



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



In the matter of:)
)
) ISCR Case No. 23-02361
)
)
Applicant for Security Clearance)

Appearances

For Government: Brian L. Farrell, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2025

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant mitigated the security concerns under Guideline H (Drug Involvement and Substance Misuse). However, he failed to mitigate the security concerns under Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 6, 2023. On January 4, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H and 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 April 9, 2024 (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

The hearing convened as scheduled on March 18, 2025. Department Counsel offered into evidence Government Exhibits (GX) 1-2, which I admitted without objection. Applicant testified and did not submit any documentary evidence. One additional witness testified on Applicant's behalf. The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on March 25, 2025.

Findings of Fact

In his Answer to the SOR, Applicant admitted all the SOR allegations. His admissions are incorporated into my findings of fact. After a thorough review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 52 years old, married, and has three children. He completed an associate degree in about 2015 and is a machinist. He has never held a security clearance. (GX 1-2; Tr. 8-16)

The SOR alleged that Applicant used marijuana from about 1988 through 2018 and that he failed a drug test in about October 2019. Additionally, the SOR alleged that he failed to disclose in his February 2023 SCA his history of drug use and that he was fired from Company A following the October 2019 positive drug test.

Applicant admitted to using marijuana from 1988 into 2019 and stated there were occasions where he did not use marijuana for several months at a time. He described smoking marijuana with friends and using it on his own to relax and "get high." (Tr. 26) Sometime in 2019, he switched from smoking marijuana to using a THC vape pen as it was more convenient. He admitted he was aware that marijuana use was illegal in the state where he resided and under federal law. He was also aware that marijuana use violated the drug policies of his employers. (GX 2; Tr. 21-48)

In about October 2019, while working with Company A as a machinist, he dropped a work part on a conveyor belt of an adjacent machine, damaging the machine. He was sent home. The next day, he was directed to undergo a urinalysis drug test, which came back positive for marijuana. Later, he was contacted by Company A's human resources office and informed he could participate in a drug counseling program sponsored by the company. Shortly afterwards, he began attending weekly sessions with a drug counselor. However, after about three sessions, he received a call from Company A and was informed that his position had been eliminated. He did not receive any documents from Company A regarding the termination of his employment. He stopped attending drug counseling and quickly obtained new employment. (GX 1-2; Tr. 11, 23-37)

Applicant started working with his sponsoring employer, Company B, in 2022. He described that, in February 2023, he spent about a week filling out his first-ever SCA. He described the process as challenging as he completed the application on a computer in a noisy airplane hangar. Nonetheless, he managed to provide details about several prior employments, as well as his own criminal history from over 20 years ago, which included

convictions for robbery, assault and battery, and possession of cocaine. He also detailed periods of incarceration relating to those convictions. (GX 1; Tr. 8-16)

Applicant listed his employment with Company A in his SCA, but denied he was fired. Instead, in response to the question "Reason for Leaving," he wrote "I was told by HR that my position was eliminated." He also wrote, "I had an incident on the job where a part fell off the worktable. Supervisor sent me home for the rest of the day." He did not disclose that he failed a drug test. He also failed to disclose any history of drug use within the last seven years of his SCA. (GX 1; Tr. 17-31)

During a background interview with a DOD investigator later in February 2023, Applicant volunteered that he had a positive drug test for marijuana and had been fired from Company A. He detailed that, after the drug test, he was initially told by Company A's human resources office to obtain drug counseling. After a few sessions, he was informed by Company A that his position had been eliminated. He also disclosed his drug use history, which included cocaine use from 1988 through 2002 and marijuana use from 1988 through 2018. He was not asked about the date variance between his use of marijuana through 2018 and his positive drug test in 2019. (GX 2)

In his December 2023 response to interrogatories, Applicant confirmed his previous periods of drug use and the accuracy of the investigator's summary of his background interview. He stated his intent to not use drugs in the future and claimed he "fully understand[ed] the company policy, and most definitely the government stance on drug use." (GX 2)

With the issuance of the SOR in January 2024, Applicant lost his employment with Company B. In February 2024, he started working with Company C. However, Company B continues to sponsor his security clearance application, and he would return to work there if his application was successful. (Tr. 8-16)

Applicant testified that the positive drug test with Company A was a realization that he needed to terminate his marijuana use, and he has not used marijuana since 2019. He admitted he made a mistake by using marijuana for as long as he had and that his "thinking process" about marijuana has since changed. (Tr. 41) He understood the impact that continued drug use would have on his career. He also described being older now and more aware of his health and family obligations. He testified that, since 2019, he has undergone two drug tests, once during new-employee processing with Company B in 2022 and again during new-employee processing with Company C in 2024. Both tests were negative. He did not provide documents relating to those tests. (Tr. 24-48)

Applicant denied that he was fired from Company A or that he falsified parts of his February 2023 SCA. He testified that the description of his employment with Company A in the SCA was accurate as he was informed that his position was eliminated, not that he was fired. When asked about his disclosure to the investigator about being fired, he stated "You could probably say that I got fired, because [the investigator was] trying to put two and two together, like eliminate -- my position was eliminated and fired is the same thing.

