



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



In the matter of:

Applicant for Security Clearance

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) ISCR Case No. 25-00139
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Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

09/17/2025

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the security concerns arising from his illegal drug use. Eligibility for access to classified information is denied.

Statement of the Case

On March 6, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). 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 (AG) implemented by the DOD on June 8, 2017.

In Applicant's March 7, 2025 response to the SOR (Answer), he admitted both allegations. He explained that he was aware that his marijuana use was illegal under Federal law even if permitted under his state's law. He claimed to have ceased marijuana use in January 2025. He did not attach any documentary evidence. He requested a

decision by an administrative judge of the Defense Office of Hearings and Appeals based upon the written record in lieu of a hearing. (Answer)

On March 31, 2025, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM included Government Exhibits (GE) 1 through 5. In the FORM, Department Counsel provided Applicant notice that failure to respond to the FORM may be considered a waiver of any objections to the admissibility of the evidentiary exhibits.

On May 6, 2025, Applicant received the FORM and its attachments. A cover letter included with the FORM advised Applicant that he had 30 days from the date of receipt to file any objections or to provide any additional information in support of his clearance eligibility. He did not submit a response to the FORM nor object to any of the Government's evidentiary exhibits. The case was assigned to me on September 2, 2025. Government's Exhibits 1 through 5 are admitted into evidence without objection.

Findings of Fact

Applicant is 50 years old. He earned a bachelor's degree in 1997. Since 2007, he has been the chief executive officer of his own company. He was married in 2001 and divorced in 2010. He has three children, ages 26, 22, and 9. (GE 3, GE 5)

On June 11, 2024, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 23 – Illegal Use of Drugs or Drug Activity, he denied using any illegal drugs in the previous seven years. (GE 3)

On September 9, 2024, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). During the interview, he admitted purchasing marijuana from a state-licensed dispensary on a quarterly basis since about 2014. He shared the marijuana edibles and flower he purchased with his mother and his girlfriend. He used marijuana about monthly, both recreationally and to aid his sleep. As of the interview, he last used marijuana in August or September 2024. He expressed his willingness to discontinue his marijuana use if required, and he claimed that he had not realized that his marijuana use was illegal under Federal law. He confirmed that accuracy of the OPM interview summary on February 21, 2025. (GE 5)

On January 3, 2025, Applicant responded to interrogatories regarding his illegal drug use. He reported that he was currently using marijuana about five times a month. His most recent use had been December 31, 2024, and he expressed his intent to abstain from illegal drugs in the future. (GE 4)

In his Answer, Applicant admitted using marijuana from 2014 to at least December 2024. He explained that he stopped all marijuana use as of January 2025. (Answer)

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 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(a), 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 sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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 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.

Director of National Intelligence (DNI) Memorandum ES 2014-00674, "Adherence to Federal Laws Prohibiting Marijuana Use," October 25, 2014, 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.

In 2021, the Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. 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 requires 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.¹

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

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

Applicant admitted that he used marijuana from 2014 to at least December 2024. He continued to use marijuana after being made aware of its illegality under Federal law during his September 2024 security interview. Although permitted under state law, his purchase and possession of marijuana violated Federal drug laws. AG ¶¶ 25(a) and 25(c) apply.

Conditions that could mitigate the drug involvement security concerns are provided under AG ¶ 26. 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.

Applicant regularly used and purchased marijuana for at least 10 years. Most importantly, he continued to illegally possess and use marijuana after he was alerted to its illegality under Federal drug laws and its incongruity with security clearance eligibility.

¹ *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*, dated December 21, 2021 (SecEA Clarifying Guidance), at p. 2.

During his interview, Applicant admitted that he often shared marijuana with his girlfriend and mother. There is no evidence that he has discontinued his associations with drug users or environments where drugs are used. Notwithstanding his expressed intent to abstain from marijuana use in the future, he has not established a pattern of abstinence nor disassociated himself from drug users. He did not mitigate the drug involvement security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to classified information 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 and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant used marijuana for over 10 years, including several times after he was alerted that such conduct was illegal under Federal law and prohibited by those entrusted with access to classified information. There is no evidence he has disassociated himself from marijuana users close to him. He has not established a pattern of abstinence from marijuana. This decision should not be construed as a determination that Applicant cannot obtain a security clearance in the future. With a more established period of abstinence, he may mitigate the drug involvement security concerns, but he has not on the current record. Eligibility for access to classified information is denied.

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.:

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 grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge