



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 24-02101

Applicant for Security Clearance

Appearances

For Government: Mark Lawton, Esq., Department Counsel
For Applicant: *Pro se*

12/11/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate drug involvement and substance misuse concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On March 6, 2025, the Defense Counterintelligence and Security Agency (DCSA) Adjudications and Vetting Services (AVS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and substance misuse guideline the DCSA 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); Department of Defense (DoD) Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (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 March 22, 2025, and elected to have his case decided on the written record in lieu of a hearing. This case was assigned to me on September 15, 2025. Applicant received the File of Relevant Material (FORM) on June 5, 2025, and was instructed to file any objections to the FORM or supply additional information for consideration within 30 days of receipt. Applicant did not respond to the Government's FORM and did not object to the Government's materials included in the FORM.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used marijuana with varying frequency from about December 2008 to about December 2024; (b) used marijuana from about June 2024 to about December 2024 while holding a sensitive position; (c) purchased marijuana with varying frequency from about March 2009 to about September 2024; (d) received a citation in about 2015 for possession of marijuana and drug paraphernalia; (e) received a citation in about 2012 or 2013 for marijuana; and (f) intends to continue using marijuana in the future.

In Applicant's SOR response, he admitted most of the allegations covered by Guideline H. He denied receiving a citation for possession of marijuana, and he denied any intention to continue using marijuana in the future. For clarification, he claimed that the alleged charge in 2015 was only for possession of drug paraphernalia, and not for possession of marijuana itself. He also claimed that in the interest of keeping his job and clearance, he no longer intends to use marijuana in the future (despite its legality in his state of residence). And, he claimed he was more than willing to subject himself indefinitely to regular drug screenings. Applicant attached his letter of abstinence to his SOR response. (GE 1)

Findings of Fact

Applicant is a 33-year-old civilian employee of a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has no children. (GEs 2-3) He earned a high school diploma in June 2010 and attended college classes between September 2012 and April 2015 without earning a degree. (GE 2) Applicant did not report any military service. (GEs 2-3)

Since March 2024, Applicant has been employed by his current employer (GEs 2-3) Previously, he worked for other employers in other jobs. He is sponsored by his current employer for a security clearance and has held an interim security clearance since April 2024. (GE 4)

Illegal drug involvement

While in high school and college (spanning December 2008 and November 2023), Applicant used marijuana in varying frequency, generally once or twice a week on average before tapering off in 2022 and 2023. (GE 3). Sometimes he used marijuana nightly to help him fall asleep. Mostly, though, he used marijuana with friends in social situations. (GE 1 and 3) More specifically, he used marijuana with varying frequency between December 2008 and December 2024, while his marijuana purchases were made with varying frequency between March 2009 and September 2024. (GEs 2-3) For a six-month period spanning June 2024 to December 2024 Applicant used marijuana while holding a sensitive position and interim security clearance. (GEs 3-4) His purchases of marijuana were contemporaneously made between June 2024 November 2024 while holding a sensitive position and interim security clearance..

Applicant acknowledged his awareness that since at least March 2024 (regardless of state law in his state legalizing the use of marijuana) that the possession (and implicitly use) of marijuana remained illegal under the Federal Controlled Substances Act. (21 U.S. ¶¶ 802, *et seq.* (1970)) (CSA). (GE 3) His marijuana purchases were made through friends and acquaintances.

While preparing for drug testing and job training with his current employer, in December 2023 Applicant abstained from marijuana activity for a short time with the knowledge that the use and possession of marijuana was illegal under federal law. (GEs 1 and 3) Once he passed his employer-administered hair follicle test in March 2024, he resumed his marijuana use and purchases. (GEs 1 and 3) He estimated to have used and purchased marijuana on several occasions between March 2024 and December 2024, with a last acknowledged purchase in September 2024 and a last acknowledged use in December 2024. (GE 3)

In August 2015, Applicant was cited in a neighboring state for possession of marijuana and drug paraphernalia. (GEs 2-3 and 5) He was later fined without the need for a court appearance. Earlier in 2012 or 2013, he was cited in the same neighboring state for possession of marijuana. (GE 6) He was later fined without the need for a court appearance. (GEs 2-3 and 6) Applicant is credited with reporting both incidents to his employers at the time. (GE 3)

Policies

By virtue of the jurisprudential 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.

Eligibility for a security clearance is 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 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. These 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.

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 considered together with the following AG ¶ 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 guideline is pertinent:

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. AG ¶ 24.

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 AGs 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 use and purchase of marijuana, over a considerable number of years. More recently, he used and purchased marijuana while holding a sensitive position and interim security clearance.

Drug and Substance Abuse Concerns

Applicant's admissions to using and purchasing marijuana regularly in high school and college, and more recently while holding an interim security clearance and sensitive position with his current employer raise security concerns over his judgment and risks of recurrence. The Director of National Intelligence (DNI) has made very clear that neither state laws legalizing the use of marijuana and any other drugs considered illegal under federal law permit individuals to preempt or otherwise violate federal laws banning or restricting the possession of drugs covered by Schedules 1 and 2 of the CSA.

On the strength of the evidence presented, four disqualifying conditions (DCs) of the AGs for drug involvement and substance misuse are applicable. DC ¶¶ 25(a), "any substance misuse"; 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia"; 25(f), "any illegal drug use while granted access to classified information or holding a sensitive position"; and 25(g), "expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse," apply to Applicant's situation.

Uncontroverted is Applicant's discontinuance of using and purchasing marijuana since December 2024. Applicant has fully acknowledged his frequent use and purchases of marijuana in high school and college long before he ever applied for a job requiring a security clearance. He has committed, too, to sustained abstinence from his use of marijuana for so long as marijuana is banned by the CSA, irrespective of the drug's legalization by his state of residence. And, the cited marijuana arrest offenses that resulted in fines are considerably aged and did not require any continuing court oversight.

Considering all of the circumstances surrounding Applicant's past involvement with marijuana, his recent conditional commitments to abstain from marijuana activity for so long as it is federally banned, and his lack of corroborating evidence to support his cessation claims, his abstinence commitment claims entitle him to very limited application of potentially available mitigating conditions (MCs) of the drug involvement and substance misuse guideline. Neither potentially applicable MC ¶ 26(a), "the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment," nor any of the other listed mitigating conditions are available to Applicant.

Still, Applicant's lengthy personal history of marijuana use and purchases undercut his commitment to avert all risks of recurrence of marijuana involvement in the foreseeable future. Neither misconduct nor uncontroverted claims of sustained abstinence (conditioned as they are under the continued CSA ban of marijuana possession) are sustainable standing alone without record corroborating evidence. See

ISCR Case No. 02-08032 (App. Bd. May 2004) Without more time and corroborating evidence of sustained abstinence from the use and purchase of federally banned drugs over a more prolonged period of time, other potentially available mitigating conditions are inapplicable.

While this is not a close case, even close cases must be resolved in the favor of the national security where doubt exists. *See Dept. of Navy v. Egan, supra*. Quite apart from any judgment reservations the Government may have for the clearance holder employed by a defense contractor, the Government has the right to expect the keeping of promises and commitments from the trust relationship it has with the clearance holder. *See Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Summarized, it is still too soon to make safe predictions that Applicant will be able to fulfill his personal commitment to avoid illegal drugs in the future. Without a face-to-face hearing to assess his credibility, his abstinence assurances cannot be reliably evaluated without corroborating evidence.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of illegal drug use and purchases of marijuana can be reconciled with minimum standards for holding a security clearance. Applicant's considerable amount of marijuana use and purchases over a prolonged period of time raise serious security concerns about his overall judgment, reliability, and trustworthiness.

While Applicant is to be credited for his contributions to the defense industry, his extensive illegal drug activity over an extended number of years (inclusive of his more recent use and purchases of marijuana while holding a sensitive position and an interim clearance) preclude him from benefitting from any of the potentially available mitigating conditions. *See ISCR Case No. 02-07555 at 2-3 (App. Bd. July 19, 2004); ISCR Case No. 01-07735 at 2 (App. Bd. June 25, 2002)*

I have carefully 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 illegal drug involvement and substance misuse concerns are not mitigated. 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:

GUIDELINE H (DRUG INVOLVEMENT): AGAINST APPLICANT

Subparagraphs 1.a-1.f:

Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge