



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



In the matter of:)
)
) ISCR Case No. 23-01462
)
Applicant for Security Clearance)

Appearances

For Government: George A. Hawkins, Esq., Department Counsel,
Andrea M. Corrales, Esq., Deputy Chief Department Counsel
For Applicant: Richard J.R. Raleigh, Jr., Esq., Virginia L. Gibson, Esq.

01/21/2025

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant failed to 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 February 1, 2023. On August 15, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. The DOD issued the SOR 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 the Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on October 11, 2023 (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The hearing convened as scheduled on October 29, 2024. Department Counsel offered into evidence Government Exhibits (GX) 1-2. Applicant testified and offered into evidence Applicant Exhibits (AX) A-C. All exhibits were admitted without objection. Five additional witnesses testified on behalf of Applicant, and the record closed. DOHA received the hearing transcript (Tr.) on November 5, 2024.

Findings of Fact

In his Answer to the SOR, Applicant admitted SOR allegations ¶¶ 1.a and 1.b. He denied SOR allegation ¶ 1.c and provided supporting documents and explanations. His admissions are incorporated into my findings of fact. After a thorough review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 34 years old. He attended some college from about 2010 into 2012, when he realized the program was not right for him. He returned home and managed a paper route for another two years before enrolling in a technical school in 2014. He completed that program in 2016 and began working with composites and carbon fiber manufacturing. (GX 1-2; Tr. 112-120)

Applicant was able to maintain consistent employment and a decent income with this work. However, he grew tired of the long hours and high living expenses. In 2019, he sold his home and moved with his girlfriend to a cabin off the grid. He described the experience as rewarding. However, in 2021, his girlfriend was ready to move out of the cabin, and they agreed it was time for a change. (GX 1; Tr. 115-130)

During a family vacation in August 2021, Applicant's cousin, Mr. K offered Applicant a job with his company that focuses on robotic solutions for various defense contractors. Mr. K was a part-owner of the company and had previously tried to recruit Applicant right out of high school in 2010. This time, Applicant accepted the offer, relocated, and began working with the company in October 2021. Although he started with basic responsibilities within the company, he was quickly able to apply his technical skills to the work and is now a highly valued employee. The company continues to sponsor Applicant, and this is his first security application. (GX 1-2; AX C; Tr. 115-125)

Applicant began purchasing and using marijuana in 2010, when he was about 19 years old and in college. His marijuana use gradually increased to daily by 2013 and remained at that level until he relocated to work with his cousin's company in October 2021. He further admitted that, while he occasionally purchased from dispensaries, most of his marijuana purchases came from friends or from individuals that could be characterized as drug dealers. (GX 1-2; Tr. 135-156)

As part of their discussion regarding a position with the company in 2021, Applicant acknowledged that Mr. K told him he needed to stop using marijuana. He also

acknowledged that he knew at the time that the company was a drug-free workplace and that marijuana use was illegal at the federal level. Nonetheless, he continued to use marijuana after relocating and starting with the company. He described that the move prompted him to begin reducing his marijuana use. (GX 2; Tr. 130-156)

In his February 2023 SCA, Applicant disclosed that he started using marijuana in 2010 and that his use was ongoing. He further disclosed his intent to continue to purchase and use marijuana as a way to relieve stress and anxiety. (GX 1)

During his April 2023 background interview with a DOD investigator, Applicant stated that his use of marijuana had decreased from daily to every other weekend. He disclosed that he last used marijuana in March 2023 and planned on continuing to use marijuana once per quarter to relieve stress and anxiety. He also stated that he was unsure about stopping his marijuana use in order to hold a security clearance. (GX 2)

In his August 2023 response to interrogatories, Applicant confirmed that he had not used marijuana since March 2023. He had also changed his perspective and stated that he no longer intended to use marijuana in the future. (GX 2)

During his testimony, Applicant was candid about his drug use history. He admitted that, after he relocated to work for the company, he was unsure about quitting his use of marijuana. He explained that marijuana had become a stress relief and assisted in managing his anxiety. However, as his responsibilities and expertise in the company increased, he became more invested in his career and recognized the importance of holding a security clearance. After his marijuana use in March 2023, he decided it was time to quit. (Tr. 133-156)

In an effort to establish that he had not used marijuana since March 2023, Applicant submitted negative drug tests from September 2023, March 2024 and September 2024. He also submitted a statement of intent to abstain from all future drug involvement while acknowledging that any future involvement may result in the revocation of his security clearance. (AX A-B)

Applicant further stated that he had successfully managed increased responsibilities within the company, including the management of client proprietary information. He also found alternative ways to manage his stress and anxiety including increased exercise and social engagement. He believed that he had shown he was a responsible and trustworthy individual and was fully capable of maintaining a security clearance. (Tr. 147-158)

