



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



In the matter of:)
)
) ISCR Case No. 24-01560
)
Applicant for Security Clearance)

Appearances

For Government: John G. Hannink, Esq., Department Counsel

For Applicant: *Pro se*

07/11/2025

Decision

LAFAYE, Gatha, Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate security concerns raised under Guidelines H (drug involvement and substance misuse) and E (personal conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 1, 2023. On September 20, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines H and E. The DOD acted 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on October 7, 2024, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on January 12, 2025, including documents marked as Government Exhibits (GE) 1 through GE 6. A complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the

FORM on January 30, 2025, and did not submit a response. The case was assigned to me on June 6, 2025. GE 1 and GE 2 are already part of the administrative record and need not be admitted. GE 3 through GE 6 are admitted in evidence without objection.

Findings of Fact

In his Answer to the SOR, Applicant admitted all allegations (SOR ¶¶ 1.a – 1.d, and 2.a). His admissions are incorporated in my findings of fact. After thorough review of the evidence, I make the following additional finding of facts.

Applicant is 29 years old. He earned his high school diploma in June 2014. He enrolled in the United States Naval Academy in July 2014 and was honorably discharged as an enlisted Sailor a month later. He attended college from January 2015 through May 2019 and earned his bachelor's degree in engineering in May 2019. He has never married and has no children. (GE 3, 4)

Applicant has worked as a structural engineer for a defense contractor since September 2019. His position requires a security clearance. He completed his first SCA in October 2019, and in Section 23 of the SCA, he admitted using and purchasing marijuana from January 2016 through September 2018. He said he legally purchased marijuana from a store in Amsterdam in 2016 and used it about three times during his visit. He also said he legally purchased marijuana from a dispensary in State 1 (S1), where it was legal to do so. S1 allowed the recreational use of marijuana, and Applicant used it a few times during his visit.

Applicant is aware that marijuana remains illegal under federal law. He said, "I wanted to try marijuana in a legal environment. Both times I was on vacation and trying to enjoy myself. However, I consider drugs to be juvenile behavior at this point in my life." (GE 4) He continued to comment on his marijuana involvement:

Even though I now reside in a state where marijuana is legal, I have not purchased any more, nor do I intend to. While I honestly believe the occasional use would not have ill effects on my judgment or career, I also believe it is unnecessary for me to relax or enjoy myself. I worked hard to start a career in this industry, and I'm more than happy to relinquish any behaviors that could harm my ability to continue to progress and grow. I have every intention of taking all necessary steps to ensure I am granted, and maintain, clearance from the government. (*Id.*)

Applicant signed a nondisclosure agreement (NDA) in November 2019 and was granted a secret security clearance in January 2020. (GE 5)

In November 2023, Applicant completed his second SCA. He disclosed using marijuana from January 2016 through September 2021. His comments regarding his future intent to use marijuana were the same as those in his 2019 SCA. He answered "no" to the question of whether he EVER illegally used or had otherwise been illegally

involved with a drug or controlled substance while possessing a security clearance. (GE 3 at 39-40)

In a March 2024 background interview, Applicant disclosed he purchased marijuana gummies in 2020 at a dispensary in State 2 (S2) where he resides. He said he consumed two marijuana gummies at a time at a few parties he attended between 2020 and September 2021. He said he stopped using marijuana in September 2021, and that he does not intend to use it in the future. (GE 3, 6)

The SOR alleges under Guideline H that Applicant used and purchased marijuana from January 2016 through September 2021 (SOR ¶¶ 1.a, 1.b), including while in a sensitive position from January 2020 through September 2021 (SOR ¶¶ 1.c, 1.d). Under Guideline E, the SOR cross-alleges his use and purchase of marijuana while in a sensitive position (SOR ¶ 2.a).

Applicant did not submit documentary evidence but he offered comments in support of his case in mitigation. He said, "I admit to using marijuana with varying frequency over the January 2016 to September 2021 dates specified." He shared more information about his marijuana involvement:

I maintain that this use [was] very infrequent, and never while actively on a job site or during work hours when I would have access to sensitive information. It remains a regret, but I hope that my discontinued use and good standing since these dates will allow me to maintain a position of public trust. I will continue to abstain from marijuana, or any other illegal substance, and consent to any drug testing that the agency deems necessary to maintain an active security clearance. (Answer to SOR)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is described 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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable are:

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

Applicant admitted he used and purchased marijuana from January 2016 through September 2021, including while in a sensitive position. His admissions are supported by other evidence in the record. AG ¶¶ 25(a), 25(c), and 25(f) apply.

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.

AG ¶¶ 26(a) and 26(b) are not fully established. Applicant disclosed he used and purchased marijuana from January 2016 to September 2018 in his October 2019 SCA. His statement about his marijuana involvement is compelling and worthy of including here:

Even though I now reside in a state where marijuana is legal, I have not purchased any more, nor do I intend to. While I honestly believe the occasional use would not have ill effects on my judgment or career, I also believe it is unnecessary for me to relax or enjoy myself. I worked hard to start a career in this industry, and I'm more than happy to relinquish any behaviors that could harm my ability to continue to progress and grow. I have every intention of taking all necessary steps to ensure I am granted, and maintain, clearance from the government.

Based on this statement, DOD adjudicators apparently concluded Applicant's illegal drug involvement and substance misuse were behind him, that he no longer posed a national security risk, and granted him a secret security clearance in January 2020. Despite the above proclamation, however, Applicant purchased marijuana again, this time in S2, his home state, and he continued to use marijuana through September 2021. An applicant's use of illegal drugs after completing a security clearance application, or otherwise being placed on notice of the inherent incongruity between illegal drug use, and eligibility for a security clearance, raises questions about an applicant's judgment, reliability, and willingness to comply with laws, rules, and regulations. ISCR Case No. 19-00540 at 3 (App. Bd. Dec. 13, 2019). An applicant's disqualifying conduct is particularly troublesome when it occurs while holding a clearance. ISCR Case No. 06-18270 at 3 (App. Bd. Nov. 7, 2007)

Thus, AG ¶¶ 26(a) and 26(b) are not established despite the passage of time. Applicant, in making such a compelling statement, essentially promised that his federally illegal drug involvement was behind him while secretly engaging in the same behavior. In doing so, he seriously damaged his credibility and he presented no documentary evidence to support his assertions. There is no evidence that Applicant disassociated from drug-using friends or contacts, nor is there evidence he changed or avoided the environment where drugs were used. Applicant is unable to mitigate drug involvement and substance misuse security concerns through his evidence.

Guideline E, Personal Conduct

The security concern under this guideline is described 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 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:

- (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: (3) a pattern of dishonesty or rule violations; 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.

The SOR cross-alleged under Guideline E Applicant's use and purchase of marijuana from January 2020 through September 2021 while in a sensitive position. Applicant's decision to continue using and purchasing marijuana after being granted a secret security clearance created a vulnerability to exploitation, manipulation, or duress as it could affect his professional standing. AG ¶ 16(e) is applicable. However, AG ¶ 16(d) is not applicable because the alleged conduct is already covered under Guideline H.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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; and
- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

AG ¶¶ 17(c) and 17(d) are not established. Comments made in Guideline H above also apply here. Applicant exercised poor judgment by continuing to use marijuana after he was granted a secret security clearance in 2020. His conduct created a vulnerability to exploitation, manipulation, or duress, which casts doubt on his current reliability, trustworthiness and judgment, and demonstrates an unwillingness to comply with federal rules and regulations. Applicant acknowledged his behavior but he has not received

counseling to change it. His statement about his marijuana use and involvement while working in a sensitive position is revealing:

I maintain that this use [was] very infrequent, and never while actively on a job site or during work hours when I would have access to sensitive information.

Given Applicant's stated attitude and belief about his marijuana involvement, objective, reliable proof is required to support his assertion that his federally illegal drug involvement is fully behind him. Any federally illegal drug use, no matter how small, still constitutes a rule violation. The evidence submitted by Applicant is insufficient to establish either mitigating condition.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines H and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because this case is decided on the written record, I had no opportunity to question Applicant about any of the security concerns in the case, nor did I have an opportunity to observe his demeanor and thereby assess his credibility.

Therefore, after weighing the disqualifying and mitigating conditions under Guidelines H and E, and evaluating all evidence in the whole-person context, I conclude Applicant failed to mitigate the security concerns raised in this case.

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: **AGAINST APPLICANT**

Subparagraphs 1.a – 1.d: Against Applicant

Paragraph 2, Guideline E: **AGAINST APPLICANT**

Subparagraph 2.a: Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Gatha LaFaye
Administrative Judge