I was just agreeing with what [the investigator] was saying." (Tr. 36) When asked why he did not disclose the positive drug test, he stated "I didn't know I had to go in lengthy details and explain[sic] everything." (Tr. 38) He denied any intent to withhold this employment history from his SCA. (Tr. 32-40)

Regarding his failure to disclose any drug use history in his February 2023 SCA, Applicant admitted he understood the question in the SCA but miscalculated the timing of his drug use. "I admit I was using, but I thought during that time that I was out of that seven-year window. That's why I said no." (Tr. 29) Applicant admitted that his last drug use was within four years of the SCA. Still, he insisted that his failure to disclose his drug use history in the SCA was a mistake and not intentional. (Tr. 26-35)

Mr. L testified and has been with Company B, Applicant's sponsoring employer, for nearly 25 years. He has held a security clearance for most of his career. He has known Applicant for over two years and interacted with him daily during Applicant's time with Company B. He described Applicant as a "hard worker" who "got along with everybody." He noted that Applicant never appeared impaired at work and was mindful of safety and his responsibilities. He believed Applicant was trustworthy, reliable, and exercised good judgment. (Tr. 56-68)

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 H, Drug Involvement and Substance Misuse

The security concern relating to drug involvement and substance misuse is set out 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. *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 adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant admitted to using marijuana from 1988 through 2018 as alleged in the SOR. His use of marijuana continued into 2019 when, while employed with Company A, he failed a drug test. All the above disqualifying conditions are established.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided under AG ¶ 26. The following are potentially applicable:

- (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.

Applicant admitted to an extensive period of drug use that included cocaine from 1988 through 2002 and marijuana from 1988 through 2019. He described his failed drug test in 2019 as a realization that he needed to terminate his drug use and refocus on his career, health and family. The record is absent any drug use since 2019.

It has been nearly six years since Applicant used marijuana and he has established a pattern of abstinence from drug use. He understood that marijuana was illegal under state and federal law and stated his intent to not use marijuana in the future. The drug involvement and substance misuse security concerns are mitigated under AG ¶¶ 26(a) and 26(b).

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. ...

The adjudicative guideline notes several conditions that could raise security concerns under AG ¶ 16. 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.

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) An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010) An act of falsification has security significance, independent of any significance of the underlying conduct. ISCR Case No. 01-19278 (App. Bd. Apr. 22, 2003) Falsification of an SCA is not "minor," but "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011)

In his February 2023 SCA, Applicant did not disclose his history of drug use or that he was fired from Company A after his positive drug test in October 2019. He described that this was his first-ever SCA. He noted the application was complicated and that he spent about a week completing it while in a noisy airplane hangar. However, he successfully submitted details about his background in other components of the SCA, including his criminal history from over 20 years earlier. Additionally, he admitted to understanding the drug-use questions in the application, but did not disclose his 30-year history of marijuana use because he thought it was outside the "seven-year window." Given the extended period of his drug use and the fact that he lost a job less than four years earlier following a failed drug test, his statements of unintentional nondisclosure are not persuasive.

Regarding his termination from Company A, Applicant testified that he was not fired and, instead, was told that his position had been eliminated. This is inconsistent with

statements he made during his background interview, the summary of which he later reviewed and confirmed as accurate. Additionally, he did not disclose the positive drug test elsewhere in the SCA. As he also failed to disclose any drug-use history in his SCA, his statements that he believed he was not fired in relation to the positive drug test are not persuasive. I conclude that security concerns under AG ¶ 16(a) are established.

Conditions that could mitigate the drug involvement and substance misuse 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 is credited with volunteering details about his drug-use history, positive drug test, and firing from Company A during his background interview. He also disclosed details about his drug use and positive drug test in his response to interrogatories and at hearing. Mitigation under AG ¶ 17(a) must be considered

However, Applicant intentionally failed to disclose his 30-year history of drug use, positive drug test or firing from Company A in his February 2023 SCA. While he denied any intent to falsify the SCA, his explanations that he miscalculated the timeframe of his drug use or that his firing from Company A was mischaracterized are not credible when compared to his previous statements and extended period of drug use. He has not met his burden of mitigating the previously established falsification allegations. This involved a significant matter of his past and continues to cast doubt on his reliability, trustworthiness and judgment. Neither AG ¶¶ 17(a) nor 17(c) is applicable.

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 H and Guideline E in my whole-person analysis.

Following a positive drug test in 2019, Applicant has abstained from any drug use for nearly six years. He is credited with overcoming a 30-year history of drug use and refocusing on his family and career.

However, despite this progress, Applicant failed to disclose in his February 2023 SCA his history of drug use, or his positive drug test leading to his termination from Company A. His progress in abstaining from drug use does not overcome his refusal to provide a complete history of that use in his SCA. This involved a relevant and material component of his past. I conclude he has not mitigated the security concerns raised by his personal conduct.

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 H:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against 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