



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-02254

Appearances

For Government: A.H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

05/07/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant did not 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 July 14, 2023. (Item 2) The Defense Counterintelligence & Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) on January 7, 2025, detailing security concerns under Guideline H. DCSA CAS acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 January 10, 2025, Applicant answered the SOR and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On January 16, 2025, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 3. Applicant received the FORM on January 28, 2025. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. On February 4, 2025, he submitted additional matters in response to the FORM. (Item 4) The Government did not object to the Response to the FORM. The case was forwarded to the Hearing Office on April 4, 2025, and assigned to me on May 1, 2025.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

Findings of Fact

In Applicant's SOR response, he admitted the sole SOR allegation, SOR ¶ 1.a. Applicant's admissions are accepted as findings of fact. (Item 1)

Applicant is 36 years old. He has been employed by a DOD contractor since August 2011. He was first granted a security clearance in November 2011 and has continuously held a security clearance. His highest level of education is a master's degree. He is married and has two children. (Item 2)

The SOR alleges under Guideline H that Applicant used marijuana (THC) with varying frequency from about November 2021 to about July 2023, while in a sensitive position, *i.e.*, one requiring a security clearance. (SOR ¶ 1.a: Item 1; Item 2 at 40-42; Item 3 at 3-4, 8-9)

Applicant listed his illegal marijuana use on his July 14, 2023, SCA in response to Section 23 - Illegal Use of Drugs or Drug Activity. He mentioned that he started to use marijuana in approximately November 2021 to deal with stress and help him sleep. He used it about two or three times a week at home, after his children went to sleep. He purchased marijuana from a cousin, who had a medical marijuana card, every couple of months from November 2021 to May 2023. He listed his last date of marijuana use was July 2023. He admitted that he used marijuana while he possessed a security clearance. (Item 2 at 40-42) In response to a question about whether he intends to use marijuana in the future, he responded:

I intend to continue to purchase small amounts of marijuana to continue to help deal with stress and help me sleep. (Item 2 at 42)

On September 6, 2024, Applicant was interviewed in conjunction with his security clearance background reinvestigation. He told the investigator about his marijuana use between November 2021 to July 2023. He told the investigator that he no longer intended to use marijuana in the future. He mentioned that his Facility Security Officer (FSO) told him that he should stop smoking marijuana if he wanted to keep his security clearance. As a result of this discussion, he stopped using marijuana and began to exercise and meditate to deal with stress. (Item 3 at 3-4)

In response to DOHA Interrogatories dated, December 13, 2024, Applicant reviewed a summary of his September 2024 personal subject interview. He made corrections and verified after the corrections that the summary of the personal subject interview was accurate. He also listed his illegal use and purchase of marijuana, which was consistent with the marijuana use disclosed on his SCA and in the summary of his personal subject interview. He indicated he was aware that marijuana use is illegal under federal law. He mistakenly believed that since it was legal under the state law where he resides that it would be allowed. Once his FSO informed him that marijuana use is not allowed, he stopped using marijuana and does not intend to use it in the future. (Item 3 at 7-10)

In his Response to the SOR, Applicant acknowledged that he used marijuana from approximately November 2021 to approximately July 2023, while in a sensitive position, *i.e.*, one requiring a security clearance. He claims it was a lapse in judgment and character and it won't happen again. (Item 1) In his Response to the FORM, dated February 4, 2025, Applicant indicated he started using marijuana during a period where his work was very stressful and several close family members were going through health concerns. He was having a hard time sleeping and easily became irritable and agitated. His state had legalized marijuana recreationally, so he decided to try smoking marijuana to manage his stress and sleep better. He thought that since the state had legalized marijuana, he could use it while possessing a security clearance. Once it was made clear to him by his FSO that smoking marijuana was illegal under federal law and was not allowed for people who possessed a security clearance, he immediately stopped and has not used marijuana since. He claims he was never dependent or addicted to it. He declared it was his intent to abstain from any future marijuana use and acknowledged that any future involvement or use would be grounds for revocation of his security clearance eligibility. He states that his use of marijuana was a mistake on his part and it will not happen again. (Item 4)

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).

The adjudicative 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 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 access to classified information 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 avoided drawing 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 as to obtaining 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 as to potential, rather than actual, risk of compromise of classified information.

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, "Adherence to Federal Laws Prohibiting Marijuana Use" addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. "An individual's disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations."

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, "Federal Laws and Policies Prohibiting Marijuana Use." The Director of OPM acknowledged that several jurisdictions have

decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence 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 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.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement and substance misuse under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse;

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(f) any illegal drug use while granted access to classified information or holding a sensitive position.

The record evidence shows Applicant used marijuana several times a week from approximately November 2021 to July 2023. He used marijuana in a state where the recreational use of marijuana is legal but was aware the use and possession of marijuana remained illegal under federal law. He purchased marijuana from his cousin every other month from November 2011 to May 2023. AG ¶¶ 25(a) and 25(c) apply. He also admits that he worked in a sensitive position and possessed a security clearance during the time he used marijuana. AG ¶ 25(f) applies.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

AG ¶ 26(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

AG ¶ 26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence on 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.

AG ¶ 26(a) does not apply. Applicant used and purchased marijuana on a regular basis from November 2021 to July 2023 while he worked for a DOD contractor in a sensitive position and possessed a security clearance. His last use of marijuana occurred less than two years ago. Not enough time has passed to conclude the behavior happened so long ago. Questions remain about Applicant's judgment. He admitted that marijuana remained illegal under federal law yet concluded that he could use marijuana since it was legal in his state of residence. He made no attempt to ask his FSO whether he could use marijuana before deciding to use it.

AG 26(b) does not apply because Applicant has not demonstrated sufficient steps to show he has overcome his past marijuana use. He decided to use marijuana several times a week from November 2021 to July 2023, while he was possessed a security clearance and was employed in a sensitive position. He was aware that marijuana use remained illegal under federal law even though it was legal under state law but used marijuana on a regular basis anyway. Merely indicating that he has stopped using marijuana is not sufficient to mitigate the security concern. His behavior indicates an unwillingness to comply with laws, rules, and regulations. His conduct raises questions about his judgment, trustworthiness, and reliability. Not enough time has passed to conclude Applicant's illegal marijuana use is mitigated.

This decision should not be construed as a determination that Appellant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a drug-free lifestyle, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 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 and the AG ¶ 2(d) factors in this whole-person analysis. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. Insufficient time has passed since his last use of illegal drugs to overcome the extent and seriousness of his conduct. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I considered that Applicant has been an employee of the same DOD contractor since August 2011 and that he has held a security clearance since November 2011. I considered he provided full disclosure about his illegal drug use on his July 2023 SCA, during his background investigation interview, and in response to interrogatories. I considered that he used marijuana in a state where marijuana use is legal but was also aware that the use of marijuana remained illegal under federal law. I considered that Applicant possessed a security clearance and was employed in a sensitive position during the time he used marijuana. I considered he stopped using marijuana in July 2023. This was less than two years ago. Not enough time has passed to conclude he is serious about his intention to refrain from illegal marijuana use. His decision to use marijuana after possessing a security clearance for ten years indicates he does not fully understand the responsibilities of working for a DOD contractor and the standards required to possess a security clearance. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his conduct under Guideline H.

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
Subparagraph 1.a:	Against Applicant

Conclusion

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

Erin C. Hogan
Administrative Judge