



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



In the matter of:

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ISCR Case No. 24-00856

Applicant for Security Clearance)

Appearances

For Government: Lauren A. Shure, Esq., Department Counsel

For Applicant: *Pro se*

07/01/2025

Decision

MURPHY, Braden M., Administrative Judge:

Applicant used marijuana over about two years in college, from 2021 to September 2023. He did not disclose his illegal drug use on his October 2023 security clearance application, though he disclosed it and discussed it fully in a later background interview. Security concerns under Guideline E (personal conduct) and Guideline H (drug involvement and substance misuse) are mitigated. Applicant's eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 1, 2023, in connection with his employment in the defense industry. On July 15, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and H. 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, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

When Applicant answered the SOR on July 18, 2024, he admitted both SOR allegations, with explanations, and requested a decision based on the administrative (written) record, without a hearing, before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

On August 6, 2024, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 5. Items 1 and 2 are the SOR and the Answer. Item 3 is Applicant's SCA. Item 4 is an Interrogatory Response from Applicant, including his authentication of Item 5, the summary of his background interview.

The file reflects that DOHA mailed Applicant a copy of the FORM on August 7, 2024, and that he received it on or about August 26, 2024. He was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. Applicant submitted an emailed response to the FORM on August 26, 2024. (FORM Response) Department Counsel did not object to its admission. Applicant did not note any objections to the Government's proposed evidence. FORM Items 3, 4, and 5 are admitted into evidence without objection, as is the FORM Response. The case was forwarded to the DOHA Hearing Office for assignment on or about August 27, 2024, and it was assigned to me on June 10, 2025.

Findings of Fact

The two allegations in the SOR concern Applicant's marijuana use (SOR ¶ 2.a) and his deliberate failure to disclose that marijuana use on his SCA (SOR ¶ 1.a). Applicant admitted both allegations and included explanations and arguments for application of mitigating conditions. His admissions are incorporated into the findings of fact. Additional findings follow.

Applicant is 24 years old. He has never married and he has no children. He graduated from high school in May 2019 and he earned his bachelor's degree in August 2023. In October 2023, he submitted his SCA and began working as a software engineer for his employer, defense contractor 1, in November 2023. (Items 3, 4, 5)

Applicant did not disclose any illegal drug use on his October 2023 SCA, in answer to questions under Section 23 calling for disclosure of that information. (Item 3 at 26) In his December 2023 background interview, however, "when asked if [he] had used drugs

at any point in time in the past seven years, [Applicant] provided the following information...." (Item 5 at 2)

Applicant disclosed that he first used marijuana in November 2021, when he moved from his parents' home into a college dorm. He began using marijuana once or twice a month with friends and roommates at parties. He said he used marijuana until September 2023, and stopped using marijuana once he received the job offer from defense contractor 1. He said he had not used marijuana since September 2023. (Item 5 at 2)

Applicant also acknowledged in the interview that he deliberately falsified his SCA in failing to disclose his drug use. He thought he would be automatically disqualified from the job and he was scared. He also said that a day or two after submitting his SCA, he did some research online and learned that it was better to be honest during a background investigation because the investigators look for honesty and trustworthiness in applicants. He learned it is better to be honest and he hoped he would be able to disclose his drug use in his interview (which he did). (Item 5 at 2)

Applicant authenticated the summary of his background interview in a July 2024 interrogatory response. He also confirmed the timeframe and frequency of his marijuana use (monthly from November 2021 to September 2023). (Item 4 at 3-4) Applicant also stated that he no longer intended to use marijuana in the future. He disclosed that his roommates still use marijuana, weekly, but do so "outside, away from me." He also said, "whenever I find myself nearby illegal substances, I always leave the room." (Item 4 at 4)

Applicant noted that he took a random, pre-employment drug test, and that he is potentially subject to further random tests at work. He provided a copy of his employer's drug policy, which chiefly deals with "Maintaining a Drug Free Workplace." However, it also notes, "Why It Matters: Using an illegal substance can negatively impact your ability to perform safely, be productive, and obtain or maintain a security clearance or continued employment." (Item 5 at 10)

Applicant also checked "Yes" to an interrogatory question asking that he acknowledge that any illegal drug involvement or misuse of prescription drugs is grounds for revocation of national security eligibility. (Item 4 at 5)

In answering the SOR in July 2024, Applicant admitted SOR ¶ 2.a regarding his illegal drug use. He said he had not used illegal drugs in a year, and he said, "I knew I had to stop after getting an interview with [defense contractor 1]." He said he has disassociated himself from most people he used with, except his roommates, "who respect my boundaries." He cited the paragraph above (from his interrogatory response)

as a “statement of intent to abstain” from all future illegal drug misuse, with any misuse being grounds for revocation of his eligibility. (Answer)

Applicant also admitted SOR ¶ 1.a, and acknowledged falsifying his SCA, though noting, as before, that he disclosed it voluntarily in his interview. (Answer) He said much the same thing in his FORM Response, though he acknowledged that he should have said something before his interview and been more prompt.

As to the illegal drug use (SOR ¶ 2.a), Applicant said in his FORM Response that in his circumstance, a year of abstinence is significant, especially compared to his two years of use.

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 several 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

AG ¶ 24 expresses the security concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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 Controlled Substances Act (“CSA”) makes it illegal under Federal law to manufacture, possess, or distribute certain drugs, including marijuana. (Controlled Substances Act, 21 U.S.C. § 801, et seq. See § 844.) All controlled substances are classified into five schedules, based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. §§ 811, 812. Marijuana is classified as a Schedule I controlled substance, § 812(c), based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment. § 812(b)(1). See *Gonzales v. Raich*, 545 U.S. 1 (2005).

