, 2023, Applicant responded to CAS interrogatories about his illegal drug use. He reported that he "currently" used illegal drugs, but that he did not intend to use illegal drugs in the future. He admitted that he used marijuana monthly and that he had most recently used marijuana on April 1, 2023. (GE 6)

In his July 14, 2023 response to DOHA interrogatories, Applicant adopted the summary of the OPM interview without any corrections or additions. He also stated, "At this time, marijuana is now recreationally legal and I purchase from the dispensary. I understand that it is federally illegal as stated in the report." He admitted that he intended to use marijuana in the future, that he used marijuana on a weekly basis, and that he had most recently used marijuana in July 2023. As to his future intent to use illegal drugs, he responded, "I have not decided to stop using [illegal drugs]." (GE 5)

In his Answer, Applicant admitted his intent to use marijuana in the future. In his Amended Answer, he admitted using marijuana, with varying frequency, from July 2015 to about July 2023. (Answer; Amended Answer)

## **Policies**

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to sensitive information.

These 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 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 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 to obtain a favorable security decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See also EO 12968, Section 3.1 (b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

The trustworthiness concern for drug involvement is set out in AG ¶ 24:

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.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 25. The following are potentially applicable in this case:

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

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.

On October 25, 2014, the then Director of National Intelligence (DNI) issued guidance that changes to laws by some states and the District of Columbia to legalize or decriminalize the recreational use of marijuana do not alter existing federal law or the National Security Adjudicative Guidelines, and that an individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security eligibility determinations.

Moreover, on December 21, 2021, the current DNI issued clarifying guidance concerning marijuana, noting that prior recreational use of marijuana by an individual may be relevant to security adjudications, but is not determinative in the whole-person evaluation. Relevant factors in mitigation include the frequency of use and whether the individual can demonstrate that future use is unlikely to recur.

Applicant admitted that he used marijuana from July 2015 to about July 2023 (SOR ¶ 1.a.). He repeatedly expressed his intent to use marijuana in the future (SOR ¶ 1.b.). AG ¶¶ 25(a), 25(c), and 25(g) apply.

Conditions that could mitigate the drug involvement trustworthiness concerns are provided 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 or misuse is grounds for revocation of national security eligibility.

Applicant bears the burden of production and persuasion in mitigation. Applicant disclosed his illegal use of marijuana and his intent to continue to use marijuana in his e-QIP, during his security interview, in his July 2023 response to the interrogatories, in his Answer, and in his Amended Answer. He acknowledged that his marijuana use violated Federal drug laws. He explained that he used marijuana to alleviate pain following an amputation. Notwithstanding Applicant's candor during the background investigation, his willful and repeated violation of Federal drug laws casts doubt upon his judgment, reliability, and ability to adhere to rules and regulations. Applicant did not mitigate the drug involvement and substance misuse trustworthiness concerns.

"The United States has a compelling interest in protecting and safeguarding [sensitive] information from any person, organization, or country that is not authorized to have access to it, regardless of whether that person, organization, or country has interests inimical to those of the United States." ISCR Case No. 02-11570 at 5 (App. Bd. May 19, 2004). The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to coercion.

To establish AG ¶ 7(a), the Government must demonstrate a "heightened risk" of exploitation due to Applicant's foreign contacts. The Government did not submit any materials for administrative notice concerning Hungary and did not establish the requisite "heightened risk" under AG ¶ 7(a) for Applicant's contacts with her children, mother, and

sister (SOR ¶¶ 1.a.-1.c). Furthermore, Applicant's children also maintain citizenship with the United States. I find for Applicant as to SOR ¶¶ 1.a.-1.c.

The materials for administrative notice concerning Turkey detail the significant security concerns raised the presence of active terrorist organizations in Turkey and significant human-rights issues. The Government has established a "heightened risk" required under AG ¶ 7(a) concerning Applicant's foreign contacts in Turkey. AG ¶¶ 7(a) and 7(b) apply to Applicant's foreign contacts in Turkey (SOR ¶ 1.d.).

Applicant maintains two foreign bank accounts, totaling approximately \$9,500 (SOR ¶¶ 1.e. and 1.f.). Recognizing that Applicant has not provided significant information about her assets and property interests, common sense dictates that value of these two accounts does not rise to the level of a security concern under AG ¶ 7(f). I find for Applicant as to SOR ¶¶ 1.e. and 1.f. Applicant's home in Turkey, valued at approximately \$40,000 (SOR ¶ 1.g.), does trigger AG ¶ 7(f).

Applicant's participation in the 2018 Turkish election was an exercise of her foreign citizenship and is more appropriately alleged under Guideline C (foreign preference). Department Counsel did not establish a foreign influence security concern based upon Applicant's participation in the foreign election. I find for Applicant as to SOR ¶ 1. h.

The following mitigating conditions under this guideline are potentially relevant:

AG ¶ 8(a): the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

AG ¶ 8(b): there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the U.S., that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

AG ¶ 8(c): contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

As discussed above, the Government did not establish a "heightened risk" as to Applicant's Hungarian family members. Even assuming that Applicant's relationships with these family members met the threshold of AG ¶ 7(a), the nature of these relationships and the country in which they are located are such that it is unlikely Applicant will be placed in a position of having to choose between the interests of her family members and those of the United States. AG ¶ 8(a) applies as to SOR ¶¶ 1.a.-1.c.

Applicant divorced in January 2021 and moved away from Turkey in September 2022. There is no evidence of any close or continuing contacts between Applicant and her former parents-in-law. The presumption of non-casual relationships does not extend to one's parents-in-law following divorce. AG ¶ 8(c) applies as to SOR ¶ 1.d.

As discussed above, Applicant's two foreign bank accounts are de minimis, and their routine nature is such that they are unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure Applicant. AG ¶ 8(f) applies as to SOR ¶¶ 1.e and 1.f.

I recognize that Applicant has, not provided evidence of her assets or current sources of income. She does receive some rental income from her property in Turkey. She expressed her intent to sell this property during her January 2023 security interview and was actively selling the property as of her Answer. While I cannot juxtapose the value of this property against Applicant's other assets, the fact that she is actively selling the property - which had been given to her by her ex-husband - is evidence of the property's "routine" nature. She intends to move back to the United States. Given the routine nature of Applicant's rental property, I conclude that it is unlikely to result in a conflict and could not be used effectively to influence, manipulate, or pressure Applicant. AG ¶ 8(f) applies as to SOR ¶ 1.g.

Applicant has not resided in the United States since 2013; however, she actively sought employment supporting the U.S. military's linguist program. The program requires that she remain in Hungary to fulfill her job responsibilities. Taken in its entirety, a common-sense analysis of the record evidence does not establish any potential conflicts of interest between Applicant's familial and property interests and the interests of the United States. Applicant mitigated the foreign influence security concerns.

### **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 B and the factors in AG ¶ 2(d) in this whole-person analysis.

As a self-employed translator, Applicant has resided outside of the United States since 2013. She and her two daughters all maintain citizenship with the United States, Turkey, and Hungary, and they reside in Hungary with Applicant's mother, a Hungarian citizen. Applicant's contacts with these relatives and her limited contact with her former parents-in-law are such that it is unlikely Applicant will be placed in a position of having to choose between the interests of these foreign contacts and the interests of the United States. Similarly, Applicant's rental property in Turkey is unlikely to result in a conflict of interest. Applicant mitigated the foreign influence security concerns. Eligibility for access to classified information is granted.

### **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 B:	FOR APPLICANT
Subparagraphs 1.a.-1.h.:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Eric H. Borgstrom  
Administrative Judge