



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



In the matter of:

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ISCR Case No. 16-03592

Applicant for Security Clearance

**Appearances**

For Government: Mary Margaret Foreman Esq., Department Counsel

For Applicant: *Pro se*

11/28/2017

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**Decision**

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CURRY, Marc E., Administrative Judge:

Applicant has successfully completed substance abuse counseling and has abstained from marijuana use for more than two and a half years. I conclude he has mitigated the drug involvement security concern. Clearance is granted.

**Statement of the Case**

On December 29, 2016, 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 interests of national security to grant or continue security clearance eligibility. 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 *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on September 1, 2006.

On February 10, 2017, Applicant answered the SOR allegations, admitting subparagraphs 1.b through 1.h, and partially admitting subparagraph 1.a.<sup>1</sup> He requested a decision on the written record rather than a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On March 22, 2017, Department Counsel prepared a File of Relevant Material (FORM). Applicant received the FORM on March 29, 2017, and was instructed that he had 30 days to file a response. Within the allotted time, Applicant filed a response. Department Counsel did not object, and the case was assigned to me on October 1, 2017.

While this case was pending a decision, Security Executive Agent Directive 4 was issued establishing National Security Adjudicative Guidelines (AG) applicable to all covered individuals who require initial or continued eligibility for access to classified information or eligibility to hold a sensitive position. The AG supersede the adjudicative guidelines implemented in September 2006 and are effective for any adjudication made on or after June 8, 2017. Accordingly, I have adjudicated Applicant's security clearance eligibility under the new AG.

### **Evidentiary Ruling**

Item 4 is a Report of Investigation (ROI) summarizing Applicant's Personal Subject Interview conducted on August 6, 2016. Such reports are inadmissible without authenticating witnesses. Directive ¶ E3.1.20. Consequently, I have not considered this document in my disposition of this case.

### **Findings of Fact**

Applicant is a 27-year-old single man who lives with his girlfriend and their infant child. He graduated from high school in 2009. Since 2015, he has been working as a janitor at a military facility. He was initially granted a security clearance in April 2011. (Item 2 at 1)

Applicant smoked marijuana from 2005 to 2015. (Item 2 at 16) He smoked approximately one to three marijuana cigarettes per week, and would have smoked more if he could have afforded it. (Item 2 at 16) Over the years, his marijuana use caused family problems, as his parents, upset with his drug use, made him move from their home when he was 24 years old. (Item 2 at 26)

Applicant's marijuana use also led to legal problems and employment instability. On December 12, 2011, he was arrested and charged with second degree possession of marijuana. (Item 2 at 1) The case was dismissed in June 2012. (Item 2 at 14)

In February 2012, Applicant was again arrested and charged with second degree marijuana possession. (Item 2 at 1) While trial was pending, Applicant completed a two-month drug counseling program. The state withdrew the case in December 2012.

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<sup>1</sup> Applicant admits using marijuana during the time specified in the SOR, but could not confirm using it weekly.

Applicant continued to use marijuana after completing counseling. At or about the time he completed counseling, he was terminated from his job on the military facility after failing a drug test. (Item 2 at 28, 30)

In October 2012, Applicant was arrested and charged with second degree possession of marijuana. In July 2013, he pled guilty to the lesser charge of loitering. (Item 2 at 1)

In September 2014, Applicant was arrested and charged with possession of drug paraphernalia. He pleaded guilty in February 2015 and was sentenced to two years probation, and ordered to attend two months of inpatient drug treatment from March 2015 to May 2015. Around the time of his guilty plea, he failed a pre-employment drug screening. (Item 2 at 28)

While at the treatment center, a licensed social worker diagnosed him with severe cannabis use disorder. (Item 2 at 15) He was cooperative with treatment, working on his treatment plan, being receptive to feedback, and interacting appropriately with others. (Item 2 at 17)

Applicant has been clean and sober since his May 2015 discharge. (Item 2 at 6) He has passed multiple random drug tests. (Item 2 at 7-9) After meeting all of the probation requirements, it was terminated in February 2017. (Response at 2) Applicant successfully obtained his current job with assistance from the state's department of vocational rehabilitation services. On January 14, 2016, he received a letter from his vocational counselor commending him for getting a job and performing satisfactorily. (Response at 3)

In February 2017, Applicant met with a doctor to assess his rehabilitation progress. The doctor interviewed Applicant and "found him to be truthful, trustworthy, and reliable." (Item 2 at 6) In addition, he concluded that he was no longer dependent on marijuana and that he was fit for employment.

Applicant neither spends time, nor has any contact with his previous drug-using associates, and he avoids the environment where he used drugs in the past. He is settled down, as he is living with his girlfriend and raising their infant child together. He executed an affidavit pledging that he will continue to abstain from marijuana use, and expressing his understanding that future use of marijuana would result in the automatic revocation of his security clearance. (Item 2 at 2-3)

### **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. According to AG ¶ 2(a), the entire process is an evaluation 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. 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

## **Analysis**

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

The security concern under this guideline is as follows:

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. (AG ¶ 24)

Applicant's lengthy, frequent use of marijuana, including a period after the grant of a security clearance, resulted in multiple arrests, two failed drug tests, and a diagnosis of severe cannabis disorder. The following disqualifying conditions are applicable under AG ¶ 25:

- (a) any substance abuse;
- (b) testing positive for an illegal drug;
- (c) diagnosis by a duly qualified medical or mental health professional (e.g. physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance abuse disorder; and

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

The following mitigating conditions under AG ¶ 26 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;

(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; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis from a duly qualified medical professional.

Applicant's marijuana use was not a minor, youthful indiscretion. He was addicted to it, and used it one to three times weekly for more than ten years, continuing to abuse it after the grant of a security clearance, followed by three arrests, two jobs lost or foregone through drug test failures, and a failed effort at drug rehabilitation.

Conversely, Applicant has been clean and sober for more than two and a half years, having not used marijuana since completing counseling in May 2015. After completing inpatient drug rehabilitation, Applicant enrolled himself in a state-sponsored vocational rehabilitation program. With the help of his vocational rehabilitation counselor, he obtained his current job. He no longer associates with his former drug-using associates, and has settled down, living with his girlfriend and their infant child. Recently, he met with a doctor who evaluated him, and found him to be truthful, trustworthy, reliable, and no longer marijuana dependent. Under these circumstances, the strong presence of rehabilitation triggers the application of all of the aforementioned mitigating conditions.

### **Whole-Person Concept**

In assessing the whole person, 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>2</sup> There is no bright line rule as to the recency of drug use. A judge must consider the evidence as a whole. (ISCR Case No. 05-03941 (App. Bd. Aug. 2, 2007) There is significant evidence of rehabilitation, as Applicant has completed rehabilitation, obtained a new job, and received the favorable endorsement of a physician familiar with his past struggles with marijuana addiction. Under these circumstances, the length of time that has elapsed since Applicant's last use is sufficient to conclude that Applicant has mitigated the security concern.

### **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:

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| Paragraph 1, Guideline H: | FOR APPLICANT |
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| Subparagraph 1.a – 1.h: | For Applicant |
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### **Conclusion**

In light of all of the circumstances, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Marc E. Curry  
Administrative Judge

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<sup>2</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.