Further, in October 2014, the Director of National Intelligence (DNI) issued a memorandum entitled “*Adherence to Federal Laws Prohibiting Marijuana Use*,” (2014 DNI Memo) which makes clear that changes in the laws pertaining to marijuana by the various

states, territories, and the District of Columbia do not alter the existing National Security Adjudicative Guidelines, and that Federal law supersedes state laws on this issue:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines. . . . An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

The DOHA Appeal Board has cited the 2014 DNI Memo in holding that "state laws allowing for the legal use of marijuana in some limited circumstances do not pre-empt provisions of the Industrial Security Program, and the Department of Defense is not bound by the status of an applicant's conduct under state law when adjudicating that individual's eligibility for access to classified information." ISCR Case No. 14-03734 at 3-4 (App. Bd. Feb. 18, 2016).

The current National Security Adjudicative Guidelines went into effect on June 8, 2017, after the 2014 DNI memo was issued. Nevertheless, the principle continues to apply.

Moreover, on December 21, 2021, then-DNI Avril D. Haynes issued a memorandum entitled, "*Security Executive Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position.*" (2021 DNI Memo) The memo incorporates the AGs (at reference B) and the 2014 DNI Memo (at reference G) among various other relevant federal laws, executive orders, and memoranda. I take administrative notice of the 2021 DNI memo here, given its relevance to this case, its reliance on the AGs, and its recency.

The 2021 DNI memo specifically notes that "under policy set forth in SEAD 4's adjudicative guidelines, the illegal use or misuse of controlled substances can raise security concerns about an individual's reliability and trustworthiness to access classified information or to hold a sensitive position, as well as their ability or willingness to comply with laws, rules, and regulations." Thus, consistent with these references, the AGs indicate that "disregard of federal law pertaining to marijuana remains relevant, but not

determinative, to adjudications of eligibility for access to classified information or eligibility to hold a sensitive position." (2021 DNI Memo)

I have considered the disqualifying conditions for drug involvement under AG ¶ 25, and the following is applicable:

- (a) any substance misuse (see above definition).

I have considered the mitigating conditions 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 is grounds for revocation of national security eligibility.

As Applicant notes, both AG ¶¶ 26(a) and 26(b) warrant consideration. His illegal drug use was over a two-year period but is confined to his college years, albeit right before he accepted his job offer. While he had abstained for "only" a year as of August 2024, he also stated that he knew he needed to stop using marijuana once he accepted the job offer from defense contractor 1, and there is no evidence of any use after he submitted his SCA, in October 2023. While his illegal drug use was monthly and not exactly "isolated," it is nonetheless college-era drug use. Applicant has now entered the working world, and his statements in his interview, SOR Response, and FORM Response reflect a recognition of responsibility that comes with his new status in life.

Applicant also has recognized the importance of avoiding drug involvement, and has consistently expressed that, while his roommates still use marijuana, they do not do it around him, and if he is around it, he leaves. He has also provided and acknowledged his company's drug policy and has offered (and reaffirmed) a statement of intent not to use marijuana in the future. He is also subject to drug testing, which will serve as a deterrent. While I must also consider the falsification allegation under Guideline E (discussed below) and its impact on mitigation here, I nonetheless conclude that both mitigating conditions apply.

Guideline E: Personal Conduct

AG ¶ 15 details the security concerns for personal conduct:

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 or candid answers during national security eligibility investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
- (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

I considered the following disqualifying condition under AG ¶ 16:

- (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; and

Applicant falsified his October 2023 SCA when he failed to disclose any information about his marijuana use from November 2021 to September 2023. He admitted doing so in his background interview and he admitted the falsification allegation at SOR ¶ 1.a. AG ¶ 16(a) applies.

AG ¶ 17 sets forth the following potentially applicable mitigating condition under Guideline E:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.

Review of Applicant's authenticated summary of his December 2023 background interview reflects that he disclosed his illegal drug use fully and voluntarily when he was asked about it. He also acknowledged unequivocally that he lied on the SCA in failing to disclose his illegal drug use as he should have. While fear over the employment impact of his illegal drug use is not mitigating, it is nonetheless understandable, especially for someone new to the clearance application process and the working world, coming right out of college. While it is difficult to fully assess Applicant's credibility when he did not elect a hearing, the record establishes that he came clean during his interview voluntarily, and he did so after learning soon after he internalized (probably for the first time) that candor, honesty, and trustworthiness are valued traits for clearance applicants and that it is better to "come clean." While Applicant should not have lied on the SCA, he recognized what he did and confessed voluntarily. I conclude that AG ¶ 17(a) fully applies to mitigate the personal conduct security concerns arising from SOR ¶ 1.a.

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 under all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. On balance, this is a case where, having initially done the wrong thing, Applicant has learned from his mistakes and done the right thing. While he should have been more truthful on his SCA, he also came clean voluntarily. He consistently asserted that he did not use illegal drugs after submitting his SCA, or at any time thereafter, and there is no evidence to the contrary. On balance, even though I cannot make a full assessment of Applicant's demeanor and credibility as I would do in a hearing, I believe

he has learned his lesson and set forth sufficient evidence in mitigation under both guidelines alleged to warrant granting of classified eligibility. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility for a security clearance.

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: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline H: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

Under all the circumstances, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Braden M. Murphy
Administrative Judge