



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



In the matter of:

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ISCR Case No. 24-02429

Applicant for Security Clearance)

Appearances

For Government: Jenny Bayer, Esq., Department Counsel

For Applicant: *Pro se*

07/17/2025

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 January 8, 2025, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and substance abuse guideline the DCSA CAS 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 January 16, 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 (GEs 1-6), on March 4, 2025, and interposed no objections to the materials in the FORM. Applicant did not respond to the FORM. The case was assigned to me on July 8, 2025.

Summary of Pleadings

Under Guideline H, Applicant allegedly used marijuana with varying frequency, since about September 2017 to about September 2024.

In Applicant's response to the SOR, he admitted the allegations with explanations. He claimed he used marijuana for recreational purposes and disclosed the information on his security clearance application. He further claimed that he ceased using marijuana last year (i.e., in 2024) and has no intention of using the substance in the future and potentially jeopardize his employment or his obtaining a security clearance. He claimed, too, that he is honest and trustworthy and has personal and professional references who can attest to his character and integrity. (GE 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 never married and has no children. (GE 3) He earned a bachelor's degree in May 2002. (GE 3) He reported no military service.

Since December 2017, Applicant has worked for his current employer as a senior cost accountant. (GE 3) Previously, he worked for other employers in similar accounting positions. He reported periods of unemployment between March 2014 and December 2017 (GEs 2 and 6) He has no prior or current security clearances but is presently sponsored by his current employer. (GEs 4 and 5)

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-QIPs) he completed in 2023 and 2024, respectively, and which he confirmed in his personal subject interview (PSI). (GEs 3-4 and 6) According to what he wrote in his e-QIPs, he used marijuana several times a year, and he estimated a total use of 40 to 50 times between September 2017 and September 2024. When interviewed by an investigating agent in his PSI, he told the investigator he used

marijuana in the 2017-2024 time frame in social situations. While the marijuana he used never caused him any problems with law enforcement or at work, “he never felt dependent on it and has never purchased or sold it.” (GE 6) He also told the investigator that should he not need a security clearance he would possibly continue to use it in the future. Basically, he can take the drug or leave it but has stopped using marijuana out of respect for the abstention requirements set by the rules and regulations governing the obtaining and holding of a security clearance. (GE 6)

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 recent use while applying for a security clearance) While he has never been granted a security clearance, he continues to be sponsored by his current employer.

Drug Involvement concerns

Applicant’s recurrent use of marijuana over a 10-year period spanning 2013 and August 2023 is detailed in his January 2025 PSI. Beginning in 2013, he used marijuana on several occasions over the ensuing 10 years (through September 2024). On the strength of the evidence presented, two DCs of the AGs for drug involvement apply to Applicant’s situation: DC ¶¶ 25(a), “any substance misuse”; and 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of illegal drugs or drug paraphernalia.”

To his credit, Applicant has committed to abstinence while holding a security clearance and has abandoned all involvement with marijuana. For almost six months, he is credited with remaining abstinent from illegal drugs. However, he has reserved the possibility of resuming his marijuana use should he no longer hold a job that requires a security clearance. 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 whether his history of marijuana use while applying for a security clearance) reflect 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, 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 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:

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| GUIDELINE H (DRUG INVOLVEMENT): | AGAINST APPLICANT |
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| Subparagraph 1.a: | Against Applicant |
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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