



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



In the matter of:)
)
) ISCR Case No. 24-01413
)
Applicant for Security Clearance)

Appearances

For Government: Daniel P. O'Reilly, Esq., Department Counsel
For Applicant: *Pro se*

02/20/2025

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline H, drug involvement and substance misuse. Applicant's eligibility for a security clearance is denied.

History of the Case

On October 16, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse. The DCSA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on October 25, 2024, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's File of Relevant Material (FORM) on November 7, 2024. The evidence included in the FORM is identified as exhibits (GE) 1-4. (GE 1-2 includes pleadings and transmittal information.) The FORM was mailed to Applicant, who received it on December 3, 2024. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He only submitted a copy of his current medical marijuana card, which is marked as Applicant exhibit (AE) A. Items 3-4 and AE A are admitted into evidence without objection. The case was assigned to me on February 7, 2025.

Findings of Fact

In Applicant's answer, from October 2024, he admitted two of the SOR allegations (§§ 1.a and 1.c) and denied one allegation (§ 1.b)). I adopt his admissions as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact. (GE 2)

Applicant is 28 years old. He is not married but he has cohabitated with someone since December 2016. He has worked as a material expeditor for his current employer, a federal contractor, since February 2022. That contractor is subject to the drug-free workplace provisions of 41 U.S.C. 701 *et seq.* He is a high school graduate with some college experience. He was granted an interim security clearance in March or April 2024. (GE 3-4)

The SOR alleged, under Guideline H, that Applicant used marijuana, from July 2023 to at least October 2024. It also alleged he used marijuana from March 2024 to October 2024, while holding a sensitive position. Finally, it alleged that Applicant intended to continue to use marijuana in the future. (GE 1)

Applicant admitted his marijuana use from June 2023 to February 2024, in his March 2024 security clearance application (SCA). During his March and April 2024 personal subject interviews (PSI) with an investigator, he admitted his use of marijuana extended through the day before his first interview, on March 27, 2024, and the day before his second interview on April 9, 2024. In his October 6, 2024 SOR answers to interrogatories, he admitted his use of marijuana extended through October 5, 2024. In his October 2024 SOR answer, he admitted that he intended to keep using marijuana in the future, "as long as it remains legal at any level (i.e. state, federal), and as needed medically." (GE 2-4)

Applicant explained, during his PSI and answers to interrogatories, that he used marijuana daily at home by himself or with his fiancée. He claims he obtained a medical marijuana card because of post-traumatic stress disorder, although he did not provide evidence of such a diagnosis. He obtains marijuana from state-authorized dispensaries. As long as he has a medical marijuana card, he will continue to use marijuana. He has not received any type of drug counseling. (GE 4)

Policies

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.

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 that an 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.

Section 7 of EO 10865 provides that 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

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Three conditions are potentially applicable in this case:

- (a) any substance misuse;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant used marijuana daily between July 2023 and October 2024. He admitted using marijuana after completing his SCA, before and after having his PSI, and the day before he submitted his SOR answer. He was granted an interim security clearance in March or April 2024, and he used marijuana subsequent to that time. (One may hold a sensitive position when a security clearance is granted on a temporary basis. See ISCR Case No. 22-02623 at 3 (App. Bd. Jan. 24, 2024)) Applicant held a sensitive position at the time he used marijuana between March and October 2024. Applicant currently uses marijuana and intends to continue using marijuana in the future. All the above disqualifying conditions apply.

Additionally, the provisions of 50 USC 3343 (The Bond Amendment) disqualifies Applicant from holding a security clearance because he is currently "an unlawful user of a controlled substance." Marijuana is an unlawful controlled substance under federal law regardless of any differences there may be under any state's law.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

(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's use of marijuana is frequent and is ongoing. He continues using marijuana on a daily basis. His decision to do so casts doubt upon his current reliability, trustworthiness, and good judgment. Neither AG ¶ 26(a) or AG ¶ 26(b) 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 the 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 guideline 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 considered that he continues to use marijuana, and he was unequivocal that he intends to keep doing so in the future.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H, drug involvement and substance misuse.

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

Robert E. Coacher
Administrative Judge