



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01515

Appearances

For Government: Aubrey M. De Angeles, Esq., Department Counsel
For Applicant: *Pro se*

09/02/2025

Decision

WESLEY, ROGER C., Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant mitigated drug involvement and substance abuse concerns. Eligibility for access to classified information or to hold a sensitive position is granted.

Statement of the Case

On November 26, 2024, the Defense Counterintelligence and Security Agency (DSCA) Adjudication and Vetting Services (AVS) sent to Applicant a statement of reasons (SOR) detailing reasons why under the drug involvement and substance abuse guideline the DSCA AVS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on December 29, 2024, and elected to have his case decided on the written record in lieu of a hearing. He received the File of Relevant Material (FORM) and the Government's exhibits (GEs 1-7), on April 28, 2025, and interposed no objections to the materials in the FORM. Applicant did not respond to the FORM with any post-FORM materials of his own. The case was assigned to me on August 7, 2025.

Summary of Pleadings

Under Guideline H, Applicant allegedly used marijuana with varying frequency from about September 2011 through about February 2023.

In his response to the SOR, Applicant admitted the allegations with explanations and clarifications. He claimed he used marijuana a total of 10 times, mostly in 2011 while in college, and abstained from marijuana for over 10 years before making his regrettable decision in early 2023 to use the substance briefly for medicinal purposes to relieve his debilitating back pain associated with his diagnosed spinal condition. He also claimed that the minor relief he achieved from his brief marijuana use in 2023 was not worth the disruptions caused him and was "not the correct course of action." (GE 3) He further claimed he no longer associated with people who most recently shared marijuana with him. Applicant attached copies of his medical progress notes from August 2023 that includes prescribed medications (exclusive of marijuana products) for his diagnosed spinal condition.

Findings of Fact

Applicant is a 38-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has resided with cohabitant since October 2008. (GEs 4-5) He earned a bachelor's degree in May 2007 and a master's degree in May 2009. (Item 3) He reported no military service.

Since July 2016, Applicant has worked for his current employer as a product support specialist. (Items 4-5) Previously, he worked for other employers in various jobs, some while enrolled in college. While he has never held a security clearance, the Defense Investigative Security Service (DISS) approved his eligibility for a security clearance in September 2021. (GE 7)

Use of Illegal Substances

Applicant used marijuana infrequently (approximately 10 times) between 2011 and 2012 (mostly in college). (GEs 3-6) After abstaining for over 11 years he resumed

his use of marijuana on an identified single occasion in February 2023 to address medicinal issues associated with his diagnosed spinal degenerative conditions. (GEs 3-6) Marijuana is a drug federally banned by the Controlled Substance Act (21 U.S.C. § 802, *et seq.*) (CSA)

According to what Applicant told the investigating agent from the Office of Personnel Management (OPM) in his personal subject interview (PSI) conducted in April 2024, he used marijuana socially with friends (mostly in college) to address his back pains. (GE 6) After abstaining from marijuana use for over 10 years, he resumed his use of marijuana in February 2023 as an alternative to opioid pain medications to alleviate his back pains associated with his diagnosed back conditions.

Typically, the marijuana was provided freely to Applicant. (GEs 3 and 6) Both in his PSI and his SOR response, he assured that he has not used marijuana since February 2023. Further, he no longer associates with the people who supplied him his marijuana in 2023. (GEs 3 and 6)

Applicant characterized his extemporaneous decision in 2023 to accept marijuana from friends as an alternative to opioid pain medication in addressing the spinal pain he was suffering from at the time. (GEs 3 and 6) He acknowledged in retrospect that his use of marijuana in 2023, even for pain management, was not the correct course of action. He explained that his back condition was not properly diagnosed until mid-2023, months after he had already ceased using marijuana. (GE 3) Having explained in his SOR response his marijuana use in February 2023 to alleviate his pain issues, he expressed his continued commitment to comply with all laws and regulations and avoid any future marijuana use. (GE 3)

Applicant affirmed his disassociation with the persons who supplied him his marijuana in 2023. (GE 3) He committed to maintaining his abstinence from marijuana use with the understanding and acceptance that any future involvement with illegal substances would be grounds for revocation of his security clearance. His furnished medical records document his continuing treatment (primarily through steroid injections) for his diagnosed disc issues. (GE 3)

Noteworthy, Applicant's February 2023 resumption of marijuana use was preceded by a 2015 pre-employment drug screening urinalysis and eligibility for a civilian access card (CAC) in September 2021. (GE 7) His furnished medical records do not identify Applicant's dates or marijuana use or when he ceased using the substance. (GEs 3 and 6) Nor do his medical records identify any prescribed marijuana products to treat his diagnosed spinal stenosis condition.

Still, Applicant's claimed cessation from marijuana use in February 2023 is not challenged by the Government with any probative evidence. Applicant's accounts of his use of marijuana and explanations of the circumstances that prompted him to marijuana for relief from the back pains he was experiencing are well documented and unchallenged. Considering the record as a whole, Applicant's accounts are accepted.

Policies

By virtue of the jurisdictional principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a right to a security clearance.” As Commander in Chief, “the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Application approvals for a security clearance are predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person.

An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information.

The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of 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.

Burdens of Proof

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours.

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 about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531.

"Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any

of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant's considerable history of marijuana usage. Altogether, Applicant used marijuana recurrently over an 11-year period mostly between 2011 and 2012), with a last reported use in February 2023 to medicate severe back pain associated with his diagnosed disc issues.

Drug Involvement concerns

Applicant's acknowledged recurrent use of marijuana spread over a period of 11 years is detailed in his 2024 e-QIP, his 2024 PSI, and his SOR response. On the strength of the evidence presented, two disqualifying conditions (DCs) of the AGs for drug involvement apply to Applicant's situation: DC ¶¶ 25(a), "any substance misuse" and 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of illegal drugs or drug paraphernalia."

To his credit, Applicant has committed to abstinence and has abandoned all involvement with marijuana. For over two years, he is credited with remaining abstinent from illegal drugs. He has also acknowledged his mistakes in using marijuana to address his back pain and committed to maintaining his abstinence from marijuana use with the understanding and acceptance that any future involvement with illegal substances would be grounds for revocation of his security clearance.

Based on the developed record, two mitigating conditions (MCs) are available to Applicant. Applicable mitigating conditions are MC ¶¶ 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 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) dissociation 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.”

To be sure, drug use (inclusive of marijuana products) for analgesic purposes are not generally considered to be “unusual circumstances” for purposes of applying MC ¶ 26(a), and neither the CSA nor the laws of Applicant’s state of residence provide any exceptions for marijuana use for medicinal purposes. Moreover, Applicant makes no claims to legalization of medicinal marijuana usage at either the federal or state levels.

All in all, though, Applicant’s accounts of past usage, his single, isolated recurrence of marijuana use in 2023 to address his back pain issues, his disassociation from persons who supplied marijuana to him in 2023, and his expressed future commitments to abstain from marijuana involvement with the understanding that any future recurrence can result in a loss of his clearance are collectively sufficient to overcome any reasonable doubts about his ability to sustain his abstinence. Noteworthy is the absence of any probative evidence challenging Applicant’s commitments.

Whole-person assessment

Whole-person assessment of Applicant’s clearance eligibility requires consideration of his history of marijuana use that includes 11-years of recurrent use of the drug. and whether such use reflects collective judgment lapses incompatible with his holding a security clearance.

From a whole-person perspective, Applicant has established enough independent probative evidence of his overall trustworthiness, reliability, and good judgment required of those who seek eligibility to hold a security clearance or sensitive position. Weighted in his favor are his contributions to the defense industry and his more recent commitments to abstain from illegal drug use while looking for prescribed treatment protocols to address his diagnosed disc issues. Overall reliability, trustworthiness, and good judgment are established.

I have fully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that Applicant’s past use of federally banned marijuana (especially is mitigated. Eligibility for access to classified information is granted.

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:

GUIDELINE H (DRUG INVOLVEMENT): FOR APPLICANT

Subparagraph 1.a:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Roger C. Wesley
Administrative Judge