



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



In the matter of:

ISCR Case No. 18-00896

Applicant for Security Clearance

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Ryan C. Nerney, Esq., Attorney at Law, The Edmunds Law Firm

October 26, 2018

**Decision**

LOKEY ANDERSON, Darlene D., Administrative Judge:

**Statement of the Case**

On June 9, 2012, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On April 19, 2018, the Department of Defense issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement and Substance Misuse. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective June 8, 2017. Due to a typographical error, Department Counsel motioned to have the matter changed from an Applicant for a Trustworthiness Determination (ADP) case to an Industrial Security Clearance Review (ISCR) case without objection. The motion was granted.

Applicant answered the SOR on April 30, 2018, (Answer), and requested a hearing before an administrative judge. The case was assigned to me on June 15, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing

on July 18, 2018, scheduling the hearing for September 7, 2018. The hearing was convened as scheduled. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. Applicant offered fifteen exhibits, referred to as Applicant's Exhibits A through O, which were admitted without objection. Applicant testified on her own behalf. The record then closed. DOHA received the transcript of the hearing (Tr.) on September 19, 2018.

### **Findings of Fact**

Applicant is 40 years old, and divorced with two children. She has a high school diploma and military training. She holds the position as Facility Security Officer for a defense contractor. Applicant has served in the Army National Guard from 1998 to the present. She is currently a Staff Sergeant. (Applicant's Exhibit B.)

The Government alleged that Applicant is ineligible for a clearance because she made questionable decisions that indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which raise questions about her reliability, trustworthiness and ability to protect classified information.

Applicant has worked in the security field for the defense industry for the past sixteen years, and has held a security clearance that entire time. She has never been accused of mishandling classified information. Since April 2018, she has been working for her current employer.

From March 2011 to 2018, Applicant worked for the Navy and held a TS/SCI that she received in November 2012. She also serves in the Army National Guard, and held the position of Security Manager for the Joint Force Headquarters HIARNG from July 2004 to March 2011.

Applicant resigned from the civilian position with the Navy when she learned that a proposal for her removal was issued, and her clearance was suspended over complaints about her marijuana use. Applicant admits to using marijuana with varying frequencies from approximately 2014 through at least 2016. During that time, she held a security clearance and was a Security Specialist for the Navy. It is a given that Applicant was well aware of the rules and regulations that govern the DoD security program, including the no drug tolerance policies. Applicant has informed her current employer of her past illegal drug use.

Applicant explained that she and her same sex partner were in a committed relationship for about eleven years. They fostered children, and eventually they adopted two children, with their legal parent being the Applicant's partner. (Applicant's Exhibit H.) When marriage became legal, Applicant and her partner were married in April 2013. In 2014, they divorced and Applicant's ex-partner completely removed all contact with Applicant and the children. It has now been about four years since Applicant has seen the children. The divorce and losing the children was very difficult for Applicant and she believes it attributed to her lapse in judgment. She has suffered

prolonged depression and anxiety and has been unable to sleep since then. Applicant believes that this vulnerable state of mind caused her to use marijuana when she knew better.

In November 2014, after her divorce, Applicant started another relationship with a new partner. This partner had a medical marijuana card and access to marijuana oils and other such products. She introduced the Applicant to marijuana to help her relax and sleep. She also provided it to Applicant. Applicant states that she used marijuana about five times, the last time being sometime in 2016. In retrospect, Applicant realizes that this relationship was toxic. Applicant testified that she was afraid to start taking prescribed medication to sleep and declined it from the doctor. She admits to making poor decisions by using the marijuana in the first place. Applicant explained that when she and this partner broke up, her partner was upset with her and submitted an IG complaint which detailed that she witnessed Applicant use marijuana oils. The command was made aware, an incident report was filed and a Department of the Navy Security Access Eligibility Report was issued against the Applicant. (Government Exhibits 4 and 5.) Applicant is no longer associated with this partner and does not associate with anyone that uses illegal drugs. She states that she will never repeat her misconduct and that she has now developed strong coping skills to avoid this situation in the future.

Applicant has signed a notarized statement of intent dated June 19, 2018, indicating that she will abstain from all drug involvement and substance misuse in the future. In the event that she uses any illegal drug again there will be grounds for revocation of her national security eligibility. (Applicant's Exhibit K.)

Letters of recommendation from former coworkers, fellow soldiers, professional associates and friends of the Applicant attest to her great work ethic, competence, knowledge and positive attitude. She is a hard worker who is diligent about her work product. She is described as an exemplary performer, who is intellectually and emotionally well suited to serve under the Department of Defense. (Applicant's Exhibit A.)

Applicant's performance appraisals for 2016 and 2017 reflect favorable ratings. (Applicant's Exhibit A.)

The Army National Guard conducted two random drug tests on Applicant, one on September 11, 2016, the other on July 9, 2017 and both tests had negative results for any illegal drugs. (Applicant's Exhibit D.) Applicant also underwent a drug test in August 2018 that was negative for any illegal drug. (Applicant's Exhibit L.)

A letter from Applicant's therapist dated November 1, 2017, who has worked with Applicant for a year and a half, indicates that in her opinion, Applicant has strong work ethics, integrity, and is fair, honest, and compassionate. She did not find a need for referral to any alcohol or drug treatment program. (Applicant's Exhibit E.)

An Alcohol and Substance Use Assessment dated July 21, 2018, was conducted on Applicant by a licensed counselor and health professional. Based upon Applicant's self-report and the American Psychiatric Association Diagnostic and Statistical Manual 5, there was no evidence of an alcohol or substance use disorder. (Applicant's Exhibit M.)

## **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 to be used 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(a) describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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 access to classified information 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, the 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." The applicant has the ultimate burden of persuasion to obtain 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 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 EO 10865 provides that adverse 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 for 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);
- (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 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 behavior, when considered as a whole, demonstrates that she was aware of the seriousness of her conduct by using illegal drugs while holding a security clearance, but that she was willing to disregard the law. Furthermore, she may be subject to undue influence based upon her questionable judgment. The above disqualifying conditions have been established.

Applicant's illegal drug use is a serious violation of security rules and regulations in place to protect and control the defense industry. Working in the security field and holding a security clearance is a critical mission requiring an individual's utmost trust and confidence. As a security specialist, Applicant is not only required to follow all security rules and regulations, but is required to ensure that other employees are equally as diligent. In this case, Applicant let the Government down. She made poor decisions that has affected her ability to properly protect the national secrets. By using marijuana she violated company security policies, DoD security policies, and Federal law. Her serious lapse in judgment is a security violation that cannot be taken lightly. She is remorseful for her misconduct. However, at this time, not enough time has passed to show that her misconduct will not be repeated. She has not offered sufficient evidence to mitigate the Drug Involvement and Substance Misuse concern.

### **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(a):

- (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.

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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant's use of marijuana, regardless of the consistency, whether it be oil or otherwise, while holding a security clearance, and working in the defense industry will not be tolerated to any degree. The conduct is egregious, recent, and also against Federal law. 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 not mitigated the 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
Subparagraph 1.a:	AGAINST Applicant
Subparagraph 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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge