



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



In the matter of:)
LACHMAN, Marissa L.) ISCR Case No. 24-00600
)
Applicant for Security Clearance)

Appearances

For Government:
Tara Karoian, Esquire, Department Counsel

For Applicant:
Pro se

February 11, 2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has mitigated the security concerns raised under the personal conduct adjudicative guideline, but she failed to mitigate the concerns under the guideline for drug involvement and substance misuse. National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on June 26, 2023 (2023 Questionnaire). On June 26, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6,

Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DoD after June 8, 2017.

Applicant responded to the SOR allegations in an undated document (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on August 20, 2024. The case was assigned to me on September 5, 2024. The case was initially scheduled to be heard via Microsoft Teams video teleconference on October 8, 2024. I cancelled that date on October 7, 2024, due to unforeseen circumstances, and a second Notice of Hearing was issued on October 16, 2024, scheduling the case to be heard on Microsoft Teams on October 24, 2024.

I convened the hearing as rescheduled. Department Counsel offered four documents marked as Government Exhibits (GE) 1 through 4, which I admitted without objection. Applicant testified but did not submit any documents. I left the record open until October 31, 2024, to give her the opportunity to supplement the record. She submitted nothing further, and the record closed on October 31, 2024. DOHA received the transcript of the hearing (Tr.) on October 31, 2024. (Tr. at 15-17, 22-23.)

Findings of Fact

Applicant is 34 years old. In January 2024, she began a job with a U.S. Government contractor as a manager. She had previously worked for another government contractor (Employer A) from July 2014 to December 2023. She received a bachelor's degree in May 2013 and a post-graduate certificate in August 2017. In May 2021, Applicant also earned a diploma following her completion of a leadership training program for executives at a local university. She has never married and has no children. She has maintained a Secret security clearance since August 2019. (Tr. at 11-13, 18-21, 27, 39; GE 1 at 11-13; GE 3 at 2.)

The Government alleged in the SOR that Applicant is ineligible for a security clearance because she used marijuana at various times, including a period when she worked in a sensitive position, *i.e.*, a position in which she held a security clearance. The SOR also alleged that Applicant's illegal drug use constituted disqualifying behavior under the Personal Conduct guideline and that she deliberately provided false information about her drug use in her 2023 Questionnaire and in her initial security clearance questionnaire, submitted on April 11, 2019 (2019 Questionnaire). I find that the facts developed at the hearing and detailed in the documentary record are as follows:

Paragraph 1, Guideline H (Drug Involvement and Substance Misuse)

SOR ¶¶ 1.a and 1.b. Use of Marijuana (2016 to July 2023) and Use of Marijuana while in a Sensitive Position (2019 to July 2023).

Applicant admits both allegations. After experimenting with marijuana once in college, she started using it again in 2016 when she was 26 years old. Recreational marijuana use was legal in her state at that time. Her first use of marijuana was in the form of a tetrahydrocannabinol (THC) “gummy” given to her by a friend to help her relax, cope with anxiety, and sleep better. Thereafter, she experimented with smoking marijuana as well as consuming gummies. (THC gummies and smoked marijuana are collectively referred to hereafter as Marijuana.) She used Marijuana socially as much as every other month and at times as little as once every five months. (Answer at 1; Tr. at 29-32, 35-37.)

When the COVID-19 “lockdown” in 2020 forced Applicant to work from home and limit her contacts, she felt isolated and experienced severe stress and insomnia. Her use of Marijuana somewhat increased as she attempted to self-medicate her symptoms. In September and October 2020 her use increased when she experienced significant job-related stress. Applicant discussed her problems with a therapist who offered to treat her with prescription medications. She declined taking pharmaceuticals because she did not want to develop a dependency. During the lockdown, Applicant followed a pattern of using Marijuana. After she experienced two nights of what she called “insomnia attacks,” she used Marijuana to help her sleep the third night. She repeated this pattern about four times per month. After she could return to her workplace and until July 2023, Applicant substantially reduced her use of Marijuana. She used THC gummies a couple of times per year “to alleviate symptoms.” Her last use of Marijuana was in July 2023, when she was stressed by contract negotiations. (Tr. at 28-29, 34, 41-42, 47-48; GE 3 at 7.)

Applicant submitted the 2019 Questionnaire in April of that year and was granted a Secret clearance in August 2019. As noted, her Marijuana use after receiving national security eligibility varied over the following four years depending on the severity of her stress and insomnia. She was asked to submit the 2023 Questionnaire to apply for a Top Secret clearance in June 2023. She was interviewed by two investigators from the Office of Personnel Management (OPM) in August 2023. According to the Report of Investigation (ROI) summarizing the interview, she disclosed her past use of Marijuana and that her most recent use was in July 2023. Applicant wanted to be truthful with the investigators and that desire prompted her to disclose her past use of Marijuana. A week after the Interview, she reported her drug use to her supervisor and security official. (Tr. at 14, 39-40, 44-45, 49; GE 3 at 7-8.)

At that time, Applicant decided to cease using Marijuana. She began exercising and taking better care of her health to manage her stress and anxiety. She also acquired a dog to keep busy, and she limited her computer/phone screen time before sleeping to

reduce her insomnia. She wrote in her Answer and testified at the hearing that she has no intention of using Marijuana in the future. (Answer at 4; Tr. at 14, 39-40, 44-45, 49; GE 3 at 7-8; GE 4 at 5.)

Paragraph 2, Guideline E (Personal Conduct)

SOR ¶ 2.a. Cross-Allegation of Paragraph 1 Allegations. See discussion above.

SOR ¶¶ 2.b through 2.d. Falsification of Responses in 2023 Questionnaire (¶¶ 2.b and 2.c) and in 2019 Questionnaire (¶ 2.d). In her Answer, Applicant admitted all of the Guideline E allegations, but provided explanations indicating that she did not intend to falsify the disputed responses in her questionnaires. I construe her Answer in its entirety as providing erroneous admissions of these three allegations where her intent was to deny any intent to falsify, as alleged.

As to SOR ¶ 2.d. Applicant answered, "No," to the following question in Section 23 of her 2019 Questionnaire:

In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance. (Emphasis in the original.)

Applicant's negative response was inaccurate because she had started using Marijuana in 2016. She explained her response as a misunderstanding about the question, specifically whether it required the disclosure of her past infrequent use of Marijuana because its use was legal under the laws of her state. She acknowledged that she knew that Marijuana was illegal under federal law, although at the time, it did not occur to her that she was violating federal law by using Marijuana because of its legal status under state law. Applicant's misunderstanding with the question was about the requirements of federal clearance law with respect to Marijuana use and disclosure in light of the status of Marijuana under her state's laws. (Tr. at 34, 37-39, 57-58.)

Applicant testified that she did not consider Marijuana covered by the question's language: "the illegal use of drugs or controlled substances." She explained that the question's reference to "injecting, snorting" limited the question's scope in her mind to "more serious, heavy drugs." During cross-examination of Applicant, it was noted that an applicant has to click, "Yes," in response to this question to be advised in a dropdown menu that Marijuana is, in fact, a drug or controlled substance covered by the question and its use required disclosure. Applicant commented that the wording of the question should specifically address Marijuana to avoid confusion for applicants residing in states such as hers that have legalized the recreational use of Marijuana. She concluded that her "No" response "was an inadvertent wrong answer." Applicant denied any intent to

withhold information from the government in her 2019 Questionnaire. (Tr. at 34, 37-39, 57-58.)

As to SOR ¶ 2.b. Applicant answered, "No," to the same question quoted above in Section 23 of the 2023 Questionnaire. Her negative response was again inaccurate as the seven-year timeframe of the question covered the entire period when she used Marijuana (2016 to 2023). In preparing her 2023 Questionnaire, she did not consider whether her use of Marijuana needed to be disclosed. At the hearing, Applicant noted that the responses from her 2019 Questionnaire prepopulated the 2023 Questionnaire when she prepared it. She did not change her prior negative response. In her mind, her circumstances had not changed since 2019 when she submitted her initial questionnaire. Applicant testified that her failure to reconsider her prior response to the question was an "oversight" and "a lapse of judgment." She understands that she should have given further thought when responding since Marijuana is illegal under federal law. (Tr. at 42-44, 46.)

Applicant testified at the hearing about her disclosure of her past use of Marijuana in the August 2023 OPM interview. She initially testified that she could not specifically recall if she disclosed her Marijuana history first, though she believed that the investigators may have introduced the general subject first as part of their review of her 2023 Questionnaire. She believes that she was "upfront with it, ahead of them asking me specifically." The ROI makes no reference to the investigators confronting Applicant about a discrepancy between her acknowledged Marijuana use and her negative answer in the questionnaire to the Section 26 question quoted above. Later in her testimony, she recalled that any discussion about a discrepancy between her interview disclosure and her 2023 Questionnaire occurred after her disclosure. (Tr. at 44-45; GE 3 at 7-8.)

As to SOR ¶ 2.c. Applicant also answered, "No," to a second question in Section 23 of her 2023 Questionnaire, which reads as follows:

Have you **EVER** illegally used or otherwise been **illegally** involved with a drug or controlled substance while possessing a security clearance other than previously listed? (Emphasis in the original.)

Again, Applicant's negative response was inaccurate since she was granted eligibility for a Secret clearance in August 2019, therefore "possessed" a security clearance and used Marijuana after that date until July 2023. Her nondisclosure on this question was not separately reviewed at the hearing or in her August 2023 OPM interview. (GE 3 at 7-8.)

SOR ¶ 2.e. alleged that Applicant used Marijuana with Knowledge that Illegal Drug Use was Unacceptable to her Employer. In her Answer, Applicant admitted this allegation, which I construe was due to misunderstanding of the legal significance of an admission. She did not specifically address this allegation in her additional comments attached to the Answer. As discussed below, she denied at the hearing the substance of the allegation.

Department Counsel asserted in her opening statement that, “The Government’s evidence will establish that Applicant was aware of her company’s strict adherence to Federal drug laws and a no-drug policy.” In fact, the Government provided no documentary evidence of Employer A’s drug policy. Applicant testified that she took and passed a drug test prior to commencing her job with Employer A in 2014. The employer’s requirement that she take a standard pre-employment drug test, however, is only proof of the Company’s pre-employment drug policy at that time. Applicant testified further that she was never requested to take another drug test during the ten years she worked at that company. When she changed jobs in December 2023/January 2024, Applicant’s current employer also required that she pass a pre-employment drug test, which she did. (Tr. at 9, 28-29, 40, 46-47.)

As noted, Applicant reported her use of Marijuana to her supervisor and a company human resources representative after her August 15, 2023 background interview. Employer A’s security office submitted an incident report regarding Applicant’s disclosure, dated August 21, 2023. The incident report (GE 4) discusses reporting requirements and “refresher briefings” Applicant was required to view online between 2020 and 2023. These matters were mentioned in the incident report because they presumably addressed drug use and self-reporting requirements. At the hearing, Applicant could not recall any details about the briefings. The exhibit does not provide any specific information about Employer A’s drug policy, *i.e.*, whether it is a safe-workplace policy that prohibits drug use at work, or a complete ban on any drug use by employees at any time, or something else. (Tr. at 40; GE 4 at 5.)

Credibility and Mitigation

The thrust of Department Counsel’s closing argument was that Applicant’s hearing testimony lacked veracity due to discrepancies and contradictory statements. Applicant asserted that her testimony was completely truthful and questioned the claim that she provided inconsistent testimony. (Tr. at 51-58.)

Applicant’s credibility was questioned based upon her admitted knowledge of the status of Marijuana under federal drug law and her testimony regarding her negative response to the questions in section 23 in her two questionnaires. The credibility issue was whether it was inconsistent for Applicant to admit such knowledge and to deny that she was aware of her obligation to disclose her use of Marijuana in response to specific questions in Section 23 of the questionnaires. She testified that she misunderstood the question on the 2019 Questionnaire due to the language of the question. As a non-lawyer, she was not aware that the federal drug ban on Marijuana extended to the federal clearance disclosure requirements regarding Marijuana. I note that Applicant had not held a clearance or responded to a national security questionnaire prior to her submission of the 2019 Questionnaire. (Tr. at 52.)

Another point raised related to Applicant's testimony was that she was never interested in seeking a state medical marijuana prescription "because I had been employed by the Government or Government contracts [sic] my entire career." On cross-examination, Applicant responded affirmatively that she "knew it was illegal for Federal Government employees to use Marijuana." Applicant, however, works for a federal contractor and has never been a federal employee. (Tr. at 33-34, 46, 52.)

There is also evidence in the record that Applicant received online briefings regarding drug use and self-reporting requirements. The record is incomplete, however, as to the actual contents of those briefings and whether Applicant's viewing of the online material conveyed to her what information was required to be disclosed on a national security questionnaire and the details of Employer A's drug policy. (Tr. at 40; GE 4 at 5.)

In her interview, Applicant voluntarily disclosed her past marijuana use. I note that she was not interviewed in connection with her 2019 application. After learning in the 2023 OPM interview that she responded to the questionnaires incorrectly, she voluntarily reported her Marijuana use to her security official a week later and openly admitted her actions in her Answer and at the hearing. (Tr. at 50, 53; GE 4 at 5.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 - Guideline H, Drug Involvement and Substance Misuse

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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 sets forth the following conditions that could raise security concerns and may be disqualifying 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

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

The record evidence establishes AG ¶¶ 25(a) and (c). With respect to AG ¶ 25(f), Applicant used marijuana after 2019 and until 2023. In 2019 she was granted eligibility for a security clearance and therefore held a “sensitive position.” (See ISCR Case No. 22-01661 at 4 (App. Bd. Sep. 21, 2023).) Accordingly, AG ¶ 25(f) is also established.

The burden, therefore, shifts to Applicant. AG ¶ 26 provides conditions that could mitigate security concerns raised under this guideline. I have considered all the mitigating conditions under AG ¶ 26 and conclude that the following two conditions have possible application to the facts of this case:

(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 the 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.

In my analysis, I have taken administrative notice of the Security Executive Agent (SecEA) “Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position,” dated December 21, 2021. (Guidance.) In her Guidance, the SecEA noted the increased number of states that have legalized or decriminalized the use of marijuana and issued the Guidance to “provide clarifying guidance.” She reaffirmed the previous SecEA’s 2014 memorandum regarding the importance of compliance with federal law on the illegality of the use of marijuana by

holders of security clearances. She provided further clarification of federal marijuana policy writing that this policy remains relevant to security clearance adjudications “but [is] not determinative.” The SecEA noted that the adjudicative guidelines provided various opportunities for a clearance applicant to mitigate security concerns raised by his or her past use of marijuana.

In applying AG ¶ 26(a) to the facts of this case, I conclude that Applicant’s illegal drug use was not so long ago, was not so infrequent, and did not occur under such circumstances that it is unlikely to recur. Moreover, this recent illegal drug use while holding a sensitive position casts doubt on her current reliability, trustworthiness, and judgment. Her last use of an illegal drug while holding a sensitive position occurred one month after she submitted the 2023 Questionnaire seeking to upgrade her security clearance from Secret to Top Secret and only about 15 months before the close of the record. She did not give careful consideration to her responses to the Section 23 questions. Given her awareness of federal law with respect to Marijuana, she should have made inquiries of her security officials before using Marijuana. Overall, Applicant failed to establish mitigation under AG ¶ 26(a).

Applicant has also not provided sufficient evidence under AG ¶ 26(b) to fully mitigate the security concerns raised by her illegal drug use. She has acknowledged her drug involvement and has credibly provided testimony about the steps she has taken to improve her health and deal with stress and insomnia. She has also stated that she intends to abstain from using Marijuana in the future. However, she has not provided sufficient evidence of other actions she has taken to change her past pattern of using Marijuana to cope with stress. For example, she has not provided evidence of dissociating from drug-using contacts or a formal written statement of intent under AG ¶ 26(b)(3), though I note that she wrote in her Answer that she does not intend to use marijuana again. Her brief period of abstention is simply too short to support a conclusion that she will not use Marijuana again, despite her best intentions at this time, if she suffers from stress and insomnia attacks in the future. Under the circumstances of this case, Applicant’s evidence is inadequate to establish mitigation under AG ¶ 26(b).

Paragraph 2 – Guideline E, Personal Contact

The security concerns relating to the guideline for personal conduct are set out in AG ¶ 15, which states:

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 ¶ 16 describes the following two conditions that may raise security concerns and potentially be disqualifying in this case.

- (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
- (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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.

Due to the two different types of personal conduct allegations set forth in the SOR under Guideline E, I will review the application of the above disqualifying conditions with respect to subparagraphs 2.a and 2.e separately from the falsification allegations set forth in subparagraphs 2.b through 2.d.

SOR ¶ 2.a under Guideline E cross-alleges Applicant's past use of Marijuana and her use while holding a sensitive position as a separate security concern under this guideline. As noted above, the record evidence clearly established the cross-referenced allegations of paragraph 1 of the SOR and is sufficient for an adverse determination under Guideline H. Accordingly, the language of AG ¶ 16(c) precludes application of that potentially disqualifying condition. SOR ¶ 2.a is resolved in favor of Applicant.

SOR ¶ 2.e alleges that Applicant engaged in misconduct with knowledge that "it was not acceptable to use the drug while working for your employer." I construe this as referring to her employer at the time she submitted the June 2023 Questionnaire and was interviewed in August 2023, i.e., Employer A. The allegation does not refer to a violation of a policy of the employer. As noted, the record does not include Employer A's drug policy. The record does not support by substantial evidence a finding as to whether any policy discussed at the hearing, in the ROI, or the Incident Report is a "safe-workplace" policy, which bans the use of drugs, or being under the influence of drugs, while at work, or a total ban on the employees' use of drugs at any time, or something else.

Moreover, the primary evidence supporting this allegation is the following vague statement appearing in the ROI, "Subject is aware marijuana is still federally illegal and that it is *not acceptable* to be using marijuana *while working at* [Employer A.] (Emphasis

added.) The possibility that Applicant was referring in the Interview to a safe-workplace policy at Employer A also appears in a partially incomplete sentence appearing later in the ROI, which reads, “Subject if she did not consume marijuana during work hours at [Employer A.]” The language preceding and following the quoted partial sentence do not provide any context for the quoted wording, but the reference to “work hours” suggests that she may have referred to a safe-workplace policy. If the terms of employment referenced in this allegation is to a safe-workplace policy that prohibits marijuana use, or being under the influence of marijuana, while at work, then Applicant’s conduct did not violate such terms. In the absence of a clarification of Employer A’s terms of acceptable conduct, SOR ¶ 2.e is not established and is resolved in favor of Applicant.

The three SOR falsification allegations (SOR ¶¶ 2.b, 2.c, and 2.d) require that the Government produce substantial evidence of Applicant’s intent to provide false information in her questionnaires. I conclude that the Government had not met its burden to prove that Applicant intentionally provided false information in her questionnaires in the face of her credible denials. Based upon my observation of Applicant’s demeanor and a careful review of the transcript, I found Applicant’s testimony and explanations for her omissions to be credible and without any clear inconsistencies with other record evidence. Accordingly, the potentially disqualifying condition set forth in AG ¶ 16(a) has not been established as to any of the three SOR falsification allegations.

Even if it was determined that Applicant had deliberately provided false information in her responses to questions in Section 23 of her 2019 and 2023 questionnaires, as alleged in the SOR, I conclude that the mitigation condition set forth in AG ¶ 17(a) has full application. That condition reads:

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

As discussed above in my findings, Applicant voluntarily disclosed her past Marijuana use to the OPM investigators in the August 2023 interview. In the context of the assumption at the opening of this alternative analysis, I conclude that her disclosure was a prompt, good-faith effort to correct her omissions. I also conclude that the record evidence supports the conclusion that Applicant disclosed her drug use in the interview before an interviewer confronted her with information that she had used Marijuana. Supporting this conclusion is the fact that the record evidence provides no information to suggest that the investigators had reason to be aware of Applicant’s drug use and had any basis to confront her with such a claim. Furthermore, her recollection of the interview supports the conclusion that Applicant initiated the discussion about her drug use with her disclosure.

In addition, Applicant voluntarily took the positive step of disclosing to her supervisor and security official her past Marijuana use and her use while holding a

sensitive position. By taking this step, she has eliminated her vulnerability to exploitation, manipulation, or duress. AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) also applies.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I credit Applicant's honesty in self-reporting her past drug use knowing that it could negatively affect her clearance eligibility and therefore conclude that the personal conduct falsification allegations are not established. However, Applicant's drug use from 2019 to 2023 was a serious violation of federal security clearance rules and regulations. Her use of an illegal drug over a four-year period while holding a sensitive position seriously undercuts the value of her mitigating evidence, even though I credit her explanation that she was unaware that she was violating applicable security clearance requirements. She could have easily sought clarity from her employer's security officials about those requirements when she prepared her responses to the 2019 Questionnaire. Applicant has not, at this time, mitigated drug involvement security concerns raised by her behavior. Overall, the record evidence leaves me with questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a through 2.e:	For 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 national security eligibility. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge