



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



In the matter of:

)  
)  
) ISCR Case No. 16-03429  
)  
)  
)

Applicant for Security Clearance

**Appearances**

For Government: Gatha Manns, Department Counsel

For Applicant: *Pro se*

November 30, 2017

---

**Decision**

---

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On May 1, 2015, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). (Government Exhibit 3.) On December 8, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse; and Guideline E, Personal Conduct. The action was taken under Executive Order 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 for Determining Eligibility for Access to Classified Information*, effective within the DoD after September 1, 2006.

Applicant answered the SOR on December 19, 2016. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On April 26, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing six Items, was

received by Applicant on May 23, 2017. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant failed to respond to the FORM. DOHA assigned the case to me on October 1, 2017. Items 1 through 6 are admitted into evidence, and hereinafter referenced as Government Exhibits 1 through 6.

The SOR in this case was issued under the adjudicative guidelines that came into effect within the DoD on September 1, 2006. Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines*, implements new adjudicative guidelines, effective June 8, 2017. All national security eligibility decisions issued on or after June 8, 2017, are to be decided using the new *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), as implemented by SEAD 4. I considered the previous adjudicative guidelines, effective September 1, 2006, as well as the new AG, effective June 8, 2017, in adjudicating Applicant's national security eligibility. My decision would be the same under either set of guidelines, although this decision is issued pursuant to the new AG.

### **Findings of Fact**

In his Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations. He provided no additional supporting documentation for eligibility for his security clearance.

Applicant is 48 years old, divorced, and has a step-son. He has a bachelor's degree in Architecture. He works for a defense contractor as a Senior Architect. He has been working with his current employer since November 2010, and in the defense industry since 1993. A security clearance is required in connection with his employment in the defense industry. Applicant was granted a security clearance in 2010.

Applicant admits that he used marijuana from August 1983 until at least June 2014, throughout a period of 31 years. He states that after receiving his security clearance in 2010, he has not purchased or possessed any illegal drug including marijuana. He did use marijuana in 2014 in a private setting with close friends while on vacation from work. He further states that he does not use illegal drugs regularly, and never in a work environment, during his weekly work routine, or amongst strangers. His last use of marijuana occurred in 2014. He states that he has never used any other illegal drug except marijuana. (Government Exhibit 2.)

Applicant completed a security clearance application dated May 1, 2015, wherein he was asked in Section 23, concerning illegal use of drugs or drug activity, if he has ever illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance. Applicant responded, "NO." (Government Exhibit 3.) This was a false answer. He failed to disclose the fact that he used marijuana in 2014. He states that he forgot about his use in 2014 when answering the question, and did not

intend on being deceptive. He states that at the time, he answered the questions truthfully to the best of his knowledge and ability. (Government Exhibit 2.)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2 describing 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." 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 avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to 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**

The security concern relating to the guideline Drug Involvement and Substance Misuse is set forth at 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.

The guideline at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Three conditions are established:

- (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.

Applicant used marijuana from August 1983 to at least June 2014. He received a security clearance in 2010. Therefore, AG ¶ 25 (a), (c), and (f) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. The two conditions set forth below 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 admits to his marijuana use while holding a security clearance. However, he fails to provide anything else in mitigation. AG ¶¶ 17(a) and (b) do not prove full mitigation in this case. There is no evidence in the record that Applicant has changed his association with his friends that use drugs, his environments where the drugs are used, nor has he provided a signed statement of intent to abstain from illegal drug use in the future.

#### **Guideline E- Personal Conduct**

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant states that he misread and interpreted the question wrong in response to whether he has ever used any illegal drug while possessing a security clearance. The question is clear, simple, and not confusing. His excuse is meritless. It can therefore be assumed that he deliberately attempted to conceal his marijuana use in

2014 from the government on his e-QIP. He obviously knew it was wrong, against the law, and against DoD policy when he used marijuana in 2014, and when he deliberately falsified his security clearance application in response to the questions concerning this marijuana use. He did not answer the question truthfully, which shows poor judgment, unreliability and untrustworthiness. There are no applicable conditions that could be mitigating under AG ¶ 17.

### **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 an applicant's conduct and all the 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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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. Applicant has a long history of employment with the defense industry. He also has a long history of marijuana use. This conduct clearly diminishes his reliability, trustworthiness, and/or good judgment by his complete disregard for DOD policy and security concerns that prevent the use of illegal drugs including marijuana.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the security concerns arising from his Drug Involvement and Substance Abuse and Personal Conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	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.

---

Darlene Lokey Anderson  
Administrative Judge