



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



## **Appearances**

For Government: John Renahan, Esq., Department Counsel  
For Applicant: *Pro se*

03/19/2025

## Decision

Lokey Anderson, Darlene D., Administrative Judge:

On August 10, 2023, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On August 22, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse. The action was taken under Executive Order 10865 (EO), *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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on September 11, 2024, and requested a hearing before an administrative judge. The case was assigned to me on December 18, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on January 23, 2025, and the hearing was convened as scheduled on February 26, 2025. The

Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant did not offer any exhibits at the hearing. She did testify on her own behalf. The record remained open following the hearing, until close of business on March 5, 2025, to allow the Applicant to submit supporting documentation. Applicant submitted eight pages, collectively marked as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on March 10, 2025.

### **Findings of Fact**

Applicant is 36 years old. She is married and resides with her wife and a child. She has a Bachelor's degree in Computer Engineering. She holds the position of Software Engineer. She is seeking to obtain a security clearance in connection with her employment.

#### **Guideline H - Drug Involvement and Substance Misuse**

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose; and that she has engaged in conduct involving questionable judgment, which can raise questions about an individual's reliability and trustworthiness.

Applicant started working for her current employer in March 2023. She completed a security clearance application (SF-86) on August 10, 2023. In response to questions on the application in Section 23, which ask about whether in the last seven years she has used any illegal drugs, Applicant responded, "NO." This was a false answer.

Applicant began using marijuana, namely THC gummies in June 2020. She continued to use them on a weekly basis, once a week, on Friday nights. Her wife introduced her to THC gummies and told her that it was legal to use. Although her wife does not normally use marijuana, she has used it with the Applicant on a few occasions. Applicant stated that she uses the gummies to help her relax, as she suffers from depression. She explained that THC gummies have worked for her and help her in ways that alcohol has not. When she drinks alcohol, it does not make her feel good. From June 2020 to about December 2023, she purchased the THC gummies at a marijuana dispensary. She keeps the gummies in a drawer in her room where it is safe and put away, and only uses them at home. She stated that she last used marijuana/THC in December 2023.

From February 2011 to March 2023, Applicant worked for another defense contractor. During this employment, she applied for and was granted a security clearance in 2012. During this employment, she also held a sensitive position. Despite receiving regular and annual security briefings, she used marijuana/THC on a weekly basis during this employment. When asked if she was aware of the company's policies

concerning illegal drug use, she stated that she did not remember exactly the policy. She further stated that she is not sure that the "no illegal drug use policy" came across to her during that employment. (Tr. p. 46 and 4 and 5.)

In December 2023, as part of her recent background investigation, Applicant was interviewed by an investigator from DoD. She claims that it was during this interview that she learned for the first time that marijuana/THC is illegal under Federal law, and is prohibited by all DoD defense contractors. She stated that she assumed that because it is legal in the state in which she resides that she is allowed to use it. (Tr. pp. 42-43, and 53-54.)

Applicant testified that since that interview in December 2023, she has not used any form of marijuana or THC. She also stated that she is remorseful for her use, and she has no intention of ever using marijuana/THC or any other illegal drug in the future. Applicant also testified that instead of using THC to relax, she has continued seeing her therapist. She is on medication for her condition and is receiving counseling. (Tr. pp. 33-34.)

Six letters of recommendation submitted from professional associates of the Applicant attest to her overall competency and professionalism. A letter from Applicant's past Deputy Project Manager discusses her exceptional work ethic, honesty, and dedication in producing high-quality work during her time at their company. She consistently meets deadlines, proactively addresses all unforeseen challenges and offers solutions ensuring minimal disruption to the overall timeline. She was the go-to person to assure that tasks would be completed to the highest standard. She was critical to the success of their team and would continue to excel in her pursuits to make significant contributions to any team she joins. (Applicant's Post-Hearing Exhibit A, p.1.)

A letter of recommendation from a person who has known the Applicant for the past three years both personally and professionally, attests to her trustworthiness and her ability to get the job done no matter how difficult it might be. She is always happy to collaborate, assist, and provides her best efforts. Personally, she is kind and respectful. She is also remorseful for her past illegal drug use and has no plans to have a lapse in judgment again. She is considered to be an extremely valuable team member. (Applicant's Post-Hearing Exhibit A, p.2.)

A letter of recommendation from a person who has known Applicant for two years highlights her unique ability to rapidly understand the needs, perform her duties with excellence, and help the team keep operating at the rapid clip demanded. Her years of experience in supporting defense is obvious as it demonstrates a high level of competence to her work. Her reliability and trustworthiness, and her ability to perform her job in the environment required is excellent. (Applicant's Post-Hearing Exhibit A, p.3.)

A letter of recommendation from a professional associate of the Applicant attests to her honesty and integrity. She is considered a highly valuable asset to any team or organization. Due to her hard work, the team has seen a tremendous increase in the quality of the work, and she has helped the software team stay on track to meet deadlines. She consistently goes above and beyond her job responsibilities to help others. She possesses the character and work ethic that is necessary for success. (Applicant's Post-Hearing Exhibit A, p.4.)

A letter of recommendation from a person who has known the Applicant since March 2023, states that she is a dedicated professional who operates with integrity, honesty, and a strong commitment to her work. She puts great care into her work and has an ability to solve complex problems with a willingness to go the extra mile when needed. She is trustworthy, transparent, and takes her responsibilities seriously. (Applicant's Post-Hearing Exhibit A, p. 5.)

A note sent to Applicant's manager indicates that she was the driving force and the main reason why a certain project's software was successful. The job involved a complete software rewrite and a re-organization of how to handle their specific software code, which she was heavily involved in. She is greatly appreciated for her dedication to the job. (Applicant's Post-Hearing Exhibit A, p.6.)

Applicant received a Certificate in 2021, for ten years of service, and a Spotlight award in August 2022, for her efforts and dedication in helping to complete the project. (Applicant's Post-Hearing Exhibit A, p. 7 and 8.)

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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." 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 avoided drawing 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, 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 clearance 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 as to 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**

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns:

- (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.

None of the mitigating factors are applicable. Applicant used marijuana/THC during a 3½ year period from 2020 to December 2023. During this period, she also possessed and purchased, marijuana/THC. This fairly recent use, possession, and purchase of marijuana from 2020 through December 2023, occurred while she possessed a security clearance, and while holding a sensitive position. This illegal drug use began while she was working for her prior employer, and continued until December 2023, while working for her current employer. This is very troubling. Applicant claims that she did not know that her marijuana use was illegal until her interview in December 2023. This is not a reasonable or believable excuse for her illegal drug use. She has worked in the defense industry since 2011, about 14 years. She has held a security clearance since 2012, about 13 years. She knew or should have known that marijuana is illegal under Federal law, and that illegal drugs use is prohibited by the Department of Defense. Her recent history of illegal drug use, possession and purchase is not just

criminal conduct, but demonstrates poor judgment, unreliability, and untrustworthiness. Applicant's actions are not mitigated.

### **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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant is a 36-year-old Software Engineer. She is a hard worker with a good reputation. She is educated, intelligent, and has twelve years of work experience with a defense contractor while possessing a security clearance and while holding a sensitive position. She is expected to know the DoD and company policies and procedures concerning illegal drug use, which includes the use marijuana/THC, which is prohibited and against Federal law. If she did not know, she should have known given the long period she has worked in the defense industry. Applicant has not demonstrated the level of maturity needed in order to access classified information. Applicant is not an individual in whom the Government can be confident to know that she will always follow rules and regulations and do the right thing, even when no one is looking. At this time, Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse security concern.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:

AGAINST APPLICANT

Subparagraphs 1.a., through 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge