



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



In the matter of:)
)
) ISCR Case No. 23-02576
)
Applicant for Security Clearance)

Appearances

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

09/02/2025

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant failed to mitigate the security concerns raised under Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On June 26, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E. The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on August 23, 2024 (Answer), with explanations. He requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The hearing convened as scheduled on June 4, 2025.

Department Counsel offered into evidence Government Exhibits (GX) 1-5, and Applicant offered into evidence Applicant Exhibits (AX) A-J. All exhibits were admitted without objection. Applicant testified and the record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on June 11, 2025.

Findings of Fact

In his Answer to the SOR, Applicant admitted SOR allegations ¶¶ 1.b through 1.h. He denied allegations ¶¶ 1.a and 1.i through 1.k with clarifications. His admissions are incorporated into my findings of fact. After a review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 29 years old. He completed a bachelor's degree in mechanical engineering in December 2017 and has since earned several technical certifications. He owns his home and lives with his girlfriend. He has been with his sponsoring employer since September 2023 and works in IT support. (GX 3-5; AX E; Tr. 18-25)

The SOR alleged that Applicant used marijuana with varying frequency from approximately October 2013 through July 2019 (SOR ¶ 1.a). Additionally, the SOR alleged that he deliberately failed to disclose his marijuana use in a March 2018 Questionnaire for Non-Sensitive Positions (SF85) (SOR ¶ 1.b), an April 2019 SF85 (SOR ¶ 1.c), during an October 2019 interview with an authorized investigator for DOD (SOR ¶ 1.d), a June 2021 Questionnaire for National Security Positions (SF86) (SOR 1.f), during a July 2021 interview with an authorized investigator for DOD (SOR ¶ 1.h), during a December 2021 interview with an authorized investigator for DOD (SOR ¶ 1.i) and the full extent of his marijuana use in his May 2024 response to interrogatories (SOR ¶¶ 1.j-1.k). The SOR further alleged that he deliberately failed to disclose in his June 2021 SF86 that he had previously been denied clearance eligibility and was subsequently terminated from a position with Employer C. (SOR ¶¶ 1.e, 1.g).

In his Answer, Applicant admitted that he used marijuana from October 2013 through December 2018 and denied that he used marijuana through July 2019. He noted that his use of marijuana was infrequent, with periods where he went an entire year without using the substance. He further detailed that before 2017, he used marijuana about monthly. In 2017 and 2018, he used marijuana less than yearly. He stated his intent to not misuse substances in the future and provided a negative drug test from August 2024 in support of his claim of ongoing drug abstinence. He further admitted to several instances where he deliberately failed to disclose his drug use history or had not provided "completely honest" answers. He denied that he deliberately provided false information in his May 2024 response to interrogatories.

In March 2018, as part of an offer of employment with Employer A, Applicant submitted his responses to an SF85. Under "Section 14: Illegal Drugs:" which asked whether he had "used, possessed, supplied, or manufactured illegal drugs in the prior year, including marijuana, Applicant answered "no" and did not disclose his ongoing use

of marijuana (SOR ¶ 1.b). He was granted public trust access and began working with Employer A in April 2018. (GX 1; AX E; Tr. 20-25)

In early 2019, Applicant underwent a background investigation for a position with a federal contractor working for another government agency. On an unspecified date, he submitted an SF86 and did not disclose any drug use. (GX 4; Tr. 26, 43-44, 59-60)

In April 2019, Applicant left Employer A and began working with Employer B. Later that month, he submitted another SF85. Under "Section 21: Illegal Drugs:" which asked whether he had "illegally used any controlled substance, for example, marijuana," in the last year, Applicant again answered "no" and did not disclose any history of marijuana use (SOR ¶ 1.c). (GX 2; AX E)

In May 2019, Applicant participated in a background interview with investigators in relation to his early 2019 SF86 through another government agency. During that interview, Applicant disclosed that he tried marijuana on four occasions from 2014 through 2018, with his last use occurring on his birthday in December 2018. He admitted that, on the SF86, he had denied any drug use because he was "scared" to answer the question truthfully. He claimed he wanted to correct his SF86 because he should have answered honestly. During a June 2019 follow-up interview, he stated that he only experimented with marijuana when his friends offered it and had never purchased marijuana. (GX 4)

Applicant left Employer B in July 2019 and started with Employer C in August 2019. During an October 2019 background interview with an authorized investigator for DOD in relation to his April 2019 SF85, Applicant initially denied that he had used any illegal drugs in the prior seven years (SOR ¶ 1.d). However, when confronted with his statements made during the May and June 2019 interviews, Applicant then admitted that he used marijuana about once per month and as recently as July 2019. (GX 4; AX E; Tr. 30, 47-49)

During the October 2019 interview, Applicant was also confronted with information that he had violated school policy in March 2014 by smoking marijuana in the dorm rooms. He admitted the violation but stated that his friends were smoking marijuana in his dorm room when he was not there. However, he was held accountable because it was his room. He detailed that he was required to write an essay and see a guidance counselor to resolve the matter. (GX 4)

When asked during the October 2019 interview about his previous denials of drug use, Applicant claimed he had previously answered "no" to drug-use questions because he did not view marijuana as illegal. In the states where he had used marijuana, it was either allowed for medical use or had been decriminalized at the local level. He then admitted he did not possess a medical marijuana card and was aware that marijuana was illegal under federal law. He stated he no longer socialized with anyone who used marijuana and asserted he was not dependent on marijuana. However, he admitted he was likely to use marijuana in the future for stress relief unless

it jeopardized his ability to hold a security clearance. During a November 2019 follow-up interview, he admitted he had not previously disclosed his drug use because he was concerned his admissions could jeopardize his security clearance application. (GX 4)

In about April 2020, Applicant's April 2019 public trust application was denied. He understood the denial was based on his marijuana use and false reporting of that use. In May 2020, he was fired from his job with Employer C because he was unable to hold the public trust access. (GX 5; Tr. 30-32, 41)

In June 2020, Applicant was hired by Employer D. In June 2021, he submitted an SF86 and listed that he had not been fired from Employer C, instead stating he left voluntarily for a "better employment opportunity" (SOR ¶ 1.e). He also did not disclose he had ever been denied a clearance (SOR ¶ 1.g). Under "Section 23: Illegal Use of Drugs or Drug Activity:" which asked whether he had illegally used any drugs or controlled substances within the last seven years, he answered "no" and did not disclose any history of marijuana use (SOR ¶ 1.f). (GX 3; AX E; Tr. 30-32, 45-48)

During a July 2021 background interview with an authorized investigator for DOD, Applicant disclosed a previous clearance application had been denied in April 2020 resulting in him being fired from Employer C in May 2020. He admitted that he did not disclose the application denial or employment termination in his June 2021 SF86 because he believed it would negatively impact his ability to obtain a security clearance. He then detailed that the denial was because he had used marijuana on three occasions from 2013 through 2015 and had been afraid to disclose this use because of concerns it would impact his ability to obtain a clearance (SOR ¶ 1.h). He also stated that he had no intention of using marijuana in the future. (GX 5)

During a subsequent interview in December 2021, Applicant was again asked about his marijuana use in March 2014 and violation of school policy. This time, he admitted to smoking in the dorm room and having left before campus police arrived. He then admitted to using marijuana through 2016 and denied any recollection of using marijuana after 2016 (SOR ¶ 1.i). When confronted about his previous statements and disclosure of subsequent marijuana use, he stated he could not recall his last use of marijuana and statements he made to a previous investigator. In January 2022, Applicant also told the investigator that he did not disclose his marijuana use because he believed his use was outside of seven years and it did not have to be reported as part of his most recent investigation. (GX 5)

Applicant left Employer D to start with Employer E in September 2022. In September 2023, he left Employer E, to work with his current employer. (AX E; Tr. 52-58)

In his February 2024 response to interrogatories, Applicant admitted he was "very fearful about possibly not receiving the clearance" and had previously provided inaccurate information in his applications. He admitted he had committed a "serious

lapse of judgment" and "dishonest conduct" and sought to clear up the discrepancies in his record. (GX 4)

In May 2024, Applicant responded to a second set of interrogatories and disclosed that he had used marijuana from October 2013 through December 2018. He listed the frequency of his use as "less than once per year." He further stated that he had no intention of using marijuana in the future. (GX 5)

During the hearing, Applicant recalled that he used marijuana from about October 2013 through December 2018 but admitted he could have used marijuana through July 2019. He further detailed that, while in college, his marijuana use was about once per month. After graduation in 2017, his use of marijuana was "very infrequent" and totaled about three to four times until he stopped. He admitted to knowing marijuana use was illegal under federal law and that he continued to use marijuana after being granted public trust access in 2018. While he was unsure whether he last used marijuana in 2018 or 2019, he consistently stated he had not used marijuana since that timeframe. He reaffirmed his statement of intent to not use any illegal substances in the future and submitted negative drug tests from February and April 2025 in support. (AX A-C, J; Tr. 27-39)

Regarding the SOR falsification allegations, Applicant admitted that he repeatedly failed to report his history of marijuana use over the course of multiple investigations. He further admitted that he was "naïve" and stated "I didn't think it was something that would come up in my clearance investigation or would be discovered. So that's why I misreported." Similarly, he admitted he failed to report his previous clearance denial and termination from Employer C. He admitted he was fearful that discovery of his drug use and these events would negatively impact his ability to obtain a security clearance. (Tr. 42-48)

However, Applicant denied that he deliberately provided false information in his May 2024 response to interrogatories. He listed that he used marijuana "approximately once per year" through 2018 and that, at the time, this was to the best of his recollection. On further reflection at hearing, he sought to amend his responses to reflect that he had used marijuana monthly at times and possibly through July 2019. (GX 4; Tr. 26-30, 48-52)

Additionally, Applicant provided character-reference letters from three current and former coworkers who highlighted his problem-solving and project-management abilities. They all emphasized that Applicant was a strong leader and dedicated professional. They further noted that he was a trusted advisor and properly managed the handling of sensitive information. Applicant has also received multiple commendations and certifications of appreciation for his work. (AX E-H)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (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 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, these guidelines are applied 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(a), 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 not drawn 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

Analysis

Guideline E, Personal Conduct

The security concern relating to personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. ...

I have considered the disqualifying conditions for personal conduct under AG ¶ 16 and the following are potentially applicable:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and
- (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant began using marijuana in 2013. In October 2019, he told an investigator that he stopped using marijuana in July 2019. In his response to interrogatories and in his SOR Answer, he stated he stopped using marijuana in December 2018. Given the proximity of his October 2019 statement to the period of his use, I find it more accurately reflects that he used marijuana through July 2019. This extended period of marijuana use, including after he was granted public trust access and while he knew it was illegal under federal law, raises concerns regarding his ability to follow rules and regulations. Security concerns under AG ¶ 16(c) and the general security concern under AG ¶ 15 are established for SOR ¶ 1.a.

Applicant also admitted to deliberating falsifying information in his March 2018 SF85, April 2019 SF85 and June 2021 SF86. Security concerns under AG ¶ 16(a) are established for SOR ¶¶ 1.b-1.c and 1.e-1.g. He further admitted that he did not provide accurate information to investigators during background interviews in October 2019 and July 2021 and that he underreported the extent of his drug use during an interview in December 2021. Security concerns under AG ¶ 16(b) are established for SOR ¶¶ 1.d and 1.h-1.i.

However, Applicant denied that he falsified information contained in his May 2024 response to interrogatories, instead stating that the information he provided about his marijuana use was to the best of his recollection at the time. On further reflection, he admitted at hearing that the information was inaccurate and provided further clarification. When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004)

In review of the evidence as well as Applicant's admissions and candor at hearing about his past drug use and falsifications, I do not find that he intentionally falsified his May 2024 response to interrogatories. Security concerns for SOR ¶¶ 1.j-1.k have not been established.

Conditions that could mitigate the personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
- (c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant terminated all drug use in July 2019. In the six years that have followed, he has established that he can remain drug free. This is further supported by his multiple negative drug tests and his statements and testimony reflecting his understanding that marijuana use is illegal under federal law and inconsistent with holding a security clearance. Mitigation under AG 17(c) is applicable to SOR ¶ 1.a.

The security clearance process relies on those who are trusted with our nation's secrets to be honest and forthcoming regardless of the consequences. From about March 2018 through December 2021, Applicant deliberately and repeatedly provided false information about his drug use history. In that time, he also deliberately failed to disclose a previous security application denial and a termination from employment.

Finally, beginning with his 2024 responses to interrogatories and in his Answer to the SOR, Applicant acknowledged he had been dishonest and committed a serious lapse of judgment. He is credited with volunteering details about his drug use history and his previous falsifications during the hearing. He admitted he felt embarrassed about his past and relayed his desire to set the record straight.

However, Applicant intentionally chose not to disclose his drug use history repeatedly over an extended time. This was not a minor offense, and he did not make a prompt good-faith effort to correct his omissions and concealments. Given the extent of his falsifications, his recent efforts to provide accurate information do not fully mitigate the security concerns. More time is necessary for him to establish that he can maintain the reliability, trustworthiness, and judgment necessary to hold a security clearance. None of the mitigating conditions fully apply to SOR ¶¶ 1.b-1.i.

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 E in my whole-person analysis.

Applicant has moved past an extended history of drug use that began in college and continued into 2019. He has established a long period of abstinence from marijuana and is committed to remaining drug free. He is also credited with, more recently, voluntarily providing details of his marijuana use. Contrarily, his history of falsifications extends through multiple applications and interviews with investigators. In his response to interrogatories, Answer and at hearing, he admitted that he previously exhibited poor judgment by not being truthful and expressed his desire to clarify the record. By his admissions and disclosures, he has started that process. Nonetheless, more time is

necessary for him to fully establish the trustworthiness necessary to hold a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not mitigate the personal conduct 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 E:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b – i:	Against Applicant
Subparagraphs 1.j – 1.k:	For Applicant

Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Bryan J. Olmos
Administrative Judge