



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



In the matter of:)	
)	
)	ISCR Case No. 23-02894
)	
Applicant for Security Clearance)	

Appearances

For Government:
Aubrey M. De Angelis, Esquire, Department Counsel

For Applicant:
Pro se

07/14/2025

Decision

CEFOLA, Richard A., Administrative Judge:

On June 29, 2021, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On April 11, 2024, the Department of Defense Consolidated Adjudication Facility (DODCAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H (Drug Involvement and Substance Misuse), and Guideline J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines, effective on June 8, 2017.

Applicant answered the SOR (Answer) on May 22, 2024 (Government Exhibit (GX) 3), and requested a decision on the record without a hearing. Department Counsel submitted the Government's written case on February 26, 2025. A complete copy of the file of relevant material (FORM) was sent to Applicant, including documents identified as GXs 1 through 11. She was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on March 18, 2025, and did not respond. The case was assigned to me on June 30, 2025. GXs 1 through 11 are admitted into evidence.

Findings of Fact

In her Answer to the SOR Applicant denied the factual allegations in Paragraphs 1 and 2 of the SOR, with explanations.

Applicant is 36 years old, divorced, and has one child. She has a high school diploma. She was a member of the U.S. Army Reserve. (GX 5 at pages 7, 14, 15, 23~24 and 26~27.)

Guideline H - Drug Involvement and Substance Misuse

1.a. Applicant denies that she tested positive for marijuana on a random urinalysis test administered on April 23, 2022. Applicant repeatedly avers that she "was never informed" of the positive result, and that she "continued to go to drill [with her reserve unit] for 9 months." Even assuming this to be true, the Government, through the submission of the FORM has clearly informed Applicant of her positive urinalysis. (GXs 9 and 10.) Applicant has chosen not to respond to the FORM.

Guideline J - Criminal Conduct

2.a. Applicant denies the drug involvement, noted above, as criminal conduct.

2.b. Applicant admits that in 2017 she was arrested for, and subsequently pled guilty to, Driving Under the Influence of alcohol. (GX 11.) She avers that she "completed an alcohol rehabilitation program," but submitted nothing in support of her averment.

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person applying for national security eligibility 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

See *also* Executive Order 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 seven conditions that could raise a security concern and may be disqualifying. Two conditions are established:

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

Appellant tested positive for marijuana in April of 2022. Therefore, AG ¶ 25 (a) and (b) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be applicable:

- (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.

Neither of these apply. Although Applicant's marijuana usage was three years ago, she appears to be still "in denial." Applicant has not noted any disassociation, change in environment or a statement of intent as to abstinence. Without these, Drug Involvement and Substance Misuse is found against Applicant.

Guideline J - Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions apply, as discussed below:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant has been convicted of a DUI in 2017 and more recently, tested positive for marijuana in April of 2022. This evidence raises security concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains two conditions that could mitigate criminal conduct security concerns:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Sufficient time has not passed since Applicant's most recent, April 2022, drug involvement, and its related criminal conduct. Based on this fact, the April 2022, criminal conduct continues to cast doubt on Applicant's reliability, trustworthiness, and good judgment. The evidence does not establish mitigation under the two above conditions. Criminal Conduct is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from her drug involvement and substance abuse. This should not dissuade Applicant from applying for a security clearance in the future.

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:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For 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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge