



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



In the matter of:

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ISCR Case No. 24-01784

Applicant for Security Clearance

Appearances

For Government: John C. Lynch, Esq., Department Counsel
For Applicant: *Pro se*

08/06/2025

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 2, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement and substance misuse. On January 7, 2025, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on February 25, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 10, 2025, but he did not respond to it. The case was assigned to me on June 18, 2025. The Government exhibits included in the FORM (Items 1-5) are admitted in evidence without objection.

Findings of Fact

Applicant is a 29-year-old who is being sponsored for a security clearance by a government contractor for whom he has worked since November 2021. He earned a high school diploma in 2014 and an associate degree in 2023. He has not been married, but he has lived with a cohabitant since January 2022. He has no children. He has lived with his parents since May 2021. (Items 3, 5)

From about September 2017 to November 2024, Applicant used marijuana with varying frequency. He used marijuana from November 2023 until November 2024 after he completed a security clearance application (SCA) on February 4, 2023. He purchased marijuana from September 2016 through September 2020, with varying frequency. In the SCA, he divulged his marijuana use up to the date of the SCA and claimed that he used it to alleviate chronic stomach issues and nausea. He also claimed that he stopped using marijuana a few months prior to completing the SCA because he had been asked to undergo the clearance process by his employer. During his August 3, 2023 security interview (August 2023 SI), which he has authenticated, he confirmed his marijuana use, but told the DOD investigator that he had used it in social settings at parties. During the August 2023 SI, he claimed he had no intent to use marijuana again and stated that he had not used it since September 2022. (Items 3, 5)

On December 4, 2023, Applicant had another security interview (December 2023 SI), which he also authenticated. During the December 2023 SI, he admitted having ingested marijuana edibles at home with his girlfriend in November 2023. He obtained the marijuana edibles from his father's medical marijuana supply. He acknowledged that at some point he wanted to obtain a medical marijuana card from State A, but he decided against it. He decided to resume using marijuana at that time because he was discouraged about his prospects of being granted a security clearance. He told the DOD investigator that he regretted using marijuana again, and that he had no intention to use it in the future if he was granted a security clearance. (Item 5)

On November 21, 2024, Applicant answered interrogatories that the Government sent to him earlier that month. In his interrogatory responses, he admitted that he had ingested marijuana weekly from August 2024 until November 14, 2024. His November 14, 2024 marijuana use occurred the day after he received the Government's interrogatories. He claimed that he began using it again as he was feeling anxious because he was working and going to school. He said that he was using it to help him sleep. He again claimed that he had no intent to use marijuana in the future if he obtained a clearance and if it remained illegal. Available evidence shows that his close friend, live-in girlfriend, and father have used marijuana. (Item 5)

In his response to the SOR, Applicant admitted all the SOR allegations without additional comment. His admissions are established as findings of fact. Possession of marijuana (and therefore its use) was and continues to be illegal pursuant to federal law. Recreational marijuana use is illegal in the law of the state where Applicant resides. There is no evidence that he has attended or completed a drug treatment program. (Item 2, 5)

Policies

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 to be 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, 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(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 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 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 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 EO 10865 provides that adverse 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

The security concern for drug involvement and substance misuse is set out in 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.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, "*Adherence to Federal Laws Prohibiting Marijuana Use*," which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications (*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 states in pertinent part:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that require them to use a "whole-person concept." This requires adjudicators to carefully weigh a number of variables in an individual's life to determine whether that individual's behavior raises a security concern, if

at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Appellant used marijuana with varying frequency from September 2019 until November 2024. He purchased marijuana with varying frequency from September 2016 until September 2020. By using marijuana, he would have had to possess it. AG ¶¶ 25(a) and 25(c) are established.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially 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.

None of the mitigating conditions are applicable. It has only been about eight months since Applicant last used marijuana. This relatively short period of time pales in comparison to the length of time that he was involved with marijuana. In the SCA, he provided evidence that he knew using marijuana was incompatible with holding a security clearance when he wrote that he had stopped using marijuana after finding out he would be applying for a security clearance. While he was using marijuana, there is evidence that he knew marijuana use was illegal because he claimed that he would discontinue use until it became legal. He resumed using marijuana on multiple occasions after making statements in the SCA or during security interviews that he would stop. For these reasons, I do not find that his illegal drug use is unlikely to recur, and I find that it casts doubt on his current reliability, trustworthiness, and good judgment.

The short period of time that Applicant has stopped using marijuana, and his willingness to continue using it after saying he would stop show that he has not established a pattern of abstinence. Moreover, he still associates with others who have used marijuana, such as his friend, girlfriend, and father, and he lives in a home where he and others have used it. I find that he has not mitigated the drug involvement and 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 clearance 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 in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude he did not 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.c: Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Benjamin R. Dorsey
Administrative Judge