Mr. K, Applicant's cousin and part-owner of the company, testified on Applicant's behalf. He has held a security clearance for over twenty-five years and described the company as a drug-free workplace. He testified that he recruited Applicant to his company in 2021 while knowing that Applicant used marijuana. He recalled telling Applicant to "knock it off" before Applicant started with the company. (Tr. 50) However, even after

knowing that Applicant continued to use marijuana into 2023, Mr. K described Applicant as a very successful and valued member of the work team. He stated that Applicant successfully managed stress in the workplace, was a problem solver, and was highly trusted with “absolutely anything and everything.” (Tr. 39) He never saw Applicant impacted by drugs in the workplace. He described Applicant as candid about his past and believed he was committed to no longer using marijuana. He believed that Applicant had matured and possessed the judgment, reliability and trustworthiness necessary to hold a security clearance. (Tr. 31-58)

Four additional witnesses testified on Applicant’s behalf. Mr. B testified that he had known Applicant for over two years both in and out of the workplace. He never saw Applicant use marijuana or ever be impacted by drugs. He testified that Applicant handled stress well and had a strong sense of doing the right thing. Similarly, Mr. C. testified that he had been with the company since 2005 and had known Applicant since he started in 2021. He believed Applicant was a good worker with whom it was easy to communicate and that he was very responsible. He never saw Applicant impacted by drugs. Both Mr. B and Mr. C believed that Applicant was committed to not using marijuana in the future and had the judgment, reliability, and trustworthiness necessary to hold a security clearance. (Tr. 16-28, 59-72)

Mr. P had been with the company since 2008 and was Applicant’s first supervisor. He testified that Applicant was diligent, paid attention to details, and was always willing to tackle projects outside of his job description. He stated that Applicant handled stress well and was exceptional at protecting company and client proprietary information. He had not been aware of the extent of Applicant’s history of marijuana use prior to the hearing, but still believed that Applicant was trustworthy and exercised good judgment. Mr. R was also a former supervisor of Applicant. He further testified that Applicant “exemplifies” trustworthiness. Both Mr. P and Mr. R testified that Applicant had the judgment, reliability, and trustworthiness necessary to hold a security clearance. (Tr. 73-110)

Applicant also submitted several character-reference letters, including letters from those individuals who testified on his behalf. These letters were consistent with the individuals’ testimonies in asserting their belief that Applicant was responsible and capable of maintaining a security clearance. An additional letter from Mr. S, a work colleague, also stated his belief that Applicant possessed the awareness and responsibility necessary to maintain a security clearance. (AX C)

Policies

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

When evaluating an applicant's suitability for a security clearance, 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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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." 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 not drawn 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 to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern relating to the guideline for financial considerations 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 adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable:

- (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.

Applicant admitted to purchasing and using marijuana from 2010 through March 2023. In his February 2023 SCA, he stated his intent to continue using marijuana. All of the above disqualifying conditions apply.

Conditions that could mitigate the drug involvement and substance misuse security 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 is credited with disclosing his marijuana use in his February 2023 SCA and during his April 2023 background interview with a DOD investigator. He described how his attitude toward marijuana changed as his role in the company grew and he began to focus more on his career. He submitted a statement of intent to no longer use marijuana and appeared earnest in his commitment to remain drug free. This is supported by multiple negative drug tests. He has also found other means, besides marijuana, to relieve his stress and anxiety. He never showed himself to be inhibited in any way at the workplace and is a highly valued member of his company. He has the support of his colleagues and supervisors. Mitigation under both AG ¶¶ 26(a) and 26(b) must be considered.

In contrast, Applicant used marijuana from 2010 through March 2023. This use was nearly daily from 2013 into 2021. He also continued to use marijuana after being told to stop by his cousin in 2021 and for nearly a year and a half while working for the company. In that time, he knew that the workplace was drug free, and, eventually, that he would be considered for a security clearance. He also knew that marijuana was illegal. Yet, he stated his intent to continue using marijuana in February 2023, used marijuana in March 2023 and waived about his future marijuana use during his April 2023 interview with a DOD investigator.

Given the extent of Applicant's marijuana use both before and during his time with the company, insufficient time has passed to establish that his marijuana use is entirely in his past. None of the mitigating conditions fully apply.

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.

At hearing, Applicant was candid and forthcoming about his history of marijuana use. As he has advanced within his company and matured, he has grown more serious about his career and taken the requirements of holding a security clearance more seriously. Nonetheless, more time is necessary for him to fully establish that his extensive marijuana use is entirely in his past. At this time, the record evidence leaves me with questions and doubts as to his eligibility and suitability 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant

Conclusion

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

Bryan J. Olmos
Administrative Judge