



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



Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: *Pro se*

07/11/2025

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On February 9, 2024, Applicant submitted a security clearance application (e-QIP). (Item 3.) On December 31, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCAS CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse; and Guideline E, Personal Conduct. The action was taken under Executive Order 10865 (EO), *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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on January 7, 2025. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government's written case on February 13, 2025. A complete copy of the File of Relevant Material (FORM), containing five Items was received by Applicant on March 25, 2025. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted no response to the FORM. DOHA assigned the case to me on July 1, 2025. Items 1 through 5 will hereinafter be referred to as Government Exhibits 1 through 5.

Findings of Fact

Applicant is 66 years old. He has been married three times and has adult children. He has a high school diploma. He owned a construction company for 32 years, and later joined another firm. He has never held a security clearance before and is seeking one in connection with his employment.

Guideline H - Drug Involvement and Substance Misuse Guideline E – Personal Conduct

The Government alleges that the Applicant has engaged in conduct involving questionable judgment, which can raise questions about an individual's reliability and trustworthiness.

Applicant has a history of self-employment through a series of property management LLC's and other investments. He has also owned and operated his own construction company for 32 years. He stated that his former construction company has built projects for marijuana business owners, but he has not been directly involved in the marijuana business. Presently, he has invested in a THC-related business and maintains a passive role. He is sponsored by a defense contractor for a security clearance.

The SOR contains two allegations concerning Applicant's drug involvement. First, that he has a \$500,000 investment in a THC-related business; and second, that he declared that he will not divest his interest in the company. Applicant admits to both allegations.

From about March 2020 to the present, Applicant has been a part-time sole owner of an LLC. Through this LLC, Applicant made a direct investment of \$500,000 in a company that manufactures marijuana edibles. This direct investment was made so that the company could afford to build new production facilities for marijuana edibles. Applicant stated that he has not received any profit or income from the marijuana business or from his investment, and will not likely see anything for another five years.

Applicant also stated that he does not use illegal substances, which the Government does not contest. However, in response to DOHA interrogatories dated November 14, 2024, he stated that he will not divest his interest in the THC-related company.

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 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 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. 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).

Department Counsel requested that Administrative Notice be taken of information set forth in a Memorandum from the Director of National Intelligence, dated December 21, 2021. (Government Exhibit 5.) Applicant did not respond to the FORM. The Government policies discussed in the memorandum are relevant and address pertinent issues in this case.

The Director of National Intelligence has stated:

Finally with the topic of investments, agencies should note that an adjudicative determination for an individual’s eligibility for access to classified information or eligibility to hold a sensitive position may be impacted negatively should that individual knowingly and directly invest in stocks or business ventures that specifically pertain to marijuana growers and retailers while the cultivation and distribution of marijuana remains illegal under the Controlled Substance Act. Under SEAD 4’s guidance for personal conduct (Reference B, Guideline E), a decision to invest in an activity, including a marijuana- related business, which the individual knows violates federal law could reflect questionable judgment and an unwillingness to comply with laws, rules, and regulations. That is, it is appropriate for adjudicative personnel to consider whether an individual is knowingly facilitating violations of the Controlled Substances Act by engaging in such investments. On the other hand, if the marijuana-related investment is not direct, such as an investment in a diversified mutual fund that is publicly traded on a United States exchange, adjudicators should presume that individual did not knowingly invest in a marijuana-related business – thus, the indirect investment should not be considered relevant to adjudications. In some instances, the investment itself may be illegal, which is also relevant to SEAD 4’s guidance for criminal conduct (Reference B, Guideline J), which by its very nature calls into question an individual’s ability or willingness to comply with laws, rules and regulations. However, under the whole-person concept, any mitigating factors should be considered. For example, if an individual holds direct stock investments pertaining to marijuana growers and retailers, divestments of such activity or disassociation of such activity should be considered a mitigating factor when rendering an adjudicative decision. (See, Director of National Intelligence Memorandum ES-2021-01529, dated December 21, 2021; and Directive, Enclosure 3, paragraph E.1.15.)

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 one condition that could raise a security concern and may be disqualifying:

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

Applicant may not be a user of THC or any other illegal substance, but is directly involved with a THC-related business. He made a direct financial investment in the company with an anticipated return on the investment, which is disqualifying. Federal law prohibits this type of business interest. Applicant's direct investment is different than investing in a diversified mutual fund that is publicly traded on a US exchange and has a THC-related company as part of its portfolio. The latter is permitted while the former is not. He knowingly and directly invested in a business venture that specifically involves marijuana growers and retailers, which under the Controlled Substances Act remains illegal. Furthermore, Applicant's investment in a THC-related business knowing he is in violation of the Controlled Substances Act, thereby violating federal law, demonstrates questionable judgment and calls into question his ability or willingness to comply with laws, rules and regulations. The above disqualifying condition applies.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns:

(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.

None of the mitigating factors are applicable. Applicant knew that the company he was investing in was a THC-related business, and that it would be incompatible with security clearance eligibility. Despite knowing this, he has elected to maintain the financial interest rather than divest it. This involvement and his behavior is recent and on-going, and he plans to continue it.

Applicant has the responsibility to rebut, explain, extenuate, or mitigate the facts admitted by Applicant or proven by the Government, and has the ultimate burden of persuasion to obtain a favorable security decision. Applicant has failed to provide any evidence in mitigation. Accordingly, Guideline H is found against the Applicant.

Guideline E- Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness to comply with rules and regulations, or other characteristics indicating that

the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior; and
- (3) a pattern of dishonesty or rule violations.

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing; and

(g) association with persons involved in criminal activity.

The guideline at AG ¶ 17 contains conditions that could mitigate security concerns. Two of the conditions are potentially applicable:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

None of the mitigating conditions are applicable here. Applicant's involvement in a THC-related business are actions that show questionable judgment and an unwillingness to comply with rules and regulations. The Applicant's behavior raises questions about his reliability, trustworthiness, and ability to protect classified or sensitive information. Applicant's actions are recent, on-going, and he has no plans to change them.

Applicant's financial involvement in a THC-related business, and his intention to continue his involvement makes him unsuitable for access to classified information. Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. Applicant has not shown sufficient mitigation to be entrusted with the privilege of holding a security clearance. Applicants are expected to abide by all laws, regulations, and policies that apply to them. He has failed to provide evidence to mitigate this security concern. Accordingly, Guideline E is found against the Applicant.

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.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant has not demonstrated a willingness to comply with the rules and regulations that is needed for access to classified information. Applicant understands the requirements associated with holding a security clearance and knows that illegal drug involvement is not tolerated. Under the circumstances, Applicant is not an individual in whom the Government can be confident to know that he will always follow rules and regulations

and do the right thing, even when no one is looking. Applicant does not meet the qualifications for access to classified or sensitive information.

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 failed to mitigate the Drug Involvement and Substance Misuse, and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H: AGAINST APPLICANT

Paragraph 2, Guideline E: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge