



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



In the matter of:

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ISCR Case No. 16-03436

Applicant for Security Clearance

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

03/30/2018

**Decision**

Curry, Marc E., Administrative Judge:

Applicant has been smoking marijuana for 40 years and intends to continue smoking it. Clearance is denied.

**Statement of the Case**

On July 27, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, drug involvement, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility for him. The DOD CAF took the action under Executive Order (EO) 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On September 13, 2017, Applicant answered the SOR allegations, admitting subparagraphs 1.a and 1.b, and denying subparagraph 1.c. He requested a decision based on the administrative record instead of a hearing. On September 25, 2017, Department

Counsel prepared a File of Relevant Material (FORM). Applicant did not file a response, whereupon the case was assigned to me on March 15, 2018.

### **Findings of Fact**

Applicant is a 55-year-old man who works with a federal contractor as an electrician. He is a high school graduate and earned a vocational certification in electronics. (Item 2 at 15) He has been smoking marijuana with varying frequency, including daily, for 40 years. (Item 2 at 1) His marijuana use once caused him to fail a pre-employment drug test (subparagraph 1.c) He admits failing the test, but “really didn’t care about passing [it] because he did not want the job.” (Item 2 at 1) Currently, he is using marijuana every day. He enjoys using marijuana, characterizing it as “enjoyable and mellowing,” and believes that it “brings [him] closer to God.”(Item 4 at 2).

### **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overall adjudicative goal is a fair, impartial, and commonsense decision. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d).<sup>1</sup>

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<sup>1</sup> The factors under AG ¶ 2(d) are as follows:

(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.

## **Analysis**

### **Guideline H, Drug Involvement**

Applicant's longtime use of marijuana, his nonchalant attitude about failing a pre-employment drug screening, and his expressed intent to continue using marijuana render him an unacceptable security risk. (AG ¶¶ 24, 25(a) – 25(c), and 25(g))

### **Formal Findings**

Formal findings for 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
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Subparagraphs 1.a – 1.c:	Against Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc E. Curry  
Administrative Judge