



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



In the matter of: )  
                        ) )  
[Redacted]              ) ) ISCR Case No. 24-00132  
                        ) )  
Applicant for Security Clearance )

## **Appearances**

For Government: Cassie L. Ford, Esq., Department Counsel  
For Applicant: *Pro se*

02/19/2025

## Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse). Clearance is denied.

## **Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 9, 2023. On March 11, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons alleging security concerns under Guideline H. The DCSA acted under Executive Order 12968, *Access to Classified Information*, dated August 2, 1995; Department of Defense (DoD) Manual 5200.02, *Procedures for the DoD Personnel Security Program (PSP)*, dated April 3, 2017 (Manual); and Security Executive Agent Directive 4, dated December 10, 2016 (SEAD 4).

Applicant answered the SOR on March 17, 2024, admitted all the allegations in the SOR, and requested a hearing. His admissions are incorporated in my findings of fact. Department Counsel was ready to proceed on May 13, 2024, and the case was assigned to me on December 5, 2024. On December 13, 2024, the Defense Office of Hearings and Appeals notified Applicant that the hearing was scheduled to be conducted by video teleconference on January 9, 2025. On January 7, 2025, the hearing was rescheduled for January 15, 2025. I convened the hearing as rescheduled. Government Exhibits (GX)

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Controlled by: DLSA  
Controlled by: DOHA  
CUI Category: PRVCY  
Limited Dissemination Control: N/A  
POC: Chief Administrative Judge, osd.doha.status@mail.mil

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1 and 2 were admitted in evidence without objection. Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until January 25, 2025, to enable him to submit documentary evidence. He timely submitted Applicant's Exhibit (AX) A, which was admitted without objection. DOHA received the transcript (Tr.) of the hearing on January 28, 2025.

### **Findings of Fact**

Applicant is a 29-year-old energy auditor who installs solar panels for a non-federal employer. He has applied for employment by a defense contractor who is sponsoring him for a security clearance. He graduated from college with a bachelor's degree in December 2020. He is not married and has no children. He has never held a security clearance.

In April or May 2013, Applicant started using marijuana at parties. He obtained it from friends who had medical marijuana cards. He used marijuana three or four times a day, at home or with friends, until about 2018, when he was 23 or 24 years old. At that time, he reduced his marijuana use to once a day. When he applied for a job with the defense contractor in early 2023, he was administered a hair follicle test for drug involvement, and it tested positive. His prospective employer later administered another hair follicle test, which was negative. He underwent a urinalysis test in about April 2023, and it tested positive for marijuana. In his response to DOHA interrogatories and during his security interview in February 2024, he stated that he stopped using marijuana in April 2023. (GX 2 at 4, 9)

When Applicant submitted his SCA in August 2023, he stated, "I don't really see myself using marijuana unless my job allows me to when not currently working." (GX 1 at 24) At the hearing, he testified that he used marijuana again in early 2024, after he submitted his SCA and was interviewed by a security investigator. (Tr. 23)

Applicant grew up in a dysfunctional family. His parents are divorced. His mother kicked him out of the house frequently, for minor infractions or for no reason, and he would sleep at a friend's house, at his father's house, or in his car. His stepmother was an alcoholic and resented his presence in their house. He used marijuana to self-medicate his anxiety. He testified that he obtained professional help and was diagnosed with anxiety and post-traumatic stress disorder. (Tr. 18-22) He did not submit any documentation of his treatment or any information about the nature and extent of his treatment. He applied for a job with a defense contractor because he is fascinated with manufacturing and wanted to contribute to something greater than himself. (Tr. 40) In a post-hearing statement, he declared that if he received a security clearance, he would follow all the rules and guidelines, including the prohibition on marijuana use. However, his post-hearing statement did not include a specific acknowledgment that any further drug involvement would be grounds for revocation of his national security eligibility. (AX A)

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### Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. 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. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan* at 531.

## Analysis

### **Guideline H, Drug Involvement and Substance Misuse**

The concern under this guideline 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.

Applicant's admissions and the evidence submitted at the hearing established the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

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

The following mitigating conditions are potentially applicable:

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;

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AG ¶ 26(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; and

AG ¶ 26(d): satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) is not established. Applicant's marijuana use was recent, frequent, and did not occur under circumstances making recurrence unlikely. He used marijuana after his prospective employer gave him a second chance after he failed a hair follicle test. He continued to use marijuana after responding the interrogatories and being questioned about his marijuana use by a security investigator. His use of marijuana after being placed on notice that it was not compatible with access to classified information indicates that he does not have "the quantum of reliability expected of those with access to classified information." ISCR Case No. 16-03460 at 4 (App. Bd. May 24, 2018)

AG ¶ 26(b) is not fully established. Applicant apparently used marijuana alone, at home, and at work. Thus, AG ¶ 26(b)(1) and (2) are not applicable. AG ¶ 26(b)(3) is not fully established. His post-hearing statement was aspirational, but it fell short of the unconditional promise contemplated by AG ¶ 26(b)(3).

AG ¶ 26(d) is not established. Applicant testified that he received counseling for anxiety, but he submitted no evidence of treatment for drug abuse and no evidence of a favorable prognosis.

## Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an appellant's security eligibility by considering the totality of the appellant's conduct and all the relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

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(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.

I have incorporated my comments under Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). 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 drug involvement.

**Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman  
Administrative Judge

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