



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



In the matter of:)
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[Name Redacted])) ISCR Case No. 23-01257
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Applicant for Security Clearance)

Appearances

For Government: Mark Lawton, Esq., Department Counsel
For Applicant: *Pro Se*

01/24/2025

Decision

HOGAN, Erin C., Administrative Judge:

On December 11, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline H, Drug Involvement; and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented within the Department of Defense on June 8, 2017.

On December 20, 2023, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on September 3, 2024. On November 5, 2024, a Notice of Hearing was issued, scheduling the hearing on December 19, 2024. The hearing was held as scheduled. During the hearing, the Government offered three exhibits, which were admitted without objection as Government (GE) Exhibits 1 - 3. Applicant testified and offered no exhibits. The record was held open until January 3, 2024, to allow Applicant to submit additional exhibits. He timely submitted four exhibits which marked as AE A - D, which were admitted without objection. The transcript was received on January 13, 2025. Based upon a review of

the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

Procedural Issues

During the hearing, Department Counsel moved to amend the SOR in order to conform with the evidence, in accordance with the Directive ¶ E3.1.1.17, as follows:

- 1.c. You used marijuana with varying frequency in about 2013, while holding a sensitive position, i.e., one in which you held a security clearance. (Tr. 8)

The words "granted access to" were deleted. There was no objection to the amendment of SOR ¶ 1.c. The amendment was granted.

Findings of Fact

In his answer to the SOR, Applicant admits to all allegations in the SOR.

Applicant is a 57-year-old employee of a DOD contractor who seeks a security clearance. He previously held a security clearance from 2010 to 2016. He has been employed as a maintenance mechanic with his current employer, Employer A, since July 2021. He has a high school diploma. He is currently married. He has three adult children. His oldest child passed away about a year ago. (GE 1, Tr. 16-18)

(Note: The facts in this decision do not specifically describe employment, names of witnesses, or locations in order to protect Applicant's and his family's privacy. The cited sources contain more specific information.)

Drug Involvement

Under the drug involvement security concern, the SOR alleged Applicant used marijuana with varying frequency from about 1984 to about 2008. (SOR ¶ 1.a: GE 2 at 7); he used marijuana with varying frequency in about 2013 (SOR ¶ 1.b: GE 2 at 7); and his marijuana use in 2013 occurred while he held sensitive position i.e. one in which he held a security clearance. (SOR ¶ 1.c: GE 2 at 7).

Applicant started smoking marijuana in high school. He smoked marijuana about three to four times a week. He stopped using marijuana in 2008, because he did not like the way it made him feel. He was aware marijuana was illegal under federal and state law during the time he used marijuana. (Tr. 18-19; GE 2 at 7)

In 2013, Applicant was golfing with his cousin. His cousin was smoking marijuana and offered him the marijuana joint. Applicant took one drag. At the time, he was working for Employer B, another DOD contractor, and held a Top Secret security clearance. He was aware the use of marijuana was illegal. He has not used marijuana or any other illegal drug since that one occasion in 2013. (Tr. 19; GE 2 at 7)

After the hearing, Applicant submitted a signed Statement of Intent, signed on December 24, 2024, indicating his intent to abstain from all illegal drug involvement and substance use. He acknowledged that any future illegal drug involvement or misuse is grounds for revocation of national security eligibility. (AE D)

Personal Conduct

Under the Personal Conduct security concern, the SOR alleges Applicant was terminated from his employment at Employer B in December 2016 after he failed to pass a lifestyle polygraph examination. (SOR ¶ 2.a: GE 1 at 39; GE 2 at 6-8); and he falsified material facts on his September 9, 2021, e-QIP application, when he answered "No" in response to "Section 23 – Illegal Use of Drugs and Drug Activity – While Possessing a Security Clearance – Have you EVER illegally used or otherwise been been illegally involved with a drug or controlled substance while possessing a security clearance other than previously listed?" The allegation indicates he failed to list his 2013 marijuana use which occurred while he held a sensitive position and held a security clearance. (SOR ¶ 2.b: GE 1 at 37; GE 2 at 6-8); and he falsified material facts on a U.S. Office of Personnel Management Optional Form 306 – Declaration of Federal Employment (OPM Form 306), executed by him on February 23, 2017, in response to:

Background Information - . . . 12. During the last 5 years, have you been fired from any job for any reason, did you quit after being told that you would be fired, did you leave any job by mutual agreement because of specific problems; or were you debarred from Federal employment by the Office of Personnel Management or any other Federal agency?

He answered, "No" and did not list his termination from Employer B in December 2016 for failure to pass a lifestyle polygraph examination. (SOR ¶ 2.c: GE 3 at 1)

Regarding the allegation in SOR ¶ 2.a, Applicant testified that he did not really think he was fired in December 2016. He thought he was let go because he lost his security clearance and was unable to stay on site. He worked for Employer B from June 2010 to December 2016 when he was let go based on the failed polygraph. In February 2017, he was rehired by Employer B. They reached out to him and offered him another job. He worked for them until July 2019 when he left for a better opportunity. (Tr. 11, 15, 21-23, GE 1 at 13-16; GE 2 at 6)

The issue raised in the lifestyle polygraph was Applicant's one-time use of marijuana in 2013. While golfing with his cousin, Applicant took one puff from his cousin's marijuana cigarette. He initially did not remember this marijuana use. He testified the polygrapher was continuously asking him that there has to be something there regarding drug use. He finally remembered the 2013 incident and told the polygrapher about it. (Tr. 11, 21)

Regarding the allegation in SOR ¶ 2.b regarding the falsification on his September 2021 security clearance application, Applicant answered, "No" to the question about whether he had ever used illegally use a drug or controlled substance while possessing a security clearance. (GE 1 at 37) However, he listed that he was

terminated or lost his security clearance for failing a lifestyle polygraph on other areas of the same September 2021 security clearance application. Under Section 13A – Employment Activities, he listed his employment with Employer B from June 2010 to December 2016. He listed his reason for leaving employment from Employer B as follows:

Had yellow badge which was top secret with poly after 5 years tried to get lifestyle poly and did not pass. (GE 1 at 15)

He also indicated in the same section that he was fired for not passing a lifestyle polygraph in December 2016. (GE 1 at 16)

In Section 25 – Investigations and Clearance Record on his September 2021 security clearance application, Applicant answered “Yes” in response to the question, “Have you EVER had a security clearance eligibility/access authorization denied, suspended, or revoked?” He indicated that his security clearance was denied in December 2016 by Employer B indicating that he “was going for a higher clearance and did not pass lifestyle poly.” (GE 1 at 39)

I find the allegation in SOR ¶ 2.b for Applicant because his omission of the 2013 marijuana use was not material. He provided information about his failed lifestyle polygraph on several areas on his September 2021 security clearance application. The failure of the lifestyle polygraph was related to his one-time illegal marijuana use in 2013. He provided sufficient information on the security clearance application about the failed lifestyle polygraph which should have led the Government to information about his one-time use of marijuana in 2013. He does not deny the 2013 illegal marijuana use. He fully cooperated with investigators during his background investigation interview in October 2021. (GE 2 at 6-8)

With regard to the allegation in SOR ¶ 2.c, Applicant admits that he did not list that he was terminated from his employment with Employer B in December 2016 on his February 2017, OPM Form 306. He testified that he was worried that if he told the truth he would not get the job. He admits using bad judgment when he completed the form. (Tr. 15)

Whole-Person Factors

Several of Applicant’s co-workers wrote letters on his behalf. Mr. C., a senior chief engineer, states it is a pleasure working with Applicant. He has worked with him since May 2023. He describes him as “an exceptional person and great employee.” Applicant is always present and has a great attendance track record. He has a positive attitude towards supervisors and co-workers and is a team player. He recommends Applicant for a security clearance without question. He is a great asset and a key player on the team. (AE A)

Mr. T.M. has supervised Applicant since April 2024. He recommends him for a security clearance because he is an outstanding employee. He arrives on time each day

and is very professional. He works well with others, manages his workload well, and completes all tasks assigned to him in a timely manner. (AE B)

Mr. R.J., a mechanical supervisor, has been Applicant's immediate supervisor since June 2021. Applicant has proven himself to be an exceptional employee. He is professional when conducting business with staff members. He is always on time and completes assigned duties in a timely manner. He is an asset to the team. (AE C)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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(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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 applicant or proven by Department Counsel. . ." The applicant has the ultimate burden of persuasion as to obtaining 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 that the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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).

Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription drug 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 guideline notes several disqualifying conditions that could raise security concerns. I find the following drug involvement disqualifying conditions apply to Applicant’s case.

AG ¶ 25(a) any substance misuse;

AG ¶25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶25(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant admits to using marijuana on various occasions from 1984 to about 2008. He stopped using marijuana in 2008. He admits taking one puff off a marijuana cigarette while golfing with his cousin in June 2013. He also admits that he held a security clearance on the occasion when he used marijuana in June 2013. At the time he used marijuana, it was illegal and he possessed an illegal drug. AG ¶¶ 25(a) and 25(c) apply to SOR ¶¶ 1.a and 1.b. AG ¶ 25(f) applies to SOR ¶1.c.

The Government’s substantial evidence and Applicant’s own admissions raise security concerns under Guideline H, Drug Involvement. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. September 22, 2005))

Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions potentially apply to the Applicant's case:

AG ¶ 26(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

AG ¶ 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: (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) applies because Applicant's last use of marijuana occurred in June 2013. He stopped regularly using marijuana in 2008. On one occasion in June 2013, he took one puff off a marijuana cigarette. He has not used marijuana since that time. His last use of marijuana was over 11 years ago. Applicant's past marijuana use no longer raises questions about his reliability, trustworthiness, and judgment.

AG ¶ 26(b) applies because Applicant acknowledged his illegal drug use and signed a Statement of Intent indicating he will not use marijuana in the future. He acknowledged any future illegal use could result in the revocation of his security clearance. He has not used marijuana in over 11 years. He was very forthcoming during the hearing about his marijuana use.

Overall, Applicant met his burden to mitigate the security concerns raised under Guideline H, Drug Involvement.

Guideline E, Personal Conduct

The security concern relating to the guideline for 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 the national security or adjudicative processes. . . .

The following disqualifying conditions under AG ¶ 16 potentially apply to Applicant's case:

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

AG ¶ 16(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 violation of a written or recorded commitment made by the individual to the employer as a condition of employment. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

AG ¶ 16(a) applies with regard to SOR ¶ 2.c - Applicant's failure to list that he was fired from Employer B (or left by mutual agreement because of specific problems) on an OPM Form 306 signed by him in February 2017. It does not apply to SOR ¶ 2.b for reasons stated previously in this decision.

AG ¶ 16(e) applies because Applicant's use of illegal marijuana in June 2013 while holding a security clearance and his failure to disclose that he was terminated from Employer B makes him vulnerable to exploitation, manipulation or duress.

Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

AG ¶ 17(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c) applies. Applicant last used marijuana in June 2013. Even though he was terminated from Employer B in December 2016 because of the failed polygraph, they rehired him in February 2017 in another position. Although the OPM Form 306 does not state the name of the employer for whom Applicant completed the form as part of his employment, it appears likely that it was Employer B, since it was signed by Applicant in February 2017 and he was rehired by Employer B in February 2017. Applicant admits that it was poor judgment when he did not list that he was terminated on the OPM Form 306. If the form was completed in conjunction with being re-hired by Employer B, they were already aware of the termination. In his current job, he is well regarded by his supervisors and co-workers. He was forthcoming and accepted responsibility for his actions during the hearing. The conduct is unlikely to recur and does not cast doubt on his reliability, trustworthiness, or good judgment.

AG ¶ 17(e) applies. Applicant fully disclosed the extent of his illegal marijuana use during his 2021 background investigation. He was forthcoming about the failed polygraph related to the June 2013 marijuana use and his subsequent termination by Employer B. He has taken positive steps to reduce vulnerability, exploitation, manipulation, or duress. Personal Conduct security concerns are 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(a):

- (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 Applicant's favorable character references from two supervisors and a co-worker. I considered that he disclosed his illegal marijuana use during his background investigation and was very forthcoming during the hearing. He has not used marijuana since June 2013. He admitted the conduct and accepted responsibility for his past actions. I find Applicant mitigated the security concerns under Guideline H because it has been more than 11 years since he last used marijuana and he signed a Statement of Intent that he will no longer use illegal drugs in the future.

Under Personal Conduct, Applicant mitigated the security concerns. The allegations under Guideline E are unlikely to recur. Applicant accepted responsibility for his past actions. His current supervisors and co-workers think highly of him and attest to his excellent work ethic.

I considered the potentially disqualifying and mitigating conditions as well as the facts and circumstances surrounding this case. The security concerns under Drug Involvement and Personal Conduct are mitigated.

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.c: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a – 2.c: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

ERIN C. HOGAN
Administrative Judge