



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



In the matter of:

)

)

)

)

Applicant for Security Clearance

)

ISCR Case No. 24-00816

Appearances

For Government: Alison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

03/18/2025

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns stemming from his illegal use of marijuana. Clearance is denied.

Statement of the Case

On July 24, 2024, the Department of Defense Consolidated Adjudications Services (DOD CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H, drug involvement. The DOD CAS took the action 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

In an answer, dated July 25, 2024, Applicant admitted the SOR allegations and requested a decision based on the evidence on file instead of a hearing. On August 26, 2024, Department Counsel prepared a file of relevant material (FORM), a brief with seven attachments supporting the Government's contention that Applicant should be precluded

from having access to classified information. Applicant received the FORM on August 29, 2024, and he was notified he had 30 days to file a response. On September 18, 2024, Applicant filed a written response, whereupon the case was assigned to me on September 30, 2024. After being assigned the case, I incorporated the attachments into the record as Items 1 through 7.

Findings of Fact

Applicant is a 33-year-old single man. He graduated from college in 2013. After graduating, he worked for nine years at a casino as an entertainment technician. (Item 5 at 10) He has been hired to work for a defense contractor in a position that requires a security clearance.

Applicant's current supervisor is a team leader. He was familiar with Applicant's work quality, having worked with Applicant at the casino before working for the defense contractor. Per the supervisor, Applicant while at his previous job "was always punctual in his attendance, diligent in his duties, and [not] impaired in any manner." (Response to FORM at 3)

Applicant smoked marijuana with varying degrees of frequency between 2007 and 2023. Sometimes, he purchased it. He started using marijuana in April 2007, when he was in high school, typically taking one hit from a bong twice per week. (Item 6 at 3) He continued using it with this frequency through August 2009 before quitting to focus on college.

Applicant resumed using marijuana in January 2010, and he used it until he graduated from college in May 2013. He quit at this time to focus on job hunting. (Item 6 at 4) During college, he consumed marijuana three to four times per week, typically taking two to three puffs per use. He quit using around the time he graduated to focus on job hunting. (Item 6 at 4)

After gaining a job in about September 2013, Applicant resumed marijuana use at the same level of frequency that he used while in college, either home alone or with friends. (Item 6 at 4) Marijuana use gradually made him feel lazy and paranoid, and this feeling prompted him to quit in May 2016. (Item 6 at 4, 24)

Applicant resumed using marijuana in November 2016. For the next seven years, he used it in month-and-a-half intervals, stopping for about two weeks "to clear [his] head," before resuming. (Item 6 at 4)

On one occasion in 2017, Applicant consumed cocaine. He did not like how it made him feel, consequently, he never used it again. (Item 6 at 4, 10)

Applicant last used marijuana in April 2023. He stated in his response to the FORM he has no intention of resuming use and is deeply regretful of using marijuana, asserting that if he "had known [he] would be presented with an opportunity to work for the U.S.

government 16 years ago, [he] would have made much better choices in regards to drug use." (Response to FORM at 1) Also, in assessing the nature and seriousness of the conduct, he asked that I consider, in essence, that marijuana is trending towards being legalized, both medicinally and recreationally, in the majority of states. (Response to FORM at 1)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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. 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 applicant or proven by Department Counsel. . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Analysis

Guideline H: Drug Involvement and Substance Abuse

The security concerns about drug involvement and substance abuse are set forth 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.

Applicant's history of illegal drug use triggers the application of AG ¶ 25(a), "any substance abuse." Applicant's occasional purchase of marijuana over the years triggers the application of AG ¶ 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia." He used cocaine once, more than eight years ago. I conclude it does not create a security concern, and I resolve subparagraph 1.b in his favor.

Applicant has not used marijuana in nearly two years. However, given the long period of time that he used it, the frequency of the use, and the frequent times he quit, then resumed his use, it is too soon to conclude he has mitigated the security concern. In reaching this decision, I was particularly concerned that he continued smoking for several years after he periodically started experiencing negative side effects. Under these circumstances, none of the mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

(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.

Given the nature and seriousness of the conduct and its frequency, not enough time has elapsed to conclude Applicant's marijuana use no longer poses a security risk.

Formal Findings

Formal findings for 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

Subparagraph 1.a:

Against Applicant

Subparagraph 1.b:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge