



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



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| In the matter of: |) | |
| |) | |
| XXXXXXXXXXXXX |) | ISCR Case No. 24-00954 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

02/24/2025

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for access to classified information. He failed to mitigate the security concerns stemming from his drug involvement and substance misuse. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on February 8, 2023. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on September 13, 2024, detailing security concerns under Guideline H, drug involvement and substance misuse. The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On October 1, 2024, Applicant submitted an answer (Answer) to the SOR and elected a decision on the written record by an administrative judge from the Defense

Office of Hearings and Appeals (DOHA). On November 13, 2024, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Government's Exhibits (GE) 1 through 6. DOHA sent the FORM to Applicant on November 14, 2024, and he received it on November 19, 2024. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a response to the FORM. The SOR and the Answer (GE 1 and 2, respectively) are the pleadings in the case. GE 3 through 6 are admitted in evidence without objection. The case was assigned to me on February 4, 2025.

Findings of Fact

Applicant is 29 years old, never married, and with no children. From August 2021 until about late March 2023, he had a cohabitant. He earned his bachelor's degree in July 2027 and since August 2021 has taken graduate courses. He has worked for a defense contractor since August 2021. He has never had a security clearance. He has had a security clearance application denied. This is his second attempt. (GE 3 & 5.)

Under Guideline H, the SOR alleged that Applicant: (a) used marijuana (THC) with varying frequency from about March 2014 to at least January 2024; and (b) purchased THC from about August 2016 to at least February 2022. (GE 1.) He admitted those allegations accompanied by a lengthy explanation, which is summarized below:

Applicant accepts responsibility for his prior use of THC and the impact it has had on his development as an individual and as a U.S. citizen. He acknowledges that he has previously declared his intention to cease using THC, yet continued to do so sporadically. In retrospect, he recognizes that this was a poor decision, especially in light of the federal government's stance on THC use. For a period, he did rely on THC as a coping mechanism for the pressures he felt as a young adult balancing work and personal relationships.

Applicant traces his problems to when his father left his mother, and his parents separated. Applicant was 13 years old and dealing with his father's departure caused emotional struggles. Later, he was first exposed to THC in college. At the time, he was still deeply troubled by the strained relationship with his father, so much so that he went almost five years without speaking to him. Applicant had a sense of feeling lost and used THC as an unhealthy manner of coping.

Applicant describes the effects that THC has on him. He becomes "more peaceful," has "a high degree of consciousness," enters "a deeply mediative [*sic*] and introspective state of mind." He reflects "deeply on the qualms of [his] life with respect to work, love, family, relationships," and other positive effects.

Applicant reiterates that his “last consumption of THC occurred sometime in January 2024.” He states: “This year I took a strict and stern step with myself to ultimately quit consuming THC with no intent to consume again.” His “ulterior motive” is “in part” his mother. She never re-married and devoted “unconditional love to her three children as she sacrificed her own happiness” He has “professional and financial goals [he] would like to achieve in order to help support [his] mother in old age “

Applicant explained that he last consumed THC in January 2024 shortly after he met with his father in December 2023 after almost five years of not speaking to him. Applicant said: “It was a lot to bare [*sic*] at the time, and I used THC one final time to cope with swirling emotions” He now feels better “not needing to invest [his] time and energy on substances that add no value to my life.” (GE 2.)

In Applicant’s February 2023 SCA, he stated that he had other interests, such as learning technical skills, reading books and articles on political science, world history, economics, and foreign cultures that “serve as motivations for [him] to not really care so much for [the] cannabis plant.” (Ex. 3.) In his May 2020 SCA, he stated interests similar to the foregoing plus his employment for a defense contractor as reasons for discontinued use of THC. He said: “I have great appreciation for my experiences with marijuana, however I don’t need it anymore and feel as if my life will be just fine without it.” He stated that he did not intend to experiment any further with these substances. (Ex. 4.)

Applicant’s responses to interrogatories confirmed his use of THC, including that his last use was in January 2024. (Exs. 5 and 6.) In his August 28, 2024 response to the interrogatory “Intentions of Future Use,” he selected “No.” (Ex. 5; *see also* Ex. 6.) Another interrogatory asked:

If you have been in an environment/situation where you had reason to believe illegal substances were being used or if they were used in your presence, what steps or efforts did you make to not use illegal substances?

