



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 18-00024

Appearances

For Government: Tara A. Karoian, Esquire

For Applicant: *Pro se*

05/23/2018

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Statement of the Case

On February 2, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement).¹ In responses transmitted on March 1, 2018, and March 6, 2018, respectively, he admitted the two allegations raised and requested a determination based on the written record. On March 26, 2018, the Government issued a File of Relevant Material (FORM) with six attachments ("Items"). The case was assigned to me on May 17, 2018. Based on my review of the case file and submissions, I find Applicant failed to mitigate drug involvement security concerns.

Findings of Fact

¹ 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 (AG) effective within the DOD on or after June 8, 2017.

Applicant is 38 years old and has been employed by the same government contractor as a test specialist since May 2014. He was granted an industrial security clearance in December 2014. Applicant has earned a General Educational Development certificate (GED) and an associate's degree from a technical institute. Applicant is married. He has one minor child and two minor stepchildren.

In March 2017, Applicant attended a party with two friends. Drinking beer, Applicant became intoxicated. As the evening progressed, one of his friends produced a vapor pen that contained THC Oil in it.² The friend is a legal user of the drug. (FORM, Item 6, at 2) Applicant knew the oil was a derivative of marijuana. When offered to use the drug, Applicant accepted, and smoked off the pen multiple times throughout the night. He does not remember how it affected him due to his intoxication, and he does not recall how many times he used the vapor pen. He concedes it was a "bad decision on his part that affected his employment . . . because a few days later he had to submit to a random drug screening." (FORM, Item 6, at 2)

The results of the screening reflected a positive reading for marijuana. Applicant was suspended for three months with pay, required to attend a three-day education course with a counselor, and provide six random drug screenings throughout the rest of the year. Applicant was not referred for additional counseling and he was not deemed to be a drug abuser. He has completed these requirements.

Applicant has not used marijuana or any related drugs since the party last year. He has never been involved in the purchase, sale, manufacture, or distribution of any illegal drugs. Applicant has "no future intent to use any illegal drugs to include those legally obtained by other people." (FORM, Item 6, at 3)

Policies

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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in 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 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.

² See, e.g., <https://madebyhemp.com/difference-cbd-thc-cannabis-marijuana-oil> ("THC oil, marijuana oil, and cannabis oil are generally associated with the same product. . . . With the help of alcohol, this oil is made by extracting the resin of the female marijuana plant. . . . The resin dissolves in alcohol and then the alcohol evaporates. . . . This type of oil is illegal because of the high levels of THC.")

The protection of the national security is the paramount consideration. Under the AG, any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national interest. 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 not drawn inferences grounded on mere speculation or conjecture.

The Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

The security concern for this guideline is set forth in AG ¶ 24, where it is noted that the illegal use of a controlled substance, and the use of other substances that can 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. Such use also raised questions about a person’s ability or willingness to comply with laws, rules, and regulations.

Here, Applicant admitted that he used a marijuana derivative in March 2017 at a party. This occurred only last year, approximately two-and-a-half years after he was granted an industrial security clearance. These facts are sufficient to raise AG ¶ 25(a): any substance misuse, AG ¶ 25(b): testing positive for an illegal drug, and ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position. The Government’s substantial evidence, as confirmed by Applicant’s own admissions, raises security concerns under Guideline H. Therefore, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate related security concerns.

Under Guideline H, conditions that could mitigate security concerns arising from drug involvement and substance misuse are enumerated. The following mitigating conditions under AG ¶ 26 potentially apply to Applicant’s case:

(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.

Regarding AG ¶ 26(a), Applicant's marijuana use occurred under mundane circumstances and the incident was recent (March 2017). Indeed, the incident was so recent as to yet sustain doubts regarding Applicant's current good judgment despite the apparent infrequency of his drug use. Moreover, Applicant's use of marijuana while intoxicated raises question as to his ability to monitor his behavior with relationship to the drug while imbibing. Consequently, AG ¶ 26(a) does not apply.

As for AG ¶ 26(b), Applicant acknowledges his prohibited use of marijuana. He expressed his intent not to use marijuana or use any illegal drugs, to include those legally obtained by others, in the future. However, he failed to provide any additional information regarding his continued association with the friends who accompanied him to the March 2017 party; his continued attendance at gatherings where the use of marijuana is condoned; his ability to sustain abstinence for more than one year; or his readiness to offer 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. Therefore, AG ¶ 26(b) does not apply given the limited facts offered.

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed in the AG. The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. In addition to Applicant's drug use, I considered factors such as his age, profession, educational attainments, past employment, and lifestyle.

This is not a situation involving youthful indiscretion. Applicant was in his mid-30s, had earned an associate's degree, and had maintained a security clearance for over two years when he succumbed to the temptation to use a marijuana derivative. Although the limited facts do not specifically show that Applicant knew marijuana use was antithetical to the maintenance of a security clearance, he had sufficient notice that drug use was an issue when he completed his security clearance application.

To his credit, Applicant has successfully completed the rehabilitative requirements mandated by his employer. Only about a year, however, has passed since Applicant used marijuana while maintaining a security clearance. There has barely been sufficient time for him to demonstrate his commitment to remaining abstinent. Most importantly here, however, there has been insufficient time to reestablish the level of trustworthiness and reliability expected by the U.S. Government of one maintaining a security clearance. In light of the above, I find that Applicant failed to provide adequate evidence to mitigate drug involvement and substance misuse security concerns.

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:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.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 a security clearance. Eligibility for access to classified information is denied.

Arthur E. Marshall, Jr.
Administrative Judge