



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01769

Appearances

For Government: Lauren A. Shure, Esq., Department Counsel

For Applicant: *Pro se*

09/17/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H, Drug Involvement and Substance Misuse. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 12, 2024. (Item 2) The Defense Counterintelligence & Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on February 20, 2025, detailing security concerns under Guideline H. The DCSA acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On March 11, 2025, Applicant answered the SOR and elected a decision on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA). On April 1, 2025, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 4. Applicant received the FORM on April 18, 2025. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit additional matters in response to the FORM. The case was forwarded to the Hearing Office on June 30, 2025, and assigned to me on September 2, 2025.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

Findings of Fact

In Applicant's SOR response, he admitted both SOR allegations, SOR ¶¶ 1.a. and 1.b. Applicant's admissions are accepted as findings of fact. (Item 2)

Applicant is a 36-year-old prospective employee of a DOD contractor. This is first time applying for a security clearance. His highest level of education is a high school diploma. He is single and has no children. (Item 3)

The SOR alleges under Guideline H that Applicant used marijuana (THC) with varying frequency from about January 2006 to the present (SOR ¶ 1.a: Item 3 at 25-26, 31; Item 4 at 7,11-12) and that Applicant purchased marijuana on various occasions from about January 2006 to the present. (SOR ¶ 1.b: Item 2; Item 4 at 11-12)

Applicant listed his illegal marijuana use on his April 12, 2024, SCA in response to Section 23 - Illegal Use of Drugs or Drug Activity. He mentioned that he started to use marijuana in approximately January 2006 when he was a teenager. He admitted to smoking a lot of pot when he was a teenager. He eventually used less marijuana. He was involved in a house fire a few years ago. He struggled with the memories of the event. He was diagnosed with Post Traumatic Stress Disorder (PTSD). He chose to be treated with marijuana instead of other mood - altering drugs. He uses it before he goes to bed to help him sleep. He claimed it treats his symptoms without side effects. He has been using marijuana to treat his PTSD for years and he intends to continue to use marijuana in the future. However, he is willing to seek alternative solutions if his marijuana usage would hinder his ability to be granted a security clearance. (Item 3 at 25-26; 31)

On June 18, 2024, Applicant was interviewed in conjunction with his security clearance background reinvestigation. He told the investigator about his marijuana use from January 2006 to present. From January 2006 to July 2020, Applicant used the drug at social gatherings with friends. After being diagnosed with PTSD, he used marijuana at home alone in the form of tinctures (tinctures) and gummies. He uses it before he goes to

sleep. When he was younger, he would purchase marijuana illegally or get some from his friends. After his PTSD diagnosis in June 2020, he obtained a medical card and purchased marijuana from a state dispensary. His state has legalized the use of marijuana. He is aware that it remains illegal under federal law. He intends to continue using marijuana if permitted to do so unless his future employer tells him to stop using marijuana. (Item 4 at 11-12)

In response to DOHA Interrogatories dated October 19, 2024, Applicant reviewed a summary of his June 2024 personal subject interview and acknowledged it was an accurate summary of what occurred during his interview. He listed his first date of marijuana use was in 2006 and his last use of marijuana was on October 15, 2024. He listed his frequency of use as nightly. He intends to use marijuana in the future. He first became aware that marijuana use remained illegal under federal law in January 2000 in his middle school health class. (Item 4 at 7)

Regarding his future use, Applicant indicated that he has a medical prescription from his state and he will continue to use marijuana until its use conflicts with his employment. If there is a conflict, he would seek a more expensive pharmaceutical solution. (Item 4 at 7)

In his Response to the SOR, Applicant acknowledged that he started using marijuana in high school and through college. He smoked it sporadically in his early 20s. After the house fire in 2020, he obtained a medical marijuana prescription for PTSD and used it to help him sleep. He mentions again that if his marijuana use is a factor in his employment that he would have no problem stopping his marijuana use. When he purchased marijuana while in high school, college and while in his early 20s, he was aware the purchase and use of marijuana was illegal at the time. When his state legalized marijuana, he began purchasing marijuana from state-licensed dispensaries. He later obtained a medical marijuana prescription. (Item 2)

Applicant states that he has been completely honest throughout the interview and security clearance process. While he understands marijuana is illegal under federal law, he indicates that its recreational and medical uses have become widely accepted throughout the country. As far as his home state is concerned, he has committed no crimes. He has said many times during the investigation that he would seek other treatment options if it is required. He has not heard from anyone if this is the case. He claims his honesty makes him unable to be coerced and threatened with blackmail because of his marijuana use. (Item 2)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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 the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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, 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 as to obtaining 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 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 that an 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.

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal

law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent 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*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement and substance misuse under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse;

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant admits to using and purchasing marijuana with varying frequency from January 2006 to the present. His most recent use and purchase of marijuana occurred in a state where the recreational and medicinal use of marijuana is legal but he is aware that the use and possession of marijuana remains illegal under federal law. AG ¶¶ 25(a) and 25(c) apply. Applicant intends to continue marijuana in the future. He currently uses it to treat his PTSD. He uses it before bed-time to help him sleep. AG ¶ 25(g) applies.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

AG ¶ 26(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

AG ¶ 26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence on 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.

Neither AG ¶ 26(a) nor AG ¶ 26(b) apply. Applicant's marijuana use is ongoing. He did not sign a statement of intent to refrain from all illegal drug involvement. I acknowledge that Applicant has said he is willing to seek alternative treatment for PTSD

if marijuana use is not consistent with having a security clearance. The fact that the Government issued an SOR regarding his marijuana use should have put Applicant on notice that marijuana use is incompatible with holding a security clearance. He is aware that the use and purchase of marijuana remains illegal under federal law even though it is legal in the state where he resides. He has used marijuana for over 19 years and intends to continue to use marijuana. Security concerns under Guideline H are not mitigated.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a marijuana-free lifestyle, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 eligibility for a security 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and the AG ¶ 2(d) factors in this whole-person analysis. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I considered that Applicant is a prospective employee of a DOD contractor. I considered he provided full disclosure about his illegal drug use on his April 2024 SCA, during his background investigation interview, and in response to interrogatories. I considered that he used marijuana in a state where marijuana use is legal but was also aware that the use of marijuana remained illegal under federal law. I considered that he

intends to use marijuana in the future. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his conduct under Guideline H.

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, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

**Erin C. Hogan
Administrative Judge**