



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



In the matter of:)
)
) ISCR Case No. 24-00220
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

07/23/2025

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the Guideline H (drug involvement and substance misuse) security concerns arising from his past use of marijuana and controlled substances. He did not fully understand that, although marijuana was legal in his state of residence, it was still considered a controlled substance under federal law. Once he became aware of this standard, he made positive changes in his life and has completely abstained from using illegal drugs. National security eligibility for access to classified information is granted.

Statement of the Case

On April 1, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and E. The DCSA acted under Executive Order (EO) 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 the adjudicative guidelines implemented by the DOD on June 8, 2017.

On May 16, 2024, Applicant provided a response to the SOR (Answer). He admitted SOR ¶ 1.a, and he denied SOR ¶ 2.a. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned this case on January 3, 2025. DOHA issued a notice on March 12, 2025, scheduling the hearing for May 1, 2025. The hearing proceeded as scheduled via online video teleconferencing.

Department Counsel submitted Government Exhibits (GE) 1 through 3; Applicant testified and offered three documents, which I labeled as Applicant Exhibits (AE) A, B, and C; and all of the exhibits were admitted into evidence without objection. During the May 1, 2025 hearing, Department Counsel withdrew Paragraph 2, Guideline E (personal conduct) of the SOR and the single allegation. (SOR ¶ 2.a) I held the record open until May 15, 2025, in the event either party wanted to supplement the record. Applicant timely submitted AE D, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 8, 2025.

Findings of Fact

Applicant is 37 years old. He is previously divorced and currently living with a cohabitant since January 2020. He does not have any children. He earned a bachelor's degree in May 2010. Since September 2016, he has been employed full time for a DOD contractor. His job title is senior manager. This is Applicant's first application for a DOD security clearance. (GE 1; Tr. 13-15, 28)

Drug Involvement and Substance Misuse

Applicant disclosed on his May 2023 security clearance application (SCA) his use of marijuana between January 2006 and April 2023. He used marijuana approximately once or twice a month, for an estimated total of approximately 100-200 occasions during this listed period. He also disclosed that marijuana use became legal in his state of residence in 2021. He admitted that he was not fully aware of the legal and security significance of a state law legalizing the use of marijuana when compared to the prohibition of marijuana use under federal law. (GE 1; Tr. 17-21, 24-25)

During Applicant's background interview in June 2023, he became aware from the authorized DOD investigator that marijuana use was inconsistent with individuals granted security clearances, despite that marijuana use was legal in his state. He testified during the hearing that he got rid of everything he owned that was related to marijuana from his residence in September 2023. He did not use any marijuana after his June 2023 background interview when he became aware that using marijuana was a concern to the federal government. Applicant did not have a problem stopping his use of marijuana because it was not important in his life. His girlfriend does not use marijuana, and he does not associate with people who use marijuana. (Tr. 17-23, 26-27; GE 1, 2, 3)

Applicant has been very candid about his past use of marijuana, as reflected on his May 2023 SCA and in his November 2023 and March 2024 interrogatories. Initially, he did not fully understand that, although the use of marijuana was legal in his state of residence, it was still considered a controlled substance under federal law. He testified at the hearing that he now understands marijuana is prohibited under federal law and incompatible with DOD security clearance regulations. He provided a negative drug test he had voluntarily taken in September 2024. After the hearing, he submitted a letter of intent to abstain from all illegal drug involvement and controlled substance abuse and acknowledged that any future involvement or misuse would be grounds for revocation of national security eligibility. (Tr. 23-24, 26-27; AE C, D)

Character Evidence

Applicant submitted a positive employee character reference letter from the Associate Director, who has worked closely with him for several years. She attested to Applicant's exceptional qualifications, integrity, and professionalism. Applicant also provided a letter of character reference from his best friend for the past 18 years, who was also an officer in the U.S. Air Force with a high-level security clearance. He finds Applicant's dedication to the United States and his creative work solutions are an asset to the federal government. He fully supports Applicant be granted security clearance eligibility. (AE A, B)

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:

AG ¶ 25(a) any substance misuse; and

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

Applicant admitted he used and purchased marijuana, with varying frequency, from about 2006 to about May 2023. 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 eligibility.

Applicant's last use of marijuana occurred over two years ago. He credibly testified that he immediately stopped using marijuana upon learning it was illegal under federal law and incompatible for individuals entrusted with DOD security clearances. There is no evidence of more recent use. He acknowledged his drug use on his May 2023 SCA and took action to change his behavior by ceasing all use of marijuana. He also provided a signed statement of intent not to use any illegal drugs in the future. These actions demonstrate good judgment and reliability. Mitigating conditions AG ¶¶ 26(a) and 26(b) apply. Applicant successfully mitigated 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 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 off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant made positive changes in his life and is considered a trustworthy individual, which were fully supported by two of his character references. He is committed to remaining drug-free, and I find his use of illegal drugs is unlikely to recur. I have no reservations or doubts about Applicant's eligibility and suitability for a security clearance. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated 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:

FOR APPLICANT

Subparagraph 1.a:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant or continue Applicant's national security eligibility. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge