



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



In the matter of:)	
)	
)	ISCR Case No. 24-00833
)	
Applicant for Security Clearance)	

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: *Pro se*

06/16/2025

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the Guideline H (drug involvement and substance misuse) security concerns arising from his past and current use of marijuana. National security eligibility for access to classified information is denied.

Statement of the Case

Applicant completed and signed a security clearance application (SCA) on May 31, 2023. On June 14, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. 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 *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

On June 17, 2024, Applicant provided a response to the SOR. (Answer) He admitted the four SOR allegations (§ 1.a through 1.d) and requested a hearing before an administrative judge. On January 3, 2025, the case was assigned to me, and on March 13, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for April 24, 2025.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 3. Applicant testified, but did not offer any documents. GE 1 through 3 were admitted into evidence without objection. I marked the Government's July 17, 2024 disclosure letter as Hearing Exhibit (HE) I and appended it to the record. DOHA received the hearing transcript (Tr.) on June 5, 2025.

Findings of Fact

Applicant is 28 years old. He is unmarried and does not have any children. In May 2022, he earned his associate degree. He submitted an SCA on May 31, 2023, and he was almost immediately offered employment with a DOD contractor. His job title is detail planner. He does not currently work in an area that requires a security clearance, but in the future, there may come a time his employer can use him in a restricted area. This is Applicant's first application for a DOD security clearance. (GE 1; Tr. 14-15)

Drug Involvement and Substance Misuse

While Applicant was enrolled in high school, he noticed his back was constantly hurting. He met with a medical doctor who informed Applicant that he had early onset degenerative spinal disease. He currently exercises and stretches regularly to help with his back pain. Beginning in about January 2020, he started to use marijuana regularly to help manage the pain while he sleeps, and on some occasions, he uses marijuana for his anxiety. He decided to use marijuana after receiving a recommendation from his cousin, a medical marijuana card holder, who informed Applicant that marijuana would help him manage his back pain. The SOR alleged Applicant used and purchased marijuana, with varying frequency, from about January 2020 to "present." (SOR § 1.a) (GE 1; Tr. 15-20)

In approximately May 2023, when Applicant was in the hiring process with the DOD contractor, he was informed that he would need to obtain a medical marijuana card due to his positive drug test for marijuana. (SOR § 1.b) Marijuana use for medicinal purposes was legalized in his state of residence in about 2012, and recreational use of marijuana became legal in July 2021. Applicant went online and was able to obtain a medical marijuana card, which he needed before he could start his job training. He testified at the hearing that he renews his medical marijuana card every year and his current card was good through May 2025. (Tr. 19-23)

Applicant testified during the hearing that he was aware marijuana was illegal under federal law well before he started his security clearance investigation. He denied using marijuana on a social basis, and stated he purchased marijuana only from a dispensary. Information he provided in a January 2024 interrogatory, however, seems to

contradict his testimony. In the interrogatory he listed, "I used [marijuana] on social occasions. Small amount, probably a hit or two and I obtained it socially, friends, friends of friends...etc." During the hearing Applicant reiterated that he purchased his marijuana from the dispensary. Department Counsel asked if he used marijuana at night before going to bed, and he replied, "Yes, every single night, yes." He also admitted that when he goes out with friends, he takes marijuana with him, not for his friends, but for his own use if needed. (Tr. 26-28; GE 2)

Applicant was very candid that he would most likely use marijuana in the future as long as he continues to feel back pain. (SOR ¶ 1.d) In his January 2024 interrogatory he listed, "I plan on using medical marijuana in the future. Depending on my pain level, before bed (if needed) I will use about .3g - .5g in order to relieve my pain." On the same page the interrogatory also asked, "Do you understand that marijuana use remains illegal under Federal law and that any future use of marijuana may affect your security clearance?" Applicant responded "Yes." (GE 2; Tr. 29-39)

Applicant testified that after his July 2023 background interview, the DOD authorized investigator told him that his medical marijuana use was fine and should not prevent him from obtaining a security clearance. Applicant was immediately provided clarification that a DOD investigator should never say something like that to an applicant because 1) they have no authority to do so in their position of an investigator; and 2) the information was completely wrong. Applicant had mentioned during his background interview that he may start using a holistic approach for treating his back pain without the use of marijuana, but at the hearing, he admitted he continued to use marijuana after completion of the May 2023 SCA to manage his back pain. (SOR ¶ 1.c) (GE 3; Tr. 36-39)

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(c), 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 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 not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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 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 under AG ¶ 25 and the following are potentially applicable:

- (a) any substance misuse;
- (b) testing positive for an illegal drug; and

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

Applicant used and purchased marijuana, with varying frequency, from about January 2020 to “present” (the language alleged in the June 2024 SOR). He tested positive for marijuana during a May 2023 drug pre-employment test given by a DOD contractor. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

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 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 a statement of intent to abstain from all drug involvement or substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibly.

None of the mitigating conditions apply. Applicant used marijuana for medicinal purposes, from about January 2020 to May 2023, when he filled out an SCA. The SCA should have put him on notice that the Federal Government was concerned about his use of marijuana, especially since he was already aware it was prohibited by Federal law. It is important to note that when he responded in January 2024 to an interrogatory, it was clearly obvious that marijuana remained a concern when he was specifically asked, “**Do you understand that marijuana use remains illegal under Federal law and that any future use of marijuana may affect your security clearance eligibility?**” Even if Applicant may have been provided incorrect information previously, when he read this question, the consequences for his continued marijuana use were made crystal clear. Applicant was placed on full notice with this question, and he answered it with an affirmative response.

Applicant continued to use marijuana during his security clearance investigation, on a nightly basis, and even after he received the SOR in June 2024. He continued to use marijuana up until his security clearance hearing in April 2025. Marijuana is illegal under Federal law, and there are no exceptions for the medical use of marijuana. As such, Applicant failed to mitigate the drug involvement and controlled substance misuse security concerns.

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 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.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his or her off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant failed to make positive changes in his life by using other means to treat his back condition. He was aware marijuana was illegal under Federal law and continued use of marijuana could create adverse consequences for his security clearance eligibility. His behavior creates concern that he is unable to follow laws, rules, and regulations. He has not made a commitment to remain drug-free.

This decision should not be construed as a determination that Applicant 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 track record of responsibility and a better history of behavior consistent with his obligations under Federal law, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in Egan, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board's jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate the drug involvement and substance misuse security concerns.

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, 1.c and 1.d:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge