



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



## **Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

02/28/2025

## Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is granted.

## **Statement of the Case**

On August 15, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The DCSA CAS acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

In Applicant's September 13, 2024 response to the SOR (Answer), he admitted, with explanation, the single allegation. He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. (Answer)

On October 23, 2024, the Government was ready to proceed to hearing. I was assigned this case on December 9, 2024. On January 13, 2025, a notice was issued

scheduling the hearing for January 29, 2025 by video teleconference. The hearing proceeded as scheduled. The Government proffered two evidentiary exhibits, which I admitted as Government Exhibits (GE) 1 and 2 without objection. Applicant proffered one exhibit, which I admitted as Applicant Exhibit (AE) A without objection. At Applicant's request, I held the record open until February 4, 2025, to provide him an opportunity to supplement the evidentiary record. By email dated January 31, 2025, he proffered two additional exhibits. I have admitted the email and two exhibits as AE B through D without objection. DOHA received the hearing transcript (Tr.) on February 10, 2025. The evidentiary record closed on February 4, 2025.

### **Findings of Fact**

Applicant is 22 years old. He earned a bachelor's degree in May 2024. He has never married and does not have any children. Since August 2024, he has been employed full time as an associate engineer for a DOD contractor. He previously worked as an engineering intern with the same DOD contractor from June to August 2023 and again from June to August 2024. He has never been granted clearance eligibility. (GE 1; AE B; Tr. 27-29)

On June 20, 2023, Applicant completed and submitted an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 23 – Illegal Use of Drugs or Drug Activity Applicant admitted that he had used marijuana from December 2021 to May 2023. He reported the frequency of his use as “[o]nly recreationally, sometimes multiple times a week, sometimes none for extended periods of time (up to 1-2 months).” He declared that he did not intend to use marijuana in the future. (GE 1)

On September 1, 2023, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). He estimated that he, on average, used marijuana recreationally four to five times a week between December 2021 and August 31, 2023. He typically used marijuana by himself to aid his sleep or at social gatherings with two of his friends. He acknowledged that he was aware that marijuana use violated Federal drug laws, and he expressed his intent to continue using marijuana until his anticipated college graduation in May 2024.

In his January 27, 2024 response to DOHA interrogatories, Applicant admitted his marijuana use “during weeknights” from December 2021 to January 16, 2024. He declared that he had no intent to use marijuana in the future and acknowledged that any drug involvement would be grounds for revocation of his clearance eligibility. (GE 2)

At the hearing, Applicant confirmed his previous representations as to the span and frequency of his marijuana use. He clarified that prior to turning 21 years old (August 2023) he typically used marijuana only a couple times a month. After he turned 21 years old and was able to purchase marijuana at state-licensed dispensaries, his marijuana use increased to four to five times a week. His marijuana use was both recreational at times and also to aid his sleep. He reaffirmed he last used marijuana on January 16, 2024, and he did not intend to use marijuana in the future. He passed two pre-employment drug

tests with other employers. He believed he was subject to random drug testing with his current employer, but he had not participated in one. He has never failed a drug test. There is no marijuana or drug paraphernalia in his residence, and he currently lives with his mother and younger sister, who do not use illegal drugs. (Tr. 25-26, 29-32, 36-38)

Applicant acknowledged that he had been aware at the time that his marijuana use prior to age 21 violated state and Federal drug laws and that his marijuana use after age 21 violated Federal laws. He had infrequently used marijuana during his two summer internships, but never had access to classified information. He agreed that he was motivated to abstain from marijuana for his career. He remains in touch with the two friends with whom he previously used marijuana, but they themselves have stopped using marijuana. He has not attended a social gathering where marijuana was present since December 2023, and he does not socialize with individuals who currently use marijuana. He now exercises regularly to improve his sleep. He has disclosed his marijuana use to his supervisor, who submitted a character-reference letter. (Tr. 33-34, 39-45, 51)

At the hearing, Applicant was confronted about his inconsistent declarations about his intent to use marijuana in the future. He reaffirmed his e-QIP response wherein he expressed his intent to abstain from marijuana in the future. He admitted that he was an immature, 20-year-old college student at the time and that he envisioned "the future" as after college. He further acknowledged that he had been notified about the impending OPM interview and had nonetheless used marijuana the night before the interview. He explained that he had been uncertain and unfocused about his future and his post-graduation employment. When he received the January 2024 DOHA interrogatories, he recognized the gravity of the security clearance investigation and its impact on his future employment. He re-evaluated his priorities and ceased marijuana use immediately. He testified:

I mean, as I said, my – my priorities have shifted and I – I feel like I've grown a bit since that initial application. I was 20 when I initially made that application. Now I'm 22. I've taken, you know, complete hold of my future. At that point in time, I was still a college student and I was still a bit unsure of what I wanted my future to be. However, now I'm completely sure of what I want to do, and I am dedicated to attaining that.

Applicant recognized the immaturity of his past marijuana use, and he believes he has grown a lot professionally since January 2024. (Tr. 32-35, 46-47)

## **Whole Person**

Applicant's supervisor submitted a character-reference letter on his behalf. He attested to Applicant's "professional growth, work ethic, and integrity" in the past several months. He described Applicant as "a promising young professional who has developed a strong commitment to his career." (AE A)

In a character-reference letter, Applicant's mother praised his character, integrity, and commitment and noted that upon receipt of the January 2024 interrogatories, "the weight of this realization [that the clearance investigation was ongoing] hit him immediately, and he deeply regretted his [marijuana use]." She further explained that Applicant abstained from marijuana while uncertain whether he would attain a summer 2024 internship and future employment with the DOD contractor. (AE C)

Applicant's longtime friend also submitted a character-reference. He attested to Applicant's "positive lifestyle changes" since January 2024 and his commitment to abstaining from marijuana. (AE D)

## 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 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 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 national security eligibility will be resolved in favor of the national security."

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 security decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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 for drug involvement is set out in 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 notes several conditions that could raise security concerns under AG ¶ 25. In this case, the following disqualifying conditions potentially apply:

- (a) any substance misuse; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Marijuana is a Schedule I controlled substance under Federal law pursuant to Title 21, Section 812 of the United States Code. Schedule I drugs are those which have a high potential for abuse; have no currently accepted medical use in treatment in the United States; and lack accepted safety for use of the drug under medical supervision. Section 844 under Title 21 of the United States Code makes it unlawful for any person to knowingly or intentionally possess a Schedule III controlled substance not obtained pursuant to a valid prescription.

On October 25, 2014, the then Director of National Intelligence (DNI) issued guidance that changes to laws by some states and the District of Columbia to legalize or decriminalize the recreational use of marijuana do not alter existing Federal law or the National Security Adjudicative Guidelines, and that an individual’s disregard of Federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security eligibility determinations.

On December 21, 2021, the DNI issued clarifying guidance concerning marijuana, noting that prior recreational use of marijuana by an individual may be relevant to security adjudications, but is not determinative in the whole-person evaluation. Relevant factors in mitigation include the frequency of use and whether the individual can demonstrate that future use is unlikely to recur.

Applicant used marijuana on several occasions between December 2021 and January 2024. AG ¶ 25(a) applies. Applicant's possession and purchase of marijuana were not alleged in the SOR and will not be considered as disqualifying conduct. AG ¶ 25(c) does not apply.

Conditions that could mitigate the drug involvement security concerns are provided under AG ¶ 26. The following are potentially 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 demonstrated questionable judgment and immaturity when he continued to use marijuana after declaring his intent to abstain from future use. Notwithstanding this lapse, I have considered his candor and honesty through the security clearance process, disclosing the full extent of his marijuana use on his e-QIP, during his security interview, in his interrogatories, and at the hearing. He credibly explained that he had not focused upon or prioritized his future employment when he resumed using marijuana in the summer of 2023 and when he expressed his intent, during his security interview, to continue such use. Notwithstanding his inconsistent declarations, I find his January 2024 commitment to abstaining from marijuana use to be sincere and reliable. Applicant's supervisor, mother, and close friend all attested to Applicant's integrity, honesty, and growth. He no longer associates with individuals who use illegal drugs and has avoided such environments for over a year. AG ¶¶ 26(a) and 26(b) apply. Applicant mitigated the drug involvement and substance misuse security concerns.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a position of trust 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and the factors in AG ¶ 2(d) in this whole-person analysis.

As noted above, I found Applicant's testimony to be sincere and credible. The compelling letters of support from his supervisor, mother, and friend bolstered this assessment. Notwithstanding Applicant's lapse in judgment to use marijuana during his final year of college, he has recognized the gravity of the clearance process and his employment with a DOD contractor. I have no doubts as to his trustworthiness, reliability and judgment going forward. He 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: FOR APPLICANT

Subparagraph 1.a.: For Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with the interests of national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

*Eric H. Borgstrom*  
Eric H. Borgstrom  
Administrative Judge