



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



In the matter of:)
)
) ISCR Case No. 24-01718
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, 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.

Statement of the Case

On September 26, 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 4, 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 October 29, 2024. The evidence included in the FORM is identified as exhibits (GE) 1-5. (GE 1-3 includes pleadings and transmittal information.) The FORM was mailed to Applicant, who received it on November 5, 2024. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He submitted a one-page narrative, which is marked as Applicant Exhibit (AE) A. Items 1-5 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 one of the SOR allegations (§ 1.a) and denied the other (§ 1.b)). I adopt his admission as a finding of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact. (GE 3)

Applicant is 31 years old. He married in May 2023, and has no children. He has worked as a software engineer for his current employer, a federal contractor, since April 2024. That contractor is subject to the drug-free workplace provisions of 41 U.S.C. 701 *et seq.* Applicant holds a bachelor's degree. He was granted public trust eligibility in 2018, while working for a government contractor. (GE 3-4)

The SOR alleged, under Guideline H, that Applicant used marijuana, with varying frequency, from July 2017 to about September 2024. It also alleged that Applicant intended to continue to use marijuana in the future. (GE 1)

Applicant admitted his marijuana use, with varying frequency, from July 2017 to March 2024, in his April 2024 security clearance application (SCA). In his June 2024 personal subject interview (PSI) with an investigator, he admitted his use of marijuana extended through June 2024. In his October 2024 SOR answer, he admitted his use of marijuana extended through September 2024. (GE 3-5)

Applicant explained, during his PSI, that he used marijuana at home or at a friend's house on weekends to relax or for social purposes. He used marijuana once or twice a month or every other month. He mostly obtains marijuana from his friends. He uses it in the form of gummies or vapes. At this time, he was aware that using marijuana violated federal law. He stated that he intended to continue his marijuana use because he likes the way it makes him feel, but that he would stop using it once he is cleared. He has not received drug counseling or treatment. (GE 5)

When Applicant previously held a position of trust in 2018, he used marijuana before he was granted the position. He claimed he did not use marijuana while he held the position. He resumed use after he was no longer in the position. (GE 5)

In Applicant's Form response, he pointed out that he stopped using marijuana when he held a position of trust in approximately 2018. He stated he stopped using it once and can do it again, especially since he is older now and is less impulsive. (AE A)

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. Two conditions are potentially applicable in this case:

(a) any substance misuse; 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, on multiple occasions between July 2017 and November 2020. He admitted using marijuana after completing his SCA, before and after having his PSI, and during the same month his SOR was issued. He stated during his PSI that he intended to continue using marijuana in the future until he was cleared. Both the above disqualifying conditions apply.

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 and purchase of marijuana was frequent and was as recent as September 2024. It is troubling that Applicant continued using marijuana when he was fully aware doing so violated federal law. He continued to use marijuana after he completed his April 2024 SCA, after he was interviewed by an investigator in June 2024, and during the same month as he received the SOR.

Although Applicant stated he no longer intends to use marijuana in the future if he is granted a clearance, he failed to provide a signed statement of his intent not to use or misuse drugs in the future. Even though he apparently stopped using marijuana when he held a position of trust, his recent resumption casts doubt upon his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply, while AG ¶ 26(b)(3) has some application.

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 used marijuana as recently as September 2024, and he was equivocal about future use.

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.b:	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