He responded:

I simply decide not to use the substances, via self control and knowledge of what it means to take certain organic or synthetic substances, least of all if it's something I have never tried or know nothing/very little about. All in all, I endure the environment if I every [*sic*] find myself in it, but quickly look to distance myself, especially if I don't have synergy with those involved. (Ex. 5.)

Applicant was asked the following in his February 6, 2024 interrogatories:

Please provide any additional information . . . you believe could assist in if it is clearly consistent with the national interest to grant . . . you for a position of national security.

He responded in part as follows: “If granted the privilege of holding a US security clearance, I assure myself and you, investigator, that I will take meaningful steps to cease my consumption as I do realize that it does influence the work I do.” (Ex. 6.)

In the August 28, 2024 interrogatories, Applicant was asked: “Do you associate with persons who use illegal substances or frequent places where you have reason to believe illegal substances are being used or are used in your presence? He selected “No.” (Ex 5.)

Law and Policies

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

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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 then 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 in seeking a favorable security decision.

Discussion

Guideline H, Drug Involvement and Substance Abuse

Under AG ¶ 24 for illegal drug use, suitability of an applicant may be questioned or put into doubt because drug use can both impair judgment and raise questions about a person’s ability or willingness to comply with laws, rules, and regulations:

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.

Marijuana is a Schedule I controlled substance, and possession of it is regulated by the federal government under the Controlled Substances Act. 21 U.S.C. § 811 *et seq.* The knowing or intentional possession and use of any such substance is unlawful and punishable by imprisonment, a fine or both. 21 U.S.C. § 844. In an October 25, 2014 memorandum, the Director of National Intelligence (DNI) affirmed that the use of marijuana is a security concern. James R. Clapper, Director of National Intelligence, Memorandum: *Adherence to Federal Laws Prohibiting Marijuana Use* (October 25, 2014). See also <http://www.dea.gov/druginfo/ds.shtml>

On December 21, 2021, DNI signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior medicinal or recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

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

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including . . . purchase

Applicant admitted facts that trigger disqualifying conditions AG ¶¶ 25(a) and (c).

The next inquiry is whether Applicant’s security concerns raised by marijuana use have been mitigated. The following mitigating condition under AG ¶ 26(b) for drug involvement is the most appropriate and will be discussed here:

[T]he individual acknowledges . . . his 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.

The initial requirement of AG ¶ 26(b) is that Applicant acknowledges “his drug involvement and substance misuse.” He satisfied this requirement by his Answer and his responses to interrogatories.

Applicant’s Answer and responses to interrogatories evidence that he has abstained from the purchase and use of marijuana since January 2024. His responses to interrogatories show that he no longer associates with individuals who use marijuana. He also has a plan for situations where he might be in a setting where marijuana is being used. AG ¶ 26(b)(1) and (2) are satisfied.

Applicant responded “No” to the questions whether he intended to use marijuana in the future. His statement of future intent, however, is not controlling. The core of AG ¶ 26(b) is whether he has established a *pattern* of abstinence. His history with marijuana in the security clearance setting warrants discussion.

Applicant’s Answer acknowledged “that he has previously declared his intention to cease using THC, yet continued to do so sporadically.” More specifically, in his May 2020 SCA and in his February 2023 SCA, he declared his intention not to use marijuana in the future. Yet he continued to use marijuana into January 2024. There are other reasons that give one pause when considering his latest declaration of intent not to use marijuana. First, he described his experience with marijuana as creating “a high degree of consciousness,” an “introspective state of mind,” being “peaceful,” and other positive effects. He stated: “I have great appreciation for my experience with marijuana.” Thus, his use of marijuana for years was salutary for him and apparently difficult to give up.

Second, Applicant was asked for any additional information that could assist in finding it clearly consistent with the national interest to grant him a clearance. He responded: “If granted the privilege of holding a US security clearance, I assure myself and you, investigator, that I will take meaningful steps to cease my consumption as I do realize that it does influence the work I do.” Taking “meaningful steps” is not the categorical language “intent to abstain from all drug involvement and substance misuse” used in AG ¶ 26(b)(3). I find that his brief period of abstinence since January 2024 and his equivocal intent to abstain from future use do not satisfy mitigating condition AG ¶ 26(b).

Whole-Person Concept

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9). I have considered potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For those reasons, I conclude that Applicant has not mitigated the security concerns arising under Guideline H, drug involvement and substance abuse. I find against him on SOR ¶ 1.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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| Paragraph 1, Guideline H | AGAINST APPLICANT |
| Subparagraphs 1.a and 1.b: | Against Applicant |

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. National security eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge