



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-01305

Appearances

For Government: William Miller, Esq., Department Counsel
For Applicant: Jason Ayeroff, Esq.

03/18/2025

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant mitigated the security concerns under Guideline H (Drug Involvement and Substance Misuse). Applicant's eligibility for access to classified information is granted.

Statement of the Case

In connection with her employment with a defense contractor, Applicant submitted a security clearance application (SCA) on October 4, 2023. On September 9, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. The DCSA CAS issued the SOR 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* (AG).

Applicant answered the SOR on September 23, 2024, and requested a hearing before an administrative judge. (Answer) On March 11, 2025, the case was assigned to me. On that day, the Defense Office of Hearings and Appeals (DOHA) issued a Notice setting the hearing for March 13, 2025. Applicant waived the 15-day notice requirement. Applicant's hearing was held as scheduled in the vicinity of Arlington, Virginia using the Microsoft Teams video teleconference system. (*Id.*)

During the hearing, Department Counsel offered one hearing exhibit and two government exhibits (GE) 1-2; Applicant offered 12 exhibits (AE) A-L; and all proffered exhibits were admitted into evidence without objection. Applicant also offered a brief requesting administrative notice of four documents, which were received into the record without objection. The record was left open until close of business on March 13, 2025. Applicant timely submitted one exhibit, AE M, which was admitted without objection. On March 17, 2025, DOHA received a copy of the transcript.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

Applicant is a 38-year-old digital strategist employed by a government contractor since 2015. She is unmarried and has no children. She earned a bachelor's degree in 2010, a master's degree in software engineering in 2017, and a master's in business administration in 2020. Her 2023 SCA was her first time applying for a security clearance. (AE A; GE 1; Tr. 54)

Applicant first used marijuana in college. She used it a couple of times, trying to impress her friends. She did not like how it made her feel. She did not use marijuana again until 2021. (AE H, Tr. 73-76)

Applicant was in an abusive relationship in 2019. That relationship resulted in her suffering with depression and anxiety. In 2021, she sought mental-health treatment. She discussed her depression and anxiety with a doctor. The prescription drugs recommended by her doctor (Dr. A) made her uneasy due to their listed side effects. She discussed alternative treatments with Dr. A. While Dr. A could not prescribe medical marijuana, both Dr. A and Applicant's therapist were supportive of her seeking medical marijuana treatment and discussed with her the pros of using medical marijuana. She sought treatment from another physician (Dr. B) to get a medical marijuana prescription. That doctor reviewed her medical and mental-health treatment records, examined her, and diagnosed her with depression and anxiety. They also discussed her debilitating menstrual cramps. Dr. B. prescribed various cannabis-derived treatments from October 2021 through July 2024. They included edibles, gummies, vapes, cigarettes, a spray, and

a tetrahydrocannabinol (THC) and cannabidiol (CBD) topical cream. She used vapes and cigarettes to treat her anxiety attacks. She used marijuana products about 10 to 20 times per month. She used edibles to control her depression. The spray and cream helped with her menstrual pain. She was prescribed up to 30 grams of medical marijuana per month. Her treatments did not cause her to feel intoxicated or high. (AE F, AE G, AE H, AE K; Tr. 30-37, 55-67, 77-79)

While medical marijuana helped her temporarily to manage her anxiety, depression, and pain, she continued to search for other treatment methods too. She testified that cannabis was never meant to be a permanent solution to her medical problems. The vapes and cigarettes triggered her asthma, and she used them infrequently because they caused her to cough. She followed up with Dr. B every six months during the period she was prescribed medical marijuana. He would adjust her dosage. She also continued to see her therapist and Dr. A., who recently sent her to a rheumatologist. The rheumatologist prescribed Applicant a muscle relaxer to ease her cramps, which provides her with relief equal to that of using the cannabis products. She follows up with her doctor every three months. She uses physical fitness to help with mental health, and she eats cleanly. (AE H, Tr. 30-38, 46-51)

At each step of the SCA process, Applicant has been honest about her medical marijuana use. She fully disclosed her marijuana use on the SCA, despite knowing it was illegal under Federal law. She was also honest and fully discussed it with the investigator. She also answered government interrogatories. When the interrogatories asked her if her employer had a drug policy, she was unsure and sought to find the policy for the first time. She read it and found she needed to inform the contractor's accommodations team of her medical marijuana use. She immediately reached out to that team and reported her medical marijuana use. She does not recall getting the drug policy in 2015 during new employee orientation. (GE 2; AE J; Tr. 38-43)

Applicant surrendered her medical marijuana card in early September 2024. Prior to surrendering it, she had not purchased any marijuana products since April 2024. She has not used marijuana or any marijuana derivative product since July 29, 2024, when she last used the THC and CBD topical cream, vape cartridges, and soft chews for her menstrual cramps. After that last use, she threw out her left-over THC and CBD products. She signed a statement of intent to abstain from marijuana use and indicated that any future use of marijuana or other drugs will result in the loss of her clearance. (AE K; Tr. 44, 69-72)

Applicant completed therapy on September 12, 2024, at which point she was discharged after completing all treatment goals. She found that therapy helped her healing process. She learned coping skills and also now has a spiritual advisor. (AE F; Tr. 51)

Applicant presented seven letters from personal and professional references. She has a strong reputation for being a highly respected and trustworthy member of her

organization's community. Several references also noted her kindness, resiliency, and integrity. She also included employee feedback she has received from work interactions, that reflect she is knowledgeable and delivers exceptional results to clients. She has also been nominated for Black Engineer of the Year in 2020, received a cash award for her passionate service in 2023, received an employee appreciation award in 2024, and earned the champion's heart award in 2024. She is involved in a non-profit organization that focuses on racial equity in science, technology, engineering, and math. (AE B, AE C, AE D, AE E)

Policies

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

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 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, these guidelines are applied 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 several 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 not drawn 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 to obtain a favorable security decision."

A person who seeks access to classified information enters 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 of potential, rather than actual, risk of compromise of classified information.

Analysis

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director of 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 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 illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana. While the Department of Justice may not spend funds to enforce medical marijuana laws, and the former President pardoned individuals convicted under this law, the law itself has not changed. (Administrative Notice Document)

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.

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.

The following disqualifying conditions under AG ¶ 25 are potentially applicable:

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

Applicant's voluntary disclosures, admissions, and testimony at the personal appearance establish AG ¶¶ 25(a) and 25(c). The Government's substantial evidence and Applicant's own 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. 0231154 at 5 (App. Bd. September 22, 2005).

The following mitigating conditions under AG ¶ 26 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.

AG ¶ 26(a) is established. Applicant's marijuana use happened under such circumstances that are unlikely to recur, and her past use does not cast doubt on her current reliability, trustworthiness, or good judgment. Applicant sought medical marijuana to help treat her anxiety, depression, and severe menstrual cramps. She knew that those treatments would only offer temporary relief, and she continued to seek other treatments while using the marijuana prescriptions. She has learned to manage her anxiety and depression through therapy, and she recently completed treatment. Further, she now sees a rheumatologist who has prescribed her an effective treatment to control her cramps. Her past use of THC and CBD products does not cast doubt on her current judgment, as she has found other ways to treat her conditions. She is unlikely to use marijuana in the future.

AG ¶ 26(b) is established. Applicant has acknowledged her drug involvement and has abstained from drug use since July 29, 2024. She has surrendered her medical marijuana card to her state authority. She has provided the required statement of intent to abstain, and she has altered her lifestyle to focus on her health through diet and exercise. She discarded her unused marijuana products. She has not gone to a medical marijuana store since April 2024, and there is no evidence that she has used marijuana in a social setting since she was in college.

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.

I have incorporated my comments under Guideline H and the AG ¶ 2(d) factors in my whole-person analysis. This is Applicant's first time applying for security clearance eligibility. She has been forthright with the government about her medical THC and CBD use at every stage of this clearance process. While she used marijuana frequently, and

has only abstained for about six months, she is sincere in her promise to not use it in the future. She has offered sufficient evidence to rehabilitate herself despite her past marijuana use.

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

Subparagraphs 1.a-1.c: For Applicant

Conclusion

Considering all the circumstances presented by the record, it is clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

Jennifer I. Goldstein
Administrative Judge