



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



In the matter of:)
)
) ISCR Case No. 24-01602
)
)
Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Department Counsel
For Applicant: *Pro se*

02/26/2025

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On December 18, 2023, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On September 25, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse. The action was taken under Executive Order (EO) 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 *Adjudicative Guidelines*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on October 12, 2024, and requested a hearing before an administrative judge. The case was assigned to me on December 10, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on January 22, 2025, and the hearing was convened as scheduled on February 11, 2025. At the hearing, the Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. Applicant offered four exhibits, referred to as Applicant's Exhibits A through D, which were admitted without objection.

She called one witness, her husband, and testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on February 24, 2025.

Findings of Fact

Applicant is 46 years old. She is married and has no children. She has two Master's degrees, one in International Education, and the other in Human Development. She is employed by a defense contractor as a Program Manager. She is seeking to obtain a security clearance in connection with her employment.

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used an illegal drug, which raises questions about her ability or willingness to comply with laws, rules, and regulations and raises questions about her reliability and trustworthiness.

Applicant was born in Mumbai, India in August 1978. She emigrated to the United States in 2003. She became a naturalized American citizen in November 2017. At the age of sixteen, she met her husband in India while he and his family were visiting there. She married her husband in 2003 and emigrated to the U.S at that time. They have been married for 22 years and have known each other for 28 years.

Applicant applied for employment with a defense contractor in September or October 2023. She completed a security clearance dated December 18, 2023. Applicant admitted in her responses to the security clearance questionnaire that she has used THC and or marijuana from about April 2011 to November 2023. She credibly testified that she and her husband would occasionally share a "gummie" once or twice a month. (Government Exhibit 1.) Applicant stated that it actually occurred every two or three months. (Tr. p. 29.) Applicant was not a frequent marijuana user and she has never associated with drug users. Her infrequent use of marijuana was with her husband, in the evening at home.

She stated that she tried marijuana for the first time, once in 2011, while in college, and she did not use it again until sometime in 2019. At that time, she and her husband, out of curiosity, on rare occasions, would share a "gummie" instead of having a glass of wine or a beer. (Tr. 28.) She last used marijuana in March 2024. (Tr. p. 30.)

In May 2024, Applicant testified that during her interview with a security clearance investigator that she discussed her use of marijuana and the fact that she felt protected by state law which made it legal to use marijuana. Applicant stated that she learned during her interview that Federal law prohibits the use of marijuana, and that an individual who works for a defense contractor and possesses a security clearance must abide by Federal law, which prohibits the use of marijuana. (Tr. pp. 30-31.)

In retrospect, Applicant realizes that she was very naïve at the time. She had not yet been hired by the defense contractor, but was applying for a security clearance, with

the understanding that the role she was supposed to take would potentially need a security clearance at some point. She did not have the company's drug policies and what their requirements were. As a private citizen who had never applied for or held a security clearance, she felt protected by state law and regulations that allowed the legal use of marijuana. She stated that it was a misunderstanding on her part, and she is done using marijuana or any illegal drug.

Applicant began working for a defense contractor in June 2024. She understands that any illegal drug use, including marijuana use is prohibited by her company, the DoD, and is against Federal law. She stated that she no longer uses marijuana and has no plans to use it in the future. (Tr. p. 33.) She stated that she is in full compliance with her company's drug use policy which prohibits all illegal drug use. (Applicant's Exhibit A.)

In September 2024, Applicant responded to DOHA interrogatories wherein she stated that she does not intend to ever use illegal drugs again. (Tr. pp.34-35, and Government Exhibit 2.)

Letters of recommendation from professional colleagues, including her current supervisors as well as her past employer, collectively indicate that Applicant is a person with a strong work ethic who demonstrates a high degree of ethical conduct, loyalty, honesty, and trustworthiness. She is exceptionally organized, has a keen attention to detail, handles complex projects with ease, and ensures that tasks are completed efficiently and ahead of deadlines. She is a person with a strong moral character who possesses the integrity, judgment, and the sense of responsibility required to be entrusted with sensitive information. Her professionalism and dedication to her work has proven herself to be an indispensable element of their team. She is strongly supported for a security clearance. (Applicant's Exhibits B, C, and D)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 classified 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 AG ¶ 2 describing 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 protect or 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.

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 security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 at AG ¶ 25 contains two conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana once in 2011 and then from 2019 until March 2024. The above disqualifying conditions apply.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns.

- (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 used marijuana on one occasion in 2011, and then from 2019 to March 2024, from once or twice a month to once every two or three months. Applicant indicates that she is unable to provide exact details in terms of her exact consumption because of how rarely she used it. She explained that she was not aware that her use of marijuana was not protected by state law. Once she started her job, and learned of the company requirements, DoD policies, and Federal law which prohibits marijuana use, she quit using marijuana. She has never used any other illegal drug. Applicant now understands her responsibility to be drug free and in compliance with DoD policy, and company rules and regulations. Applicant's use of marijuana appears to be an aberration, and not a habit, and last occurred almost a year ago. She indicates that she has no intention of ever using marijuana again, and she plans to abide by the Federal law and her company's requirements. The mitigating conditions above are applicable.

The Drug Involvement and Substance Misuse security concern is found for the Applicant.

Considered in totality, Applicant has shown good judgment by altogether quitting her use of marijuana in compliance with Federal law. To be entrusted with the privilege of holding a security clearance, applicants are expected to be honest and abide by all laws, regulations and policies that apply to them. Applicant is aware of the Federal law and is in compliance. Under the particular facts of this case, she shows the requisite character or judgment of someone who has the maturity, integrity, good judgment, and reliability necessary to access classified information. Applicant meets the qualifications for access to classified information.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Applicant has demonstrated a commitment to excellence on the job and is well respected by her superiors. She continuously proves to be a mature, trusted, and reliable colleague.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Drug Involvement and Substance Misuse security concern.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:

FOR APPLICANT

Subparagraph 1.a

For Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge