



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



In the matter of: )  
)  
) ISCR Case: 17-02053  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andre M. Gregorian, Department Counsel  
For Applicant: *Pro se*

February 20, 2018

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of Case**

On November 27, 2015, Applicant submitted a security clearance application (e-QIP). On June 26, 2017, 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 J, Criminal 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 on June 8, 2017.

Applicant answered the SOR on July 7, 2017. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 2.) On August 30, 2017, Department Counsel submitted the Government's written case. A complete copy of the File of Relevant Material (FORM), containing 5 Items, was mailed to Applicant on August 30, 2017, and received by him on September 8, 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, and his response was admitted into evidence. Applicant did not object to Items 1 through 5, and they are also admitted into evidence. Hereinafter, they are referenced as Government Exhibits 1 through 5.

### **Findings of Fact**

Applicant is 24 years old. He is unmarried with no children. He has a bachelor's degree. He is employed by a defense contractor as an Electrical Engineer. He is seeking to obtain a security clearance in connection with his employment.

Applicant began working for his current employer in January 2016. He was granted an interim security clearance in February 2016. Applicant admits that he used marijuana at various frequencies from September 2011 until at least November 2016. He also admits that he purchased marijuana from October 2011 to May 2012, and that he most recently purchased marijuana in February 2015. He stated that he would purchase about 1/8 of an ounce every 2-3 weeks so that he could use the marijuana whenever he chose to smoke it. Applicant explained that from May 2015 to November 2016, he used marijuana once every one to two months to be social and because he enjoyed it. At that time of his security clearance background interview in January 2017, Applicant's use of marijuana had not ended, and he stated that he would continue to use it if there were no adverse effects with work. In his answer to the SOR dated July 2017, he expressed that he now has no intention of ever using marijuana again.

In 2012, Applicant was arrested for Possession of Marijuana in a School Zone. On this occasion, Applicant and three of his friends did not want to smoke on the school campus for fear of being caught, so they walked to the train tracks near campus. They were followed by the police without their knowledge. The Applicant and his friends were arrested and charged with the offense stated above. Applicant had to remain out of trouble for six months and pay a fine. Both charges were dismissed in October 2012.

### **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's

overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 applying for national security eligibility seeks to enter 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *a/so* 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 three conditions that could raise a security concern and may be disqualifying.

- (a) any substance misuse (see above definition); and
- (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 guideline at AG ¶ 26 contains two conditions that could mitigate security concerns. None of the conditions are 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's use of marijuana from September 2011 to November 2016 is and continues to be against Federal law. The use of any illegal drug is also prohibited by the DoD. From February 2016 through November 2016, while in possession of a DoD

security clearance, Applicant used marijuana. Furthermore his criminal arrest in 2012 for Possession of Marijuana in a School Zone shows both the depth of his involvement with this illegal drug, as well as his immaturity, poor judgment and unreliability. Applicant now states that he no longer intends to use marijuana, and there is no other evidence of marijuana use in the record since November 2016. However, given his history and pattern of marijuana use over recent years, it cannot be determined that he will stop cold turkey. The likelihood that he will continue to use marijuana in the future is great. At this time, it cannot be found that he is sufficiently responsible to access sensitive or classified information.

## **Guideline J, Criminal Conduct**

### **Guideline J, Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a single serious crime or multiple lesser offenses; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant was arrested in September 2012 and charged with Possession of Marijuana in a School Zone. He was found guilty and was placed in a one year diversion program, and required to pay a court assessment of \$755. This offense gives rise to concerns about Applicant's judgment and reliability, both because of the nature of the offense, and the circumstances surrounding the offense. The aforementioned disqualifying conditions have been established.

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

According to 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 applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a 24-year old adult, who is still fairly young and extremely immature. From 2011 to 2016, he used marijuana, which he knew to be illegal. He also used marijuana after having been granted an interim security clearance by the Department of Defense, and continued to use marijuana until November 2016. His arrest in October 2015 for the Illegal possession of marijuana shows further poor judgment. Applicant has not demonstrated sufficient responsibility on any level to be eligible for access to classified information. Overall the record evidence leaves me with serious doubt as to Applicant's judgment, eligibility, and suitability for a security clearance. He has not met his burden to mitigate the security concerns arising under the guidelines for Drug Involvement or Criminal 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
Subparagraphs 1.a	Against Applicant
Subparagraphs 1.b	Against Applicant
Subparagraphs 1.c	Against Applicant
Subparagraphs 1.d	Against Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a	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 national security eligibility and a security clearance. National security eligibility is denied.

Darlene Lokey Anderson  
Administrative Judge