



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-00325

**Appearances**

For Government:

Jeff Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

01/22/2025

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**Decision**

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GLENONDON, John Bayard, Administrative Judge:

Applicant failed to mitigate security concerns under Adjudicative Guideline (AG) H (Drug Involvement and Substance Misuse). Based upon a review of the administrative record in this case, national security eligibility for access to classified Information is denied.

**Statement of the Case**

Applicant submitted his Questionnaire for National Security Positions (Questionnaire) on May 9, 2023. (Item 2 attached to the Department Counsel's File of Relevant Material.) On April 1, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under AG H (Item 1). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended

(Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

On April 23, 2024, Applicant responded to the SOR in writing and requested his case be decided on the written record in lieu of a hearing. (Item 1.) In his Answer he admitted the single SOR allegation. He provided no additional information.

On May 20, 2024, Department Counsel submitted the Department's written case in a File of Relevant Material (FORM), consisting of the Government's arguments in support of the SOR allegations and documentary evidence, identified as Items 1 through 3. The FORM was provided to Applicant by letter, dated May 22, 2024, and he received the FORM on June 19, 2024.

Item 3 attached to the FORM is the Applicant's March 15, 2024 responses to the Government's Interrogatories. The Interrogatories included a copy of the Report of Investigation (ROI) summarizing an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on October 25, 2023 (the Interview). In his Interrogatory responses, Applicant agreed with and adopted the ROI summary as his own statement. Under the circumstances, the ROI summary will be considered and cited as evidence herein.

Applicant declined to respond to the FORM. The case was assigned to me on September 12, 2024.

### **Findings of Fact**

Applicant is 25 years old, unmarried, and has no children. He earned a bachelor's degree in 2021. He has worked as an engineer for a U.S. Government contractor since May 2021. His May 2023 Questionnaire is his first application for a security clearance. (Item 2 at Sections 2, 12, 13A, 17, 18, and 25.)

### **Paragraph 1 - Guideline H, Drug Involvement and Substance Misuse**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he used marijuana with varying frequency.

1.a. Marijuana use during the period May 2020 to September 2023. In his Answer, Applicant admitted he used marijuana during the time period alleged in the SOR. He began college in September 2017 and graduated in May 2021. Applicant's May 2023 Questionnaire reflects that beginning in May 2020, while attending college and for over two years after his graduation, he used marijuana monthly. He wrote in the Questionnaire that his last use of marijuana was in January 2023. He responded, "No," to a question asking if he intended to continue using illegal drugs in the future. (Item 1 at 3; Item 2 at 23.)

In the October 2023 Interview, Applicant reported that his last use of marijuana was in September 2023. He again advised that he had no intent to use marijuana in the future. Applicant also advised the interviewer that he no longer associates with anyone who uses illegal drugs. In his March 2024 responses to the Interrogatories, he repeated that his last use of marijuana was in September 2023 and that he had no intent to use illegal drugs in the future. He also acknowledged that illegal drug use was grounds for the revocation of national security eligibility. (Item 3 at 3, 7.)

## 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 condition that could raise security concerns and may be disqualifying in this case:

- (a) any substance misuse (see above definition).

Applicant’s admitted use of marijuana for over three years establishes the above potentially disqualifying condition. Accordingly, the burden shifts to Applicant to mitigate the security concerns raised by the facts of this case.

AG ¶ 26 of this guideline provides conditions that could mitigate security concerns. I 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.

Applicant's last use of marijuana was a little over one year ago. He reported in his May 2023 Questionnaire that his last use of marijuana was in January 2023. He noted that he has no intent to use marijuana in the future and wrote, "I understand that a security clearance requires me to not use THC." (Item 2 at Section 23.) However, he admitted in his March 2024 Interrogatory responses that he had used marijuana again at least once on September 1, 2023.

In his March 2024 Interrogatory responses, Applicant again wrote that he has no intention to use marijuana again. Applicant's failure to honor his May 2023 commitment not to use marijuana in the future by using marijuana in September 2023 seriously undercuts the mitigation value of his subsequent written commitment. Applicant waived his right to appear at a hearing and testify in support of the sincerity of his commitment not to use marijuana again, or that he has indeed abstained from using illegal drugs since his Interrogatory responses. As a result, I have no additional basis upon which to assess Applicant's credibility regarding his last use of marijuana and his future intentions. Even if I assume that he has abstained from using marijuana since September 2023, only a little more than one year has passed. Overall, Applicant's behavior casts doubt on his current reliability, trustworthiness, and good judgment. He has not provided sufficient evidence to establish mitigation under AG 26(a).

To his credit Applicant acknowledged his past illegal drug use in his March 2024 Interrogatory responses. He also wrote that he has ceased using marijuana since September 2023. He stated in his background interview that he has dissociated from drug-using friends and contacts. He did not provide a formal signed statement of intent as contemplated by AG ¶ 26(b)(3), but he did respond positively to two questions in his Interrogatory responses affirming that he has no intent to use marijuana in the future and that he acknowledged marijuana use is illegal under federal law. He further acknowledged that he understood any future use of an illegal drug would be grounds for the revocation of national security eligibility. AG ¶ 26(b), (b)(1), and (b)(3) are established on their face. However, Applicant's evidence is insufficiently persuasive to support full mitigation under this adjudicative guideline, especially in light of the recency of his last use of marijuana

after submitting his Questionnaire and his past failure to abide by his initial commitment to abstinence.

### **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 considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have considered Applicant's age and the circumstances when he used marijuana, as well as his honesty in reporting his past use of marijuana. At this time Applicant has not, however, mitigated the security concerns raised by his recent use of marijuana and his failure to abide by his initial commitment to abstinence. He has not sufficiently minimized the potential for pressure, coercion, or duress, as well as the likelihood of recurrence. 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

Subparagraph 1.a:

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 for a security clearance. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON  
Administrative Judge