



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



In the matter of:)
)
) ISCR Case No. 23-02872
)
Applicant for Security Clearance)

Appearances

For Government: Patricia M. Lynch-Epps, Esq., Department Counsel
For Applicant: *Pro se*

03/14/2025

Decision

HALE, Charles C., Administrative Judge:

Applicant did not mitigate security concerns raised under Guidelines H (drug involvement and substance misuse), J (criminal conduct), and E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On January 24, 2024, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, J, and E. Applicant responded to the SOR on April 30, 2024, and requested a hearing before an administrative judge. The case was assigned to me on November 13, 2024.

The hearing was convened as scheduled on January 28, 2025. Government Exhibits (GE) 1 through 17 were admitted in evidence over Applicant's objection. The Government's disclosure letter dated May 15, 2024, was marked as Hearing Exhibit (HE) I and the Government exhibit list as HE II. Applicant testified and offered no other additional evidence. He declined to have the record held open. The Defense Office of Hearings and Appeals (DOHA) received the transcript (Tr.) on February 7, 2025.

Findings of Fact

Applicant is a 30-year-old employee of a federal contractor working as a monitor trainee. He has worked for his current employer since December 2022. He earned his high school diploma in 2012 and has completed his HVAC certification. He previously held a security clearance in 2017 when he was working at the same workplace. He is single, and lives with his two preschool aged children. He became his children's primary custodial parent in late 2022. (GE 1, GE 2; Tr. 23-27, 98-99.)

In Applicant's Answer to the SOR, he admitted the Guideline H allegation, SOR ¶ 1.a, that he used marijuana with varying frequency from about 2015 through November 2022, which was also cross alleged as a criminal allegation, SOR ¶ 3.g. He denied SOR ¶ 3.g. At the hearing, he changed his answer and admitted SOR ¶ 3.g. He stated he started to use marijuana in his early 20s. He testified he last used marijuana in November 2022. (GE 2; Tr. at 29-36.) He has stopped smoking marijuana and was drug tested when he was hired by his company. He has been randomly selected once for a urinalysis since he was hired. He acknowledged knowing when he was preparing his SCAs in 2017 and 2023 that marijuana use was illegal federally. (Tr. 81-86, 94.) In response to Government interrogatories, he answered he did not intend to use illegal substances in the future. (GE 2.)

Applicant admitted he did not disclose his drug use on his 2017 and 2023 SCAs. (SOR ¶¶ 2.a – 2.b.) He explained:

Well, to be completely honest, when it came down to it, that was just something that I was also afraid upon. Knowing that I was not a drug user - - I don't affiliate myself with drugs, it was more to where it's like I don't feel the need to actually report that. Once I got in person with the investigator and he asked me the question, I was like, well, honestly, yes, I have experienced it before. (Tr. 33-34.)

In his Answer Applicant had denied SOR ¶ 2.b with an explanation. At the hearing he admitted his answer on the 2017 SCA was false. (GE 17; Tr. 37, 43.)

Applicant had admitted SOR ¶ 2.a in his Answer with an explanation that "the question was stated upon that current time." He explained his Answer at the hearing and admitted he did not want to be perceived as a drug user because he feared truthfully disclosing that he had used illegal drugs would jeopardize his security clearance eligibility. He admitted when he signed the acknowledgment at the end of the 2023 SCA he knew he falsified material facts about his drug use. When he met with the investigator, the investigator "pretty much cleared up everything which made me be able to understand what I did on the eQIP." Applicant acknowledged he was "scared" because he did not believe he was "drug abuser" and volunteered he could be tested "at any point in time, even now" and he would pass. During his interview in July 2023, he provided truthful responses regarding his marijuana use. (Tr. 40-42.)

SOR ¶¶ 2.c – 2.i alleged various traffic and vehicle infractions and court actions between 2017 and 2023. Applicant was cited for numerous traffic and vehicle offenses, as well as for failing to appear on multiple occasions. He admitted all of the allegations. He acknowledged he had other unpaid traffic tickets and parking tickets that had not been alleged. (Tr. 51-66; GE 2; GE 10-16.) He accrued his traffic tickets while driving either motorcycle or a sedan. (Tr. 89-90.) He no longer owns the motorcycle. (Tr. 68.)

SOR ¶ 2.j cross alleged the misdemeanor criminal allegations in SOR ¶¶ 3.a – 3.f. Applicant denied SOR ¶¶ 3(c) and 3(d), and admitted the other SOR allegations ¶¶ 3.a, 3.e – 3.f. Applicant disputed SOR ¶¶ 3.c – 3.d. In SOR ¶ 3.c, he argued in his Answer that he had a driver's license, but it was lost, and he did not have its replacement. For SOR ¶ 3.d, he argued in his Answer that his driver's license had been suspended without notice. The Government supported each allegation with the respective court documents, and he testified to the alleged conduct. His denials were based on mitigating situations that he further explained in his testimony. (Tr. 69-81; GE 3 – GE 16.)

Applicant stated in his Answer:

I understand that my past experience was not as bright but to those times I can agree, I was young, stressed, miserable, and empty minded upon the future I can withhold. Which gives no excuse to anything therefore I punish myself every day from the debt I've costed myself. I am a single father, has reliable transportation, working two jobs, renting my own place and keeping up with living and everyday expenses, and I will succeed. The balance of all fines and court fee will be paid off soon. I have also even been working at a part time position as a server to try to balance my life back to a great financial position to becoming a more supporting father and safety employee here at the [workplace].

Policies

This case is adjudicated under Executive Order (EO) 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 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 the adjudicative process. The administrative judge's overarching

adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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.”

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 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.

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 for 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.

Applicant admitted he used marijuana. The following under AG ¶ 25 are applicable in this case:

- (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

AG ¶ 26 provides conditions that could mitigate security concerns. 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.

The evidence establishes that Applicant knew throughout the alleged period of time that his use of marijuana was prohibited under Federal law. He continued to use marijuana after applying for a security clearance and after being placed on notice that such conduct was inconsistent with holding a security clearance. In doing so, Applicant not only knowingly violated Federal drug laws but also disregarded security clearance eligibility standards. This behavior raises substantial questions about Applicant's judgment, reliability, and willingness to comply with laws, rules, and regulations. See ISCR Case No. 20-02974 (App. Bd. Feb. 1, 2022). Applicant's statement in the interrogatories of his intent not to use illegal drugs in the future does not mitigate the scope of these security concerns. Nor does the passage of time eliminate those concerns for an applicant who knowingly violated Federal drug laws and continued to use marijuana after completing an SCA and possessing a security clearance. None of the mitigating conditions are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing;
- (2) while in another country, engaging in any activity that is illegal in that country;
- (3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

SOR 2.j cross-alleges the conduct set forth in SOR ¶¶ 3.a – 3.f, which Applicant admitted. AG ¶ 16(e) is applicable to SOR ¶ 2.j.

SOR ¶¶ 2.a – 2.b. Applicant admitted, and the record supports that he deliberately failed to disclose his marijuana use of marijuana on his 2017 SCA and 2023 SCA. AG ¶ 16(a) is applicable to these SOR allegations.

SOR ¶¶ 2.c – 2.i. Applicant admitted being charged with various motor vehicle offenses, which resulted findings of guilt by the courts. AG ¶ 16(d) is applicable to SOR 2.c – 2.i.

The following mitigating conditions under AG ¶ 17 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.

The mitigating condition AG 17(a) is established for SOR ¶ 2.a. I am satisfied that Applicant upon discussion with the investigator voluntarily disclosed his drug use during his 2023 security clearance interview. The Appeal Board has said an "applicant's statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they were not binding on the Administrative Judge." ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019) the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id.*

The mitigating condition AG ¶ 17(a) is not established for SOR ¶ 2.b. Applicant admitted he purposefully did not disclose his drug use on his 2017 SCA, and he continued this lie through his 2023 SCA.

The mitigating condition AG ¶ 17(c) is not established for SOR ¶ 2.c – 2j. Applicant candidly testified about his various driving offenses and why he did not appear in court. However, insufficient time has passed, given the frequency of the behavior from 2015 through 2023, to show this behavior is unlikely to recur and remove the existing doubt concerning the Applicant's reliability, trustworthiness, and judgment.

Guideline J: Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

Based on Applicant's admissions and the evidence in the record the following disqualifying condition under AG ¶ 31 applies:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The following mitigating conditions under AG ¶ 32 are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32(a) and (d) do not apply. Given the frequency of the criminal behavior from 2015 through 2023, insufficient time has passed for AG ¶¶ 32(a) and (d) to apply. Applicant having assumed the role of a single parent has recently substantially changed his life from when this pattern of criminal behavior happened. He is working to be a mature and responsible father, but he has to establish a track record of good behavior and rehabilitation. The criminal conduct security concerns 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H, E, and J in my whole-person analysis. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guidelines H, E, and J.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2: Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b – 2.j:	Against Applicant
Paragraph 3: Guideline J:	AGAINST APPLICANT
Subparagraph 3.a – 3.g:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge