



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



In the matter of:

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ISCR Case No. 24-02188

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Applicant for Security Clearance)

Appearances

For Government: Andre Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

07/14/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate drug involvement and substance abuse and personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On January 14, 2025, the Defense Counterintelligence and Security Agency (DSCA) Consolidated Adjudications Services (CAS) statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and substance abuse and personal conduct guidelines the DSCA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, DoD Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4,

establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on February 21, 2025, and elected to have his case decided on the written record in lieu of a hearing. He received the File of Relevant Material (FORM) on March 25, 2025, and interposed no FORM objections and did not respondi with new information. The case was assigned to me on June 30, 2025.

Summary of Pleadings

Under Guideline H, Applicant allegedly used marijuana on various occasions, including, since about 2022, while granted access to classified information or holding a sensitive position.

Under Guideline E, Applicant allegedly (a) falsified his electronic questionnaires for Investigations processing (e-QIP) of April 15, 2021, by deliberately failing to disclose his past use of marijuana and (b) falsified his e-QIP of June 26, 2024, by deliberately failing to disclose his use of marijuana while possessing a security clearance

In Applicant's response to the SOR, he denied each of the allegations with explanations. He claimed he used marijuana on only one occasion (in 2022), which he thought was insignificant. Addressing the falsification allegations, he claimed to have interpreted the question pertaining to drug use over the past seven years to mean "since the date of completing application." (GE 2)

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never married and has no children. (GE 3) He earned a bachelor's degree in May 2014 and a master's degree in December 2019. (GE 3) He reported no military service. Since March 2021, Applicant has worked for his current employer as a software engineer. (GE 3) Previously, he worked for other employers in similar software engineer positions. He reported unemployment between August 2019 and February 2021, and between August 2010 and May 2014 while he was in college. He has held a security clearance since July 2021 and was indoctrinated in February 2022. (GEs 5-6)

Use of Illegal Substances

Over the course of 10 years spanning 2013 and August 2023, Applicant used marijuana, a drug federally banned by the Controlled Substance Act (21 U.S.C. § 802, *et seq.*) (CSA). Marijuana was his drug of choice, and the only drug cited in his personal

subject interview (PSI). (GE 6) According to what he told the investigating investigator in his PSI, he tried marijuana for the first time by smoking with friends in 2013. (GE 6) Thereafter, he used the drug on and off “throughout the years, usually once a year of every other year” until August 2023, when he ceased using marijuana altogether. (GE 6) The marijuana that Applicant used was in gummy form that was “readily available at social gatherings.” (GE 6) At all times relevant, Applicant was aware of his employer’s anti-drug policy and knowingly violated the policy with his infrequent use.

In the only documented timeline of Applicant’s historical use of marijuana, he last used the substance in August 2023. (GE 6) Claiming in his interrogatory responses that he “did not enjoy the feeling of marijuana,” he assured (both in his PSI and interrogatory responses) that he has no intentions of future use. (GE 6) While Applicant’s marijuana use history includes his self-reported one-time use of the substance in 2022 while holding a security clearance, the evidence does not reveal any more prolonged use of the substance while holding a clearance. Even with limited opportunities to make credibility assessments of his marijuana use acknowledgements, his claims are not challenged in any way in either his PSI or interrogatory responses and warrant acceptance under all of the facts and circumstances considered.

Applicant affirmed his last use of marijuana (with friends) in August 2023. (GE 5) While Applicant’s accounts of his marijuana use are not corroborated, they are not challenged either by the Government. Fully considered, Applicant’s furnished timeline of his marijuana use is accepted.

Applicant’s e-QIP omissions

Asked to complete an e-QIP in April 2021, Applicant omitted his past marijuana use within the past seven years, claiming his belief that his infrequent use of the drug was immaterial to a security clearance investigation. (GEs 2 and 6) His explanations are not enough to avert drawn inferences of knowing and willful omission. When afforded an opportunity to disclose his past marijuana use in a scheduled PSI in May 2021, he declined to do so. (GE 6)

When completing a second e-QIP in June 2024, Applicant again omitted his use of marijuana within the previous seven years. (GE 4) As with his previous omissions, he attributed his infrequent use (even while holding a security clearance) to immateriality. (GE 6) His explanations fail to insulate him from drawn inferences of knowing and willful omission. Not until Applicant was asked about any past use of marijuana in his September 2024 PSI, did he come forward voluntarily with complete disclosures of his past marijuana use. His disclosures were not preceded by any evidence of confrontation or prompting. (GE 6) Applicant’s voluntary PSI disclosures are unchallenged and accepted.

Policies

By virtue of the jurisdictional principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), “no one has a right to a

security clearance.” 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. Eligibility for access to classified information may only be granted “upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Application approvals 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, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of 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.

Personal Conduct

The Concern: 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. . . . AG ¶ 15.

Burdens of Proof

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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s lengthy history of marijuana usage (inclusive of his recent use while holding a security clearance) Additional security concerns are raised over his falsification of e-QIPs he completed 2021 and 2024, respectively, where he failed to disclose his many years of marijuana use. Considered together, these raised issues raise security concerns over whether Applicant’s actions reflect a pattern of misbehavior incompatible with the judgment, reliability, and trustworthiness requirements for gaining access to classified information.

Drug Involvement concerns

Applicant’s recurrent use of marijuana over a 10-year period spanning 2013 and August 2023 is detailed in his January 2025. Beginning in 2013, he used marijuana on several occasions over the ensuing 10 years (through August 2023) while holding a security clearance. On the strength of the evidence presented, three DCs of the AGs for drug involvement apply to Applicant’s situation: DC ¶¶ 25(a), “any substance misuse”; 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of illegal drugs or drug paraphernalia”; and 25(f), “any illegal drug use while granted access to classified information or holding a sensitive position.”

To his credit, Applicant committed to abstinence and has abandoned all involvement with marijuana. For almost two years, he is credited with remaining abstinent from illegal drugs and exhibits no signs or indications in the developed administrative record of succumbing to any risks or pressures to resume his marijuana use.

Applicant’s abstinent assurances are not challenged by the Government, are accepted, and entitle him to the benefits of two MCs of the drug involvement guideline: MC ¶¶ 26(a), “the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment”; and 26(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 . . . , (2) changing or avoiding the environment where drugs were used . . .

Overall mitigation of Applicant's past use of marijuana is established through his unchallenged assurances of infrequent historical use between 2013 and 2022 and very limited use of the drug between 2022 and August 2023 (once only) while holding a security clearance.

Personal Conduct concerns

More concerning is Applicant's omission of his marijuana use in the two e-QIPs he completed in 2021 and 2024, respectively. Applicant's e-QIP omissions of his marijuana use were made knowingly and willfully and cover illegal drug possession under federal law that are material to the Government investigation of Applicant's security clearance eligibility. Applicable to Applicant's e-QIP omissions is DC ¶ 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."

Voluntary disclosures of adverse information are always encouraged. Without any evidence of confrontation or prompting by the interviewing OPM investigator in his ensuing 2025 PSI, Applicant fully disclosed his past marijuana use. His documented voluntary corrections of his e-QIP omissions when asked about his past use of marijuana entitle him to partial mitigation benefits of MC ¶17(a), "the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." What continues to be troubling about Applicant's belated disclosures of his past drug use is the timing of his disclosures. With over four years of unbroken employment with his current employer (2021-2025) he had plenty of opportunities to correct his omissions of marijuana use in his 2021 e-QIP but declined to do so out of imputed concern for his security clearance.

While Applicant's PSI disclosures were made less than six months after he completed his earlier June 2024 e-QIP, over three years had elapsed since his earlier completion of an e-QIP in April 2021. Challenging is the reconciling of this three-year gap with an even stretched meaning of the prompt prong in MC ¶ 17 (a).

With no bright line definitions of the term "prompt" to work with, the Appeal Board recently found an applicant's two-month delay in making corrections to be reasonable under all of the circumstances considered. See ISCR Case No. 22-02601 at 5 (App. Bd. Feb. 22, 2024). So, while Applicant is entitled to credit for making voluntary good-faith disclosures of his past drug use in his PSI, issues remain as to whether his disclosures satisfy the "prompt" prong of MC ¶ 17(a).

In previous Appeal Board decisions, the Board has drawn more restrictive definitions of the term "prompt" in situations where the applicant was a facility security

officer (FSO) who was in a position to know and respect the importance and urgency of making timely disclosures. *Compare* DISCR Case No. 93-1390 at 5-7 (App. Bd. Jan. 27, 1995) And, clearly the circumstances in this 1995 Appeal Board decision are distinguishable from the facts in Applicant's case. Unlike in the 1995 decision, Applicant was not a facility clearance officer (FSO) with a clearance.

Even with a more expansive construction of the "prompt" prong of MC ¶ 17(a) by the Appeal Board, Applicant's cumulative delays of over three years (i.e., April 2021 through June 2024) to make the right decision to voluntarily disclose his past use of illegal drugs. While his ultimate disclosures are welcomed, they came way too late to satisfy the Appeal Board's reasonable time interpretations of the prompt prong of MC ¶ 17(a). Even though a reasonable time interpretation of the prompt prong can be useful in incentivizing applicants to come forward voluntarily without fear of being too late for credit, time allowances must have limits in the interest of ensuring the expeditious requirements of security clearance investigations.

Without satisfaction of the prompt prong of MC ¶ 17(a), Applicant cannot be credited with meeting the mitigating benefits afforded by MC ¶ 17(a) of Guideline E. while his voluntary disclosures are welcomed, they are not timely enough to mitigate his e-QIP omissions.

Whole-person assessment

Whole-person assessment of Applicant's clearance eligibility requires consideration of whether his history of marijuana use (some while holding a security clearance) and recurrent e-QIP omissions of his marijuana use, when taken together contextually (even assuming favorable assessments of his past marijuana use), reflect collective judgment lapses incompatible with her holding a security clearance

From a whole-person perspective, Applicant has not established enough independent probative evidence of his overall, trustworthiness, reliability, and good judgment required of those who seek eligibility to hold a security clearance or sensitive position. While he is deserving of considerable credit for the contributions he has made to the defense industry, he has not produced enough positive reinforcements of his overall honesty and trustworthiness to facilitate safe predictions he is at no risk of recurrent candor lapses.

I have fully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that personal conduct security concerns are not mitigated. Applicant's past use of illegal drugs is mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE H (DRUG INVOLVEMENT):	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant

Conclusion

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

Roger C. Wesley
Administrative Judge