



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 24-02070 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Jenny G. Bayer, Esq., Department Counsel
For Applicant: *Pro se*

02/26/2026

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse). Applicant mitigated the security concerns. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 27, 2023. The Department of Defense (DoD) sent him a Statement of Reasons (SOR) dated January 2, 2025, alleging security concerns under Guideline H. The DoD acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on January 8, 2025, and requested a decision on the written record without a hearing. Department Counsel issued the Government's file of relevant material (FORM) on January 27, 2025, including documents identified as

Government Exhibit (GE) 1 through GE 5. Applicant received the FORM on February 11, 2025, and provided a Response dated March 10, 2025. The case was reassigned to me on February 20, 2026. The SOR and Applicant's Answer (GE 1 and GE 2), as well as Applicant's Response are the pleadings in the case. GE 3 through GE 5 are admitted into evidence without objection.

Findings of Fact

Applicant is a 47-year-old program manager who has worked for his security clearance sponsor since the fall of 2023. He had been with his previous employer since 2005. He has held a security clearance since 2004. He has been married for over 24 years and has two adult children. He earned a bachelor's degree in 2002. (GE 3 at 5, 10, 13-15, 19, 34-35; GE 4.)

In Applicant's SOR Answer, he admits he used marijuana in April 2023, while holding a sensitive position, i.e., one requiring a security clearance (SOR ¶¶ 1.a and 1.b). On his October 2023 SCA he wrote, "consumed twice during visit to friends in [State X]." (GE 3 at 33.) He concludes his Answer with "I intend to abstain from all drug involvement and substance misuse in the future. The single self-report incident represents a lapse in judgement with no pattern indicating a lack of reliability, trustworthiness, or good judgment." (Answer.)

Applicant discussed his marijuana use during his April 2024 security clearance interview with a DoD investigator. He confirmed the details on his SCA and explained the incident. He was visiting friends (husband and wife) in State X with his wife. His friends grew the marijuana themselves. They smoked it from a bong. He did not like how the marijuana made him feel and did not intend to use it again. He still speaks by phone to the husband about once a month. He provided his friends' contact information to the investigator. He has not tried marijuana since April 30, 2023. (GE 3 at 33; GE 5 at 4-5, 9.) In response to Government interrogatories, he wrote he realized it was illegal Federally during his April 2024 security clearance interview. (GE 5 at 10.)

In Applicant's Response to the FORM he argued the following points:

- This was a single occurrence of drug use;
- He self-reported the incident;
- He was committed to abstaining from illegal drug use in the future;
- His statement of intent in Answer; and
- His 20 years of unblemished service.

Applicant in his Response states he stands behind his "track record in the Defense industry, full body of evidence, and declarations of future intentions as evidence of [his] ability and trustworthiness to handle sensitive information," to demonstrate his involvement with marijuana was extremely limited in scope. The security clearance interview reads consistently with a person who had admitted his actions on his SCA; was prepared to discuss them with the DoD investigator; and that he had no intention to use

marijuana or any other illegal drug in the future. (GE 3 at 33; GE 5 at 4-5; Answer; Response.)

Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

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, an administrative judge applies these guidelines 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 and reliable information about the person, past and present, favorable and unfavorable.

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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline 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.

Applicant’s admissions in his SCA and Answer are sufficient to raise the following disqualifying conditions under this guideline: AG ¶ 25:

- (a): any substance misuse (see above definition);

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

- (f): any illegal drug use while granted access to classified information or holding a sensitive position.

The following mitigating conditions are potentially applicable under 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

(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.

There is a strong presumption against the grant or maintenance of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991). After the Government produces evidence raising security concerns, an applicant bears the burden of persuasion concerning mitigation. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that a clearance may be granted only when “clearly consistent with the interests of the national security.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” AG ¶ 2(b).

AG ¶¶ 26(a) and 26(b) are established for SOR ¶ 1.a and ¶ 1.b. Applicant has demonstrated over the last two and half years that his lapse in judgment while in a sensitive position was so infrequent, or happened under such circumstances that it is unlikely to recur nor does it cast doubt on his current reliability, trustworthiness, or good judgment. He has had no further use of marijuana since April 2023. He was put on notice when he completed his October 2023 SCA that his April 2023 use of illegal drugs was incompatible with a security clearance. He voluntarily admitted this fact on that SCA, and he discussed it with the DoD investigator in April 2024. His voluntary disclosure of his marijuana use on the weekend in question on his SCA reflects his understanding that marijuana use is not permitted while holding a sensitive position or possessing a security clearance, and any future involvement with marijuana would be grounds for revocation of his security clearance. His Answer and Response clearly expresses his intent to abstain from all drug involvement and substance misuse.

With AG ¶ 25(f) there is a heightened security concern in this case because individuals who have already been granted access to classified information or who hold sensitive positions are held to a higher standard than individuals not similarly situated. See ISCR Case No. 23-01884 (App. Bd. Nov. 6, 2024). The record supports that Applicant’s marijuana use in April 2023, after being granted a security clearance, was a one-time event and that he had no intention to use illegal drugs again in the future. His statement of intent to abstain from future drug use in his 2025 Answer is credible based on the nature of his April 2023 marijuana use and voluntary nature of his disclosure, which would never have been known by the Government but for his disclosure; his almost three years of abstinence since his April 2023 use of marijuana; and his long unblemished work history demonstrates his reliability. Applicant has met his burden of persuasion. See ISCR Case No. 23-01207 (App. Bd. Mar. 25, 2024); ISCR Case No. 22-00657 at 4 (App. Bd. Apr. 18, 2023).

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I considered Applicant's voluntary admission that he used marijuana while holding a sensitive position or possessing a security clearance and the infrequency of this conduct in his work history. Given his cooperation in the security clearance process, the infrequency of this conduct, and the length of abstinence, there is little likelihood of continuation or recurrence. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his drug involvement while holding a sensitive position and possessing a security clearance.

Formal Findings

I make the following formal findings on the allegations in the SOR:

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| Paragraph 1, Guideline H: | FOR APPLICANT |
| Subparagraphs 1.a-1.b: | For Applicant |

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Charles C. Hale
Administrative Judge