



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



In the matter of:

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2025

Decision

Dorsey, Benjamin R., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. He did not mitigate the personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 23, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. On August 28, 2024, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on November 8, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on November 26, 2024, but he did not respond to it. The case was assigned to me on February 20, 2025. The Government exhibits included in the FORM (Items 1-7) are admitted in evidence without objection.

Findings of Fact

Applicant is a 23-year-old who is being sponsored for a security clearance by a government contractor. He earned a high school diploma in 2020 and two associate degrees in 2022. He worked for government contractors as an intern while he was attending college. The record is unclear whether he is a full-time student applying for an internship or whether he has finished school and entered the workforce. He has not been married and has no children. (Items 3-6)

From about November 2019 to June 2021, Applicant used marijuana approximately eight times. He smoked it in a social setting with friends on all eight occasions. In about October 2021, he inhaled cocaine on one occasion at a bar with a friend. His friend provided the cocaine, and Applicant was slightly intoxicated at the time. He claimed that he does not believe that he would have snorted the cocaine if he had not been consuming alcohol. He claimed he had no future intent to use marijuana, cocaine, or any other illegal substance because they are illegal, unhealthy, and incompatible with his career aspirations. (Items 2-6)

On August 11, 2021, Applicant completed and certified an Electronic Questionnaires for Investigations Processing (2021 SCA). He did not disclose his November 2019 to June 2021 marijuana use, as required. In December 2021, he was granted eligibility for a position of public trust. (Items 2, 3, 6, 7)

On December 21, 2022, Applicant completed and certified an Electronic Questionnaires for Investigations Processing (2022 SCA). He again failed to disclose his November 2019 to June 2021 marijuana use, as required. He did not disclose his October 2021 cocaine use, as required. (Items 2, 4, 6)

On February 14, 2023, Applicant had a security interview with a DOD investigator (2023 SI). During the 2023 SI, he did not volunteer his marijuana and cocaine use. He claimed that the information he provided in the December 2022 SCA regarding his drug use (or lack thereof) was accurate. In March 2023, he was granted security clearance eligibility. (Items 2, 4, 6, 7)

On December 13, 2023, Applicant completed and certified an Electronic Questionnaires for Investigations Processing (2023 SCA). In the 2023 SCA, he disclosed his November 2019 to June 2021 marijuana use and his October 2021 cocaine use. (Items 2, 5, 6)

On February 16, 2024, Applicant had a security interview with a DOD investigator (2024 SI). During the 2024 SI, Applicant discussed his marijuana and cocaine use in a manner consistent with the information he provided in the 2023 SCA. He initially denied that he had deliberately omitted or falsified information in the past on any forms, or to any employer, investigator, or other security official. Upon further questioning by the DOD investigator, Applicant admitted that he lied to the previous investigator during the 2023 SI about his illegal drug use. He admitted he lied during the 2023 SI because he thought it would negatively impact his security clearance eligibility if he told the truth about his illegal drug use. For a time, he continued to lie during the 2024 SI about his prior reporting

of his illegal drug use. He claimed that he had reported his illegal drug use as required on the 2021 SCA and the 2022 SCA. When the investigator indicated to Applicant that he had not listed this illegal drug use on either of those SCAs, Applicant continued to be untruthful and claimed that he did not list his marijuana use on the 2021 SCA because he thought it was legal, therefore he was not required to list it. He also claimed that he did not list his marijuana and cocaine involvement on the 2022 SCA due to oversight because he did not read the question carefully. Eventually, Applicant admitted to the DOD investigator during the 2024 SI that the actual reason that he did not disclose the required information on the 2021 SCA and 2022 SCA was because he did not want his disclosure of that information to negatively affect his security clearance eligibility. (Items 2-6)

In his response to the SOR, Applicant admitted his illegal marijuana and cocaine use as described above (SOR ¶¶ 2.a and 2.b). He admitted he deliberately failed to disclose his marijuana use on the 2021 SCA (SOR ¶ 1.a) and the 2022 SCA (SOR ¶ 1.b). He also admitted he deliberately failed to disclose his illegal cocaine use on the 2022 SCA (SOR ¶ 1.c). He admitted that he falsified material facts by deliberately concealing his marijuana and cocaine use during the 2023 SI (SOR ¶¶ 1.d and 1.e). Finally, he admitted that he falsified material facts during the 2024 SI to cover up his falsifications about his illegal drug involvement during the 2023 SI (SOR ¶ 1.f). He provided a narrative stating that he understands that he should not have lied about his illegal drug involvement. He claimed that he understands why the Government needs to be able to trust the individuals it allows access to classified information, and that his actions did not convey trustworthiness. He partially blamed his young age when he first applied for a security clearance, but claimed he is ashamed of his actions, and he will not repeat them. He affirmed his dedication to the country and wrote that he would never do anything to harm it. (Items 2-6)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable

information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. Controlled substance means any “controlled substance” as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, “*Adherence to Federal Laws Prohibiting Marijuana Use*,” which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines An individual’s disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual’s judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications (*Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*). It states in pertinent part:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that require them to use a “whole-person concept.” This requires adjudicators to carefully weigh a number of variables in an individual’s life to determine whether that individual’s behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and

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

Appellant used marijuana with varying frequency from November 2019 until June 2021. He used cocaine in October 2021. By using marijuana and cocaine, he would have had to possess them. AG ¶¶ 25(a) and 25(c) are established.

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.

It has been about three and one-half years since Applicant used or was involved with illegal substances. His illegal drug use occurred when he was a teenager in high school and college, and it was relatively infrequent (eight-time marijuana use and one-time cocaine use). For these reasons, AG ¶ 26(a) and AG ¶ 26(b) both apply. I find that he has mitigated the drug involvement and substance misuse security concerns.

Guideline E, Personal Conduct

The security concern 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 national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and
- (b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other government officially.

Applicant deliberately omitted his illegal marijuana use from the 2021 SCA and the 2022 SCA, as required. He deliberately omitted his illegal cocaine use from the 2022 SCA, as required. He deliberately provided false information to DOD investigators about his illegal drug use during the 2023 SI and the 2024 SI. AG ¶¶ 16(a) and 16(b) are established.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

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

Applicant arguably corrected his omission or concealment of his marijuana and cocaine involvement when he disclosed it in the 2023 SCA. However, he did so about two years after the omission. Therefore, his correction was not prompt. He also continued to lie to DOD investigators about his illegal drug involvement and the reasons he failed to report it after submitting the 2023 SCA. AG ¶ 17(a) does not apply.

Deliberately omitting or falsifying required information during the security clearance process is not minor. Instead, this action strikes at the heart of the process, which relies on candid and honest reporting. Applicant omitted and falsified relevant

information over multiple security clearance investigations; in both security clearance applications and during security interviews. He has not shown that his behavior was infrequent, happened under unique circumstances, or is unlikely to recur. AG ¶ 17(c) does not apply. While he acknowledged his deceitful behavior, he did not provide evidence of any counseling or other steps he took to change the behavior or alleviate the factors that led to his untrustworthy behavior. AG ¶ 17(d) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct;
- (2) the circumstances surrounding the conduct, to include knowledgeable participation;
- (3) the frequency and recency of the conduct;
- (4) the individual's age and maturity at the time of the conduct;
- (5) the extent to which participation is voluntary;
- (6) the presence or absence of rehabilitation and other permanent behavioral changes;
- (7) the motivation for the conduct;
- (8) the potential for pressure, coercion, exploitation, or duress; and
- (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude he mitigated the drug involvement and substance misuse security concerns, but he did not mitigate the personal conduct security concerns.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a and 2.b:	For Applicant

Conclusion

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.

Benjamin R. Dorsey
Administrative Judge