



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



In the matter of:

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ISCR Case No. 24-02434

Applicant for Security Clearance)

Appearances

For Government:

Andrew H. Henderson, Esquire, Department Counsel

For Applicant:

Pro se

08/08/2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated the security concerns raised under the Drug Involvement and Substance Misuse adjudicative guideline. National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on June 28, 2024 (the Questionnaire). On February 13, 2025, the Defense Counterintelligence and Security Agency (DCSA) 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 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DoD after June 8, 2017.

On March 4, 2025, Applicant responded to the SOR in writing (Answer or Item 1). She requested that her case be decided on the written record in lieu of a hearing. In her Answer, she admitted each of the SOR allegations. On March 19, 2025, Department Counsel submitted the Government's written case in a File of Relevant Material (FORM). A complete copy of the FORM, consisting of Items 1 to 3 and the Government's arguments in support of the SOR, was provided to Applicant. She received the FORM on March 27, 2025. She did not respond within the period specified to do so. The case was assigned to me on July 1, 2025.

Findings of Fact

Applicant is 33 years old and has worked for a DoD contractor as a specialist since August 2022. She graduated from high school and has earned a certificate. She submitted the Questionnaire as a first-time applicant in connection with her employment. She is unmarried and has one minor child. (Item 2 at 5, 10-11, 16-17, 19; Item 3 at 2.)

SOR Paragraph 1, Guideline H (Drug Involvement and Substance Misuse)

The Government alleged that Applicant is ineligible for a security clearance because she has used and purchased marijuana for over 14 years and intends to continue using marijuana in the future. Based upon the evidence presented in the administrative record, I find the following facts regarding the history and status of Applicant's drug use:

1.a. Marijuana Use from June 2010 to at least December 2024. Applicant disclosed in the June 2024 Questionnaire that she has used marijuana "regularly" during the period June 2010 to January 2024 to treat a chronic medical condition. She wrote that initially her use of the drug was illegal but noted that her use has since become legal under the laws of her state. In a January 27, 2025 response to an interrogatory question, she disclosed that her drug use was in fact "daily" from June 2010 to December 18, 2024. She also responded that she learned that marijuana remained illegal at the federal level when she prepared an employment application in June 2022. In the March 2025 Answer, she admitted this SOR allegation of using marijuana "with varying frequency" until "at least December 2024." (Item 1 at 3; Item 2 at 24-25; Item 3 at 2-3.)

Applicant has made no claim in any of the documents in the record that her use of marijuana was pursuant to a prescription from a medical professional or under the supervision of a doctor. Her use of the drug was self-medication to help her tolerate pain from her medical condition. She commented in her security background interviews (September 23, 2024 and October 2, 2024) that she was trying prescription drugs at that time as an alternative to marijuana to control the pain caused by her illness, but she said that the drugs were either less effective than marijuana or had side effects that were worse than the pain from her illness. She commented further that she intends to use marijuana in the future to medicate her pain. (Item 3 at 7, 9-10.)

1.b. Marijuana Purchases from 2010 to at least December 2024. In the Questionnaire, Applicant denied that she had ever “illegally” purchased any drug or controlled substance. She wrote in a response to an interrogatory question that she purchased marijuana monthly during the period August 2022 to December 2024. In her security background interview on September 23, 2024, she explained that she first purchased marijuana at dispensaries once marijuana was legalized in her state. Prior to that she obtained the drug from friends. In the Answer, she admitted this SOR allegation. I find that she has purchased marijuana since August 2022 legally under the laws of her state. (Item 1 at 3; Item 2 at 25; Item 3 at 3, 7.)

1.c. Intent to Continue Using Marijuana in the Future. Applicant acknowledged in the Questionnaire that she intends to continue using marijuana in the future. She added the following comment: “I use it to treat my chronic medical condition.” She confirmed her intent during her security background interview on September 23, 2024, and again in response to an interrogatory question, dated January 27, 2025. Since Applicant elected not to have a hearing and therefore has not testified about her future intentions, and she did not provide a response to the FORM, the record contains no more current information regarding her future intentions. (Item 1 at 3; Item 2 at 25; Item 3 at 4, 7.)

Whole Person and Mitigating Evidence

Applicant did not respond to the FORM so she submitted no updated whole person or other evidence in mitigation of the security concerns alleged in the SOR. Also, she gave herself no opportunity to develop the record further by waiving a hearing and asking for a determination based upon the administrative record.

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, “Any 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, “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, and has the ultimate burden of persuasion as to obtaining 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 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, “Any 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 also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1, Guideline H (Drug Involvement and Substance Misuse)

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads 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. *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.

AG ¶ 25 sets forth the following three conditions that could raise security concerns and may be disqualifying in this case:

- (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

(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such use.

The undisputed record evidence establishes all of the above potentially disqualifying conditions. I note that the record evidence regarding Applicant's future intentions to continue to self-medicate with marijuana is as of January 2025.

Bond Amendment

Appendix B of the Security Executive Agent Directive 4 (SEAD 4) reflects language in the Bond Amendment to the Intelligence Reform and Terrorism Prevention Act of 2008, (IRTPA), which prohibits granting or renewing a "security clearance for a covered person who is an unlawful user of a controlled substance or an addict ...". (SEAD 4, App. B, ¶ 1) I conclude that under the facts and procedural posture of this case, the Bond Amendment does not apply. There is insufficient evidence in the record that Applicant is currently a user of a controlled substance or an addict to impose the outright prohibition of national security eligibility on Applicant. The most recent statement of her future intent was made about six months ago in her responses to interrogatories and follows her on and off uses of marijuana since January 2024, which she disclosed in the June 2024 Questionnaire.

Mitigation

The above conclusion regarding the applicability of the three potentially disqualifying conditions quoted above shifts the burden to Applicant to mitigate the security concerns raised by her long-term drug use, her purchases of marijuana since 2022, and her stated intention to use marijuana in the future.

In reviewing the facts of this case with respect to mitigation, I have considered the Security Executive Agent's *Clarifying Guidance Concerning Marijuana for Agencies conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (Dec. 2021) (Clarifying Guidance). This guidance provides, "particularly in response to the increase in the number of states and local governments legalizing or decriminalizing uses of marijuana" that prior "marijuana use by an individual may be relevant to adjudications *but not determinative*." (Clarifying Guidance at 1-2.) The guidance emphasizes the importance of the Whole-Person Concept in marijuana cases in weighing the "variables in an individual's life to determine whether the individual's behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudication determination." (Clarifying Guidance at 2.) Accordingly, the analysis of this case must weigh both the following mitigating conditions and particularly the Whole-Person Concept. ISCR Case No. 22-01865 at 4-5 (App. Bd. Jun. 17, 2025).

AG ¶ 26 of this guideline provides conditions that could mitigate security concerns. I have considered all the mitigating conditions under AG ¶ 26 and conclude that the following two conditions have possible application to the facts of this 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 the 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.

Neither of the above mitigating conditions apply. Applicant's behavior is recent, frequent, and will likely recur. Her behavior casts doubt on her current reliability, trustworthiness, and good judgment. While she has acknowledged her drug use, she has not ceased her use of marijuana and has written that she does not intend to do so in the future. Applicant has not offered any evidence in mitigation, with the possible exception of her serious, chronic medical condition that she asserts is the underlying reason for her drug use. Unfortunately for Applicant, the adjudicative guidelines have no exception to the prohibition of any federally illegal drug use when the use is for the treatment of a medical condition. Moreover, marijuana is classified as a Schedule I controlled substance under the U.S. Controlled Substance Act (21 U.S.C. § 802 *et seq.*), which means that the drug is viewed as having a high potential for abuse and has been determined by the Federal Government to have no currently accepted medical use and no accepted safety for use in medically supervised treatment. 21 U.S.C. § 812(b)(1). See also *Gonzales v. Raich*, 545 U.S. 1 (2005). The fact that Applicant's home state has legalized the use of marijuana does not mitigate Applicant's use and purchase of marijuana or her future intent to continue using marijuana.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I am required by the Whole-Person Concept and the Clarifying Guidelines to consider all aspects of the record evidence. I have weighed the nature, extent, and seriousness of Applicant's conduct. She has knowingly and voluntarily violated federal drug law since at least 2022. She has used marijuana daily for over 14 years and as recently as December 2024. There is no evidence in the record that her use of marijuana was under any medical care or even with a prescription. I have weighed the very unfortunate circumstances of her illness since 2010 when she was quite young. I have also considered her current age. Applicant is a mature adult with the responsibilities of caring for a minor child. Significantly, she has presented no conclusive evidence of behavioral change. Her motivation to seek relief from the pain of her illness is very sympathetic, but at the same time it exhibits a willingness to prioritize her self-interest over her responsibility to comply with federal law. There is little likelihood that her history of marijuana use could be used to exploit her, however that history and her stated intent to continue using marijuana makes it likely that she will continue to use marijuana at some point in the future. Applicant chose to have this matter adjudicated on the administrative record, but she declined to provide any additional documentary evidence for consideration. I also had no opportunity to observe her demeanor, assess her credibility, or question her about her current intentions with respect to using or abstaining from using marijuana in the future. Overall, the record evidence leaves me with questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

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 through 1.c: **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. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge