



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



In the matter of:

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ISCR Case No. 24-02290

Applicant for Security Clearance)

Appearances

For Government: Cassie Ford, Esq., Department Counsel

For Applicant: *Pro se*

08/22/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate drug involvement and substance abuse concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On March 11, 2025, the Defense Counterintelligence and Security Agency (DSCA) Adjudication and Vetting Services (AVS) sent to Applicant a statement of reasons (SOR) detailing reasons why under the drug involvement and substance abuse guideline the DSCA AVS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on March 13, 2025, and elected to have his case decided on the written record in lieu of a hearing. He received the File of Relevant Material (FORM), inclusive of the Government's exhibits (Items 1-6), on April 17, 2025, and interposed no objections to the materials in the FORM. Applicant timely responded to the FORM with explanations and clarifications covering his marijuana use allegations, and recent use of his clearance credentials to enter his work site. These post-FORM submissions are admitted without objections from the Government as Items 7-8. The case was assigned to me on July 21, 2025.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used marijuana with varying frequency from about 2014 to about November 2023 while granted access to classified information or while holding a sensitive position, i.e., one in which he held a security clearance and (b) used marijuana from May 2002 to about 2009 with varying frequency.

In Applicant's response to the SOR, he admitted the allegations with explanations and clarifications. He claimed honesty in voluntarily disclosing his past marijuana use. He also claimed no intention to use marijuana again. He claimed, too, to have communicated his desire to cease using marijuana to his friends and family. He further claimed to have exercised complete abstinence from marijuana use over the past 1.5 years since November 2023. And he claimed his willingness to sign a statement of intent to abstain from all drug involvement, acknowledging any future involvement is grounds for revocation of his security clearance. (Item 2)

Findings of Fact

Applicant is a 48-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in June 2017 and has two minor children. (Item 3) He earned a bachelor's degree in May 2007 and a master's degree in May 2009. (Item 3) He reported no military service.

Since July 2009, Applicant has worked for his current employer as a radar signal processing engineer. (Item 3) Previously, he worked for other employers in various jobs, some while enrolled in college. He has held a security a security clearance since 2009. (Items 3-4 and 6)

Use of Illegal Substances

Over the course of seven years spanning the years between September 2017 and September 2024, Applicant used marijuana, a drug federally banned by the Controlled Substance Act (21 U.S.C. § 802, et seq.) (CSA). Marijuana was his drug of choice, and the only drug cited in the electronic questionnaires for investigations

processing (e-QIP) he completed in July 2009 and January 2024, respectively, and which he confirmed in his September 2009 and October 2024 personal subject interviews (PSI). (GEs 3-6)

According to what Applicant wrote in his 2024 e-QIP, he used weekly or monthly socially with friends while in high school and college. (Items 3 and 5-6) Typically, he would contribute about \$10 towards purchases of the drug by his social friends without ever purchasing marijuana for himself. (Item 5) In his September 2009 PSI, he assured the investigator from the Office of Personnel Management (OPM) that he had no “desire or intention to experiment with any illegal substance in the future.” (Item 5)

Towards the end of his college tenure, he ceased using marijuana for five years (i.e., between 2009 and 2014) before resuming his marijuana use in 2014 with a frequency of use that varied between weekly, monthly, or less. (Items 3-4 and 6) Between 2014 and November 2023, he held a security clearance and was aware of the government’s zero tolerance drug policy. (Items 6-8) While the marijuana he used never caused him any problems with law enforcement or at work, he made the decision to cease using marijuana in November 2023 out of concern for his wife and two young children and fear of jeopardizing his security clearance and job. (Items 3-4 and 6) He regretted his decision to delete information about his marijuana use in his 2009 e-QIP and has committed to being upfront about all of his prior marijuana use.

When asked by the OPM investigator in his 2024 PSI about his resumed use of marijuana while holding a security clearance, Applicant explained that he regretted his actions but still maintains ties with his longtime friends who still use marijuana products. (Item 6) Cognizant of his anti-drug clearance responsibilities, he pledged to “be more mindful and responsible.” (Item 6) More recently, he used his clearance credentials to attend his present work site and collaborate with others in the radar industry. (Items 7 and 8)

Policies

By virtue of the jurisdictional principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a right to a security clearance.” 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. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Application approvals 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, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of 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.

Burdens of Proof

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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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*, 484 U.S. at 531.

“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. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s lengthy history of marijuana usage (inclusive of his more recent use while holding a security clearance). Historically, Applicant’s marijuana usage covers the years of 2002 through 2009 before he held a security clearance and the years of 2014 through November 2023 while he held a security clearance.

Drug Involvement concerns

Applicant's recurrent use of marijuana spread over a period of more than 20 years (with over nine years of his most recent use while holding a security clearance) is detailed in his 2024 e-QIP, his 2024 PSI, and his SOR response. On the strength of the evidence presented, three DCs of the AGs for drug involvement apply to Applicant's situation: DC ¶¶ 25(a), "any substance misuse"; 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of illegal drugs or drug paraphernalia"; and 25(f), "any illegal drug use while granted access to classified information or holding a sensitive position."

To his credit, Applicant has committed to abstinence while holding a security clearance and has abandoned all involvement with marijuana. For almost 21 months, he is credited with remaining abstinent from illegal drugs.

Still, Applicant's most recent years of usage (2014 through November 2023) occurred while he held a security clearance with imputed knowledge the DoD's zero tolerance drug policy, which makes his use particularly egregious. See, e.g., ISCR Case No. 11-03909 at 1-2 (App. Bd. Aug. 30, 2012); ISCR Case No. 06-18270 at 3 (App. Bd. Nov. 7, 2007).

Applicant's commitments to abstinence are further weakened by his previous promises in 2009 to abstain from illegal substances, which he failed to sustain. And, in his case, he still associates with friends who use marijuana products. Under these circumstances, none of the potentially mitigating conditions covered in the Directive are available to Applicant. See ISCR Case No. 16-03460 at 4 (App. Bd. May 24, 2018); ISCR Case No. 07-10804 (App. Bd. June 19, 2008).

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of his history of marijuana use that includes nine years of recent marijuana use while holding a security clearance, and whether such use reflects collective judgment lapses incompatible with his holding a security clearance

From a whole-person perspective, Applicant has not established enough independent probative evidence of his overall trustworthiness, reliability, and good judgment required of those who seek eligibility to hold a security clearance or sensitive position. While he is deserving of considerable credit for the contributions he has made to the defense industry, and his more recent commitments to abstain from illegal drug use, it is too soon to absolve Applicant of risks of recurrent marijuana use.

I have fully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that Applicant's past use of federally banned marijuana (especially while holding a security clearance) is not mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE H (DRUG INVOLVEMENT): AGAINST APPLICANT

Subparagraphs 1.a-1.b: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge