



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



In the matter of:

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2025

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On October 28, 2024, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The action was taken under Executive Order (EO) 10865, *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 adjudicative guidelines (AG) implemented by the DoD on June 8, 2017.

Applicant submitted a response to the SOR (Answer) on November 13, 2024, and he elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on December 4, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 29, 2025, and he did not

respond. The case was assigned to me on May 7, 2025. The Government's documents identified as Items 1 through 4 are admitted in evidence without objection.

This decision was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

Findings of Fact

Applicant admitted the SOR allegations in his Answer. In addition to his admissions in his Answer, he disclosed information regarding his marijuana involvement and his intent to use marijuana in the future, on his July 2023 security clearance application (SCA), during his March 2024 background interview, and in his October 2024 response to interrogatories. (Items 1-4)

Applicant is 27 years old. He previously lived with his parents but moved out of their home in 2024. He earned an associate degree in 2019 and a bachelor's degree in 2021. He worked as a part-time sale associate for a fast-food restaurant chain for three months in 2016 and as a technician for an oral surgeon for three months in 2020 but was otherwise unemployed while he was attending college. He worked as an independent contractor for a records storage facility from June 2022 to July 2022 and December 2022 to May 2023 but left to look for better opportunities. He was unemployed from May 2023 to April 2024, and he has since worked as a front desk representative for his employer. He has had an offer of employment from a defense contractor since May 2023, contingent on obtaining a security clearance. He has never held a clearance. (Items 3-4)

Applicant used marijuana, with varying frequency, from about May 2022 to October 2024. (SOR ¶ 1.a) He enrolled in his state cannabis commission in April 2022 and was prescribed medical marijuana to help manage the aches and pains associated with having flat feet and the surgery used to treat it. (Items 3-4) He stated in his SCA that marijuana "works effectively to help me manage my pain in a way that doesn't rely on pain killers or other opioids." (Item 3) He used marijuana once a day to once every other day through a THC vape pen to manage his pain and anxiety. (Item 4) He was willing to relinquish his enrollment in the commission if he was required to do so for his clearance. (Items 3-4)

Applicant also purchased marijuana, with varying frequency, from about May 2022 to September 2024. (SOR ¶ 1.b) He purchased from marijuana dispensaries marijuana products "for pain relief as per my prescription. I don't require a lot and therefore only visit the dispensary about once a month." (Items 3-4) He stated in his response to interrogatories that he spent approximately \$50 to \$60 monthly on marijuana products. (Item 4)

Applicant became aware that marijuana use remains federally illegally around the time of his March 2024 background interview, "while discussing how it might impact the progress of my clearance." (Item 4) During his response to interrogatories, he was

provided two memoranda issued by the Director of National Intelligence, titled “Adherence to Federal Laws Prohibiting Marijuana Use” and “Security Executive Agent Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position,” dated October 25, 2014, and December 21, 2021, respectively. Despite noting that he read both memoranda, he expressed an intent to continue to use marijuana in the future. (SOR ¶ 1.c; Item 4) He stated:

It works very well for managing my pain and anxiety, but as I said in my interview[,] I would be willing to surrender my [state cannabis commission] registration and discontinue use if necessary to complete the security clearance process. When I [was] asked during the interview[,] I was told that it would have no impact on the clearance and would instead be up to my employer who [initiated] the process. (Item 4)

Applicant stated in his response to interrogatories he does not socialize with individuals who use illegal substances, and he does not frequent places where he has reason to believe illegal substances are being used. He indicated during his background interview that his parents are aware of his drug use. He also stated, “During any time that I think illegal drugs [may] be present such as at a concert or similar event[,] I only accept food and drink from proper vendors and generally avoid contact with groups or individuals that are not going to the event with me.” (Item 4) He also stated he was required to take a preemployment drug test for his current employer and he tested positive for THC, which was explained by his state cannabis commission registration and had no bearing on him being hired for his current position. (Item 4) He further stated his employer has a random drug testing policy, but he had not yet been subjected to such a test. (Item 4)

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(c), 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 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 of 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).

Analysis

Guideline H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse as:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant: "(a) any substance misuse . . . ;" "(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;" and "(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse."

Applicant used marijuana from May 2022 to October 2024, and he purchased marijuana from May 2022 to September 2024. He also intends to continue to use marijuana in the future. AG ¶¶ 25(a), 25(c), and 25(g) are established.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

- (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 self-reported information about his use and purchase of marijuana on his SCA, during his background interview, and in his response to interrogatories. He acknowledged that his use of marijuana violated federal law despite his enrollment in his state cannabis commission and his prescription for medical marijuana, yet he expressed his intent to continue to use marijuana in the future to continue to manage his pain and anxiety. While he stated he was willing to relinquish his enrollment in his state cannabis commission and discontinue his marijuana involvement if necessary to complete the security clearance process, he did not provide a statement of intent to abstain from all drug involvement and substance misuse. Given the length of time in which he has used and purchased marijuana, not enough time has passed since his last use in October 2024 to establish a pattern of abstinence. None of the mitigating conditions are established.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in this whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge