



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



In the matter of:

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ISCR Case No. 23-02694

Applicant for Security Clearance)

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel

For Applicant: Sean D. Rogers, Esq.

06/24/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the security concerns under and Guideline J, Criminal Conduct. The security concerns raised under Guideline E, Personal Conduct and Guideline H, Drug Involvement and Substance Misuse were not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 27, 2023. (Government Exhibit (GE) 1) The Defense Counterintelligence & Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on January 24, 2024, detailing security concerns under Guidelines H, E, and J. DCSA acted under Executive Order (Exec. Or.) 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

Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR and elected a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The DOHA Hearing Office received the case on May 24, 2024, and it was assigned to me on December 9, 2024. On December 19, 2024, a Notice of Hearing was issued scheduling the hearing for February 20, 2025. The hearing was held on that date. Department Counsel offered four exhibits which were marked and admitted as GE 1 - 4 without objection. Applicant through his counsel offered 28 exhibits, which were marked and admitted as Applicant Exhibits (AE) A - BB without objection. Applicant testified and called three witnesses during the hearing. The transcript (Tr.) was received on March 3, 2025.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

Findings of Fact

In Applicant's SOR response, he admits with explanation the allegations under Guideline H (SOR ¶¶ 1. – 1.d); denies the cross-allegation of his illegal drug use under Guideline J (SOR ¶ 2.a); and admits with explanation the allegations under Guideline E (SOR ¶¶ 3.a – 3.c). Applicant's admissions are accepted as findings of fact.

Applicant is 32 years old. He has been employed by a DOD contractor since June 2017. He was first granted a secret security clearance in 2011 while enrolled as a cadet in one of the US military academies. In the Spring 2015, he was medically disqualified three months before his graduation from the academy. He received an honorable discharge. He transferred to another university and earned his undergraduate degree in May 2017. After graduation he was hired by his current employer and has been continuously employed there. He earned a master's degree while working full time. He has been promoted to other positions while working with his DOD contractor employer. On May 13, 2017, he submitted his first security clearance application. He was ultimately granted a secret security clearance. He submitted another security clearance application on January 4, 2023, in order to apply for a top secret clearance. He is single and has no children. (Tr. 14-19; GE 1 -3; AE G)

The SOR alleges under Guideline H that Applicant purchased and used marijuana with varying frequency from about January 2023 until at least June 2023, after completing an Electronic Questionnaire for Investigations Processing (e-QIP) on January 4, 2023 (SOR ¶ 1.a: GE 1 at 26; GE 4 at 2); from about January 2019 to at least June 2023, he purchased and used marijuana with varying frequency while holding a sensitive position and security clearance (SOR ¶ 1.b: GE 1 at 26; GE 4 at 2-3, 12-16); from about

September 2015 to at least June 2023, he purchased and used marijuana with varying frequency (SOR ¶ 1.c: GE 1 at 26; GE 4 at 2-3, 12-14); and from about April 2017 to about May 2017, he purchased and used the prescription medication Adderall that was not prescribed to him. (SOR ¶ 1.d: GE 4 at 2-3, 12-14).

The allegations under Guideline H were cross-alleged under Guideline J, Criminal Conduct.

Under Guideline E, Personal Conduct, the allegations relate to Applicant's alleged deliberate falsification of several e-QIP applications in relation to his purchase and use of marijuana and his use of Adderall without a prescription. Specifically:

SOR ¶ 3.a alleges Applicant falsified material facts on an e-QIP application executed by him on November 27, 2023, in response to "Section 23 – Illegal Use of Drugs or Drug Activity – Illegal Use of Drug or Controlled Substances? Misuse of Prescription Drugs. In the last seven (7) years have you intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed for you or someone else?" when he answered "No." He deliberately failed to disclose the information alleged in SOR ¶ 1.d, which alleged he purchased and used the prescription medication Adderall, a drug that was not prescribed to him, from about April 2017 to May 2017. (GE 1 at 26-27; GE 4 at 2-3, 12-14)

SOR ¶ 3.b alleges Applicant falsified material facts on an e-QIP application executed by him on January 4, 2023, in response to "Section 23 – Illegal Use of Drugs or Drug Activity – Illegal Use of Drug or controlled Substances?" In the last seven years, have you illegally used any drugs or controlled substances? . . . in the last seven (7) years, have you been involved in the illegal purchase . . . of any drug or controlled substance? . . . While Possessing a Security Clearance Have you EVER illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance other than previously listed? . . . Misuse of Prescription Drugs. In the last seven (7) years have you intentionally engaged in the misuse of prescription drugs, regardless of whether or not the drugs were prescribed for you or someone else?" when he answered "No." He deliberately failed to disclose the information alleged in SOR ¶¶ 1.a, 1.b, 1.c, and 1.d. (GE 1 at 26-27; GE 2; GE 4 at 2-3, 12-14)

SOR ¶ 3.c alleges Applicant falsified material facts on an e-QIP application executed by him on May 13, 2017, in response to "Section 23 – In the last 7 years, have you illegally used any controlled substance, for example . . . THC (marijuana, hashish, etc.) . . . or prescription drugs (including painkillers)? Use of a controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming a controlled substance." . . . "in the last 7 years , have you been involved in the illegal purchase . . . of any drug or controlled substance?" . . . "in the last 7 years have

you intentionally engaged in the misuse of prescription drugs. Regardless of whether or not the drugs were prescribed for you or someone else?" when he answered "No." He deliberately failed to disclose the information alleged in SOR ¶¶ 1.c and 1.d. (GE 1 at 26-27; GE 3 at 25-26; GE 4 at 2-3, 12-14)

GUIDELINE H – Drug Involvement

Applicant began using marijuana around September 2015 when he was an undergraduate college student after his honorable discharge from the service academy for medical reasons. He purchased marijuana not more than once every three months from September 2015 to June 2023. He used it as "a recreational activity." He used marijuana on average less than once a month in a social setting or by himself on weekends. (GE 4 at 2-3, 12)

On his November 2023 e-QIP application, Applicant listed he used marijuana from approximately August 2015 to approximately May 2022. He listed the amount of use as "UNDER 10 TIMES, rarely." He admits that his use occurred while possessing a security clearance. He indicated that he did not intend to use marijuana in the future because he wants to achieve his professional and personal goals and perform at a high-performance job. (GE 1 at 26-27) He previously stopped using marijuana from January 2017 to December 2018 but started using again from January 2019 to October 2022, and then started using again from May 2023 to June 2023. (GE 4 at 16)

During the hearing, Applicant testified that he worked with classified information on a daily basis. He has had no data spills or security incidents. (Tr. 26-28) Under cross-examination, he admits that the illegal drug use is a problem for personnel who hold a security clearance. He is aware that marijuana use remains illegal under federal law. (Tr. 42-43)

Applicant used Adderall without a prescription from April 2017 to May 2017. He purchased and used Adderall less than five times during this period for recreational purposes. This occurred towards the end of his undergraduate education. (GE 4 at 2-3)

On February 1, 2024, Applicant signed a pledge to abstain from all illegal drugs, to include marijuana. He acknowledged that any future use of illegal drugs will be grounds for revocation of his security clearance and any national security eligibility. (AE D) He provided samples of his hair for hair follicle tests for illegal drug use on July 9, 2024, and January 29, 2025. Both tests were negative for illegal drugs. (AE U; AE V) On his own volition, he attended a Drug and Alcohol Awareness Class in December 2024. (AE W)

On April 19, 2024, Applicant underwent a Substance Abuse Evaluation by a licensed certified counselor, R.A. The evaluation used the Addiction Severity Index which

is a structured clinical interview instrument utilized for evaluating the severity of substance use and associated issues with individuals. As part of the evaluation, Applicant provided his substance use history as follows:

- a) Alcohol: 11 years (orally) – used once weekly or bi-weekly in the past 12 months – last used 4/16/2024
- b) Cocaine: 1 time experimentation (nasal ingestion) – last used in 2016
- c) Amphetamines (Adderall -used recreationally): 2 years (orally) – typically used 1 time per month for – last used in May 2017
- d) Cannabis: used from 2015 to 2023, with some months or years of non-use in between (smoking and orally)

During the assessment, Applicant stated that he had no substance use disorder symptoms over the past 12 months. His last use of a controlled substance was cannabis in December 2023. He experienced no withdrawal symptoms, cravings to use, or reduced functioning at work or home. After the assessment, R.A. concluded that no current/active substance use disorder was identified. No treatment was recommended other than prevention and education. (AE F)

Guideline J – Criminal Conduct

The allegations in SOR ¶ 1, were cross alleged under the concerns raised Guideline J, mainly because the purchase and use of marijuana remains illegal under federal law. I find Guideline J for Applicant because the concern was fully addressed under the Guideline H security concern.

Guideline E – Personal Conduct

After Applicant submitted his January 2023 e-QIP application (GE 2), he was interviewed by an investigator in conjunction with his background investigation on June 26, 2023. During the interview, he was asked about illegal drug use within the past seven years. (Note: the unsworn summary of the interview claims “Subject was confronted on marijuana use in the past year.” The report of investigation is unclear whether the investigator had information about his marijuana use or if they just asked about whether Applicant used marijuana in the past year.) Applicant told the investigator that he illegally used and purchased marijuana and used Adderall, without a prescription. During college, he purchased both drugs from other students. After college, he had marijuana delivered to his residence (it is illegal in the state where he resides). Later, he purchased marijuana at a dispensary in the state where his parents reside. Marijuana is legal in the state where they reside. (GE 4 at 12)

Applicant admitted to using marijuana and Adderall within the past seven years. He told the investigator that he used marijuana from approximately September 2015 to June 2023. He used it less than once a month in a social setting or by himself on weekends once a month. He admitted that he purchased and used marijuana while possessing a security clearance. When he was in college, he purchased and used Adderall from April 2017 to May 2017 on less than five occasions. He did not have a security clearance when he used Adderall. (GE 4 at 12-13, 15)

During the interview, Applicant admitted that he did not list his use and purchase of Adderall on his case paperwork out of fear about his career and dishonesty. (GE 4 at 12-13) He did not list his purchase and use of marijuana and Adderall, without a prescription in response to Section 23 – Illegal Use of Drugs or Drug Activity on his first e-QIP, dated May 23, 2017. (GE 3 at 25-26) He also did not list his purchase and use of marijuana and Adderall on his second e-QIP, dated January 4, 2023. (GE 2 at 26-27)

During the hearing, Applicant testified that he did not list his use and purchase of marijuana and Adderall on his May 2017 e-QIP application because after all the hard work that he put into his academics, he feared that if he had been truthful about his illegal drug use, he would not get to work for his employer and would severely jeopardize his professional career. In hindsight, he admits it was the wrong decision and he should have been truthful on the form. (Tr. 22-23)

In January 2023, Applicant submitted his second e-QIP application in order to upgrade his security clearance to top secret. He admits he did not list his use and purchase of marijuana and Adderall on this application. He testified:

I believe that I still had deep-seated fears of losing -- jeopardizing my career. Jeopardizing another wonderful opportunity. Jeopardizing something that I've wanted to like I said since I was a child is that serving my country, supporting the United States military in this case in a civilian capacity. I also believe at the time, I had put myself in a position where I couldn't go back. I felt the way I answered the first SF-86, I needed to be consistent with that because -- and now I've learned otherwise and understand what I did here was wrong, but I felt that how I'd answered in the first SF-86 would come into question if I had put different answers on the second SF-86. So the combination of the fear of losing my career, as well as changing my answers would open up a box – open up a can of worms that would lead me to lose everything that I had worked so hard for. (Tr. 31-32)

Applicant testified that during his July 2023 interview with the investigator conducting his background investigation, he disclosed his illegal drug use. He testified

that he reached a level of maturity and now understood it was important for him to be 100 percent honest. He was promoted to a new position and was learning about the importance of national security and that the importance of being extremely truthful. (Tr. 34)

During the last two years, Applicant testified that he has disclosed his illegal drug use to various mentors, professionally and personally. On November 27, 2023, Applicant completed another e-QIP application (GE 1) in order to clear his conscience and be completely honest about his illegal drug use. He disclosed his marijuana purchase and use. He did not list his Adderall purchase and use because he forgot about it. He previously told the investigator conducting his background investigation about it so he thought the government was informed. He said he did not intend to omit his Adderall use on the November 2023 e-QIP. He also explained that sometime after he submitted the November 2023 e-QIP, he was reminded by a close friend that he had used cocaine on one occasion in 2016. (Tr. 35-37)

Applicant has not used illegal drugs in over two years. He has no intention to use illegal drugs in the future. (Tr. 37-38)

Whole- Person Evidence

Several of Applicant's friends and colleagues either testified or wrote letters on his behalf. Mr. D.B. has known Applicant for 11 years. They met in college. He works for the same DOD contractor but in a different area. He holds a secret security clearance. He recommends Applicant for a security clearance. (Tr. 60-64; AE L)

Mr. A.E. attended the service academy at the same time as Applicant. He notes Applicant worked hard at the academy and never cheated. Applicant had to leave the academy because of a medical issue. He is aware that Applicant used marijuana and Adderall in the past. He testified Applicant is very trustworthy and honest. He states the fact that Applicant came clean about his past drug use shows maturity. He supports Applicant being able to maintain his security clearance. (Tr. 67-73; AE I)

Mr. B.U. is one of Applicant's neighbors. He testified and wrote a letter on Applicant's behalf. He has known Applicant for about three years. Applicant helped him get a job at the DOD contractor where Applicant is employed. He has never seen Applicant use marijuana. He states Applicant would take the shirt off his back to help someone. He is trustworthy and honest. He looks up to Applicant and will always support him. He believes the fact that Applicant came forward and admitted he was wrong takes a lot of courage. He recommends that Applicant maintain his security clearance. (Tr. 74-76; AE BB)

Additional friends and colleagues wrote letters on Applicant's behalf attesting to his good character, volunteerism, and excellent work ethic. (AE J-K; AE M – S; AE BB)

Applicant's performance forms for 2017 and 2019 – 2023 were favorable. (AE H) Applicant also received many positive and favorable comments during his 2024 evaluation feedback. (AE Y) He has earned numerous certifications. (AE AA). He volunteers as a certified youth basketball referee. One of the requirements for his certification was to undergo a criminal records check. He has no criminal record. (Tr. 39; AE X)

In his spare time, Applicant does a lot of volunteer work. He volunteers at a yoga studio; helps out at local shelter during "Code Blue" cold weather assisting the homeless to find a warm indoor space during the extreme cold; plays in his employer's bowling league and indoor soccer league; visits local schools to educate them on science, technology, engineering and mathematics (STEM); he is also a member of a community service group – he organizes six community service events to help the local community. (Tr. 40-41)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(a), 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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or

mitigate facts admitted by applicant or proven by Department Counsel, and 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 an applicant may deliberately or inadvertently fail to 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.

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *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 emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-

person concept" stated under SEAD 4, to determine whether the applicant's behavior raises a security concern that has not been mitigated.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement and substance misuse under AG ¶ 25 and the following are potentially applicable:

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.

The record evidence shows Applicant used marijuana at various times from about September 2015 to at least June 2023. His use was more frequent as a college undergraduate from 2015 to 2017. He stopped using marijuana from 2017 to 2019. He began to purchase and use marijuana again in January 2019 while he was employed in a sensitive position with a DOD contractor. He purchased and used marijuana while he possessed a security clearance and handled classified information. While his marijuana use was on average of less than once a month, it was illegal under federal law and under the state law where Applicant resided. Applicant also purchased and used Adderall without a prescription on about five occasions from April 2017 to May 2017. AG ¶ 25(a), AG ¶ 25(b), and AG ¶ 25(f) apply to Applicant's case.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. 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. Sept. 22, 2005))

Applicant's one-time use of cocaine in 2016 was not alleged in the SOR. It will only be considered under matters of extenuation and mitigation. In ISCR Case No. 03-20327 at 4 (App. Bd. Oct. 26, 2006), the Appeal Board listed five circumstances in which conduct not alleged in an SOR may be considered stating:

- (a) to assess an applicant's credibility; (b) to evaluate an applicant's evidence of extenuation, mitigation, or changed circumstances; (c) to consider whether an applicant has demonstrated successful rehabilitation; (d) to decide whether a particular provision of the Adjudicative Guidelines is applicable; or (e) to provide evidence for whole person analysis under Directive Section 6.3.

Id. (citing ISCR Case No. 02-07218 at 3 (App. Bd. Mar. 15, 2004); ISCR Case No. 00-0633 at 3 (App. Bd. Oct. 24, 2003)). See also ISCR Case No. 12-09719 at 3 (App. Bd. Apr. 6, 2016) (citations omitted)). The non-SOR allegations will not be considered except for the five purposes listed above.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

AG ¶ 26(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

AG ¶ 26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence on 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 with regard to Applicant's use of Adderall without a prescription while in college from April 2017 to May 2017. More than eight years have passed since his last use of Adderall and it is unlikely to recur. (SOR ¶ 1.d). Though unalleged, his 2016 one-time use of cocaine occurred more than nine years ago and is unlikely to occur.

AG ¶ 26(a) does not apply with respect to Applicant's marijuana use (SOR ¶¶ 1.a – 1.c). Although his last use of marijuana occurred over two years ago, not enough time has passed to conclude he has fully stopped marijuana use based on his history. Most concerning is Applicant's continued use of marijuana while employed in a sensitive position with his DOD contractor, while possessing a security clearance, and while actively handling classified information although he was fully aware that marijuana use was not compatible with holding a security clearance and if discovered, could jeopardize his career. Security concerns remain about Applicant's reliability, trustworthiness and good judgment because of his history of illegal use of marijuana especially while employed in a sensitive position with a DOD contractor after being granted a security clearance.

AG ¶ 26(b) partially applies. Applicant has not used illegal drugs in over two years. He provided a statement of intent to abstain from illegal drug involvement and substance misuse. He is aware that any future illegal drug use may result in the revocation of his security clearance. However, this mitigation is given less weight because security concerns remain regarding Applicant's history of illegal marijuana use, especially while employed in a sensitive position with a DOD Contractor while possessing a security clearance. Applicant was aware that illegal marijuana use was not compatible with working in a sensitive position and holding a security clearance. He chose to use marijuana despite these concerns.

Overall, I found Applicant did not mitigate the security concerns raised under Guideline H, Drug Involvement and Substance Misuse.

Guideline J – Criminal Conduct

The allegations under Guideline H, Drug Involvement and Substance Misuse, were cross alleged under Criminal Conduct. While criminal conduct security concerns are similarly established, I nonetheless find for Applicant under this Guideline because the conduct was appropriately addressed under Guideline H, and the Guideline J security concerns are duplicative.

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 conduct includes: (1) engaging in activities which, if known, could affect a person's personal, professional, or community standing.

AG ¶ 16(a) applies with regard to SOR ¶¶ 3.b and 3.c. Applicant admits that he deliberately failed to list his illegal marijuana and Adderall use on both his May 2017 and January 2023 e-QIP applications. He hid his past illegal drug use because he was concerned he would lose his job. I find for Applicant with respect to SOR ¶ 3.a, which alleged he deliberately omitted his illegal Adderall use on his November 2023 security clearance application. I find Applicant's testimony that he overlooked putting his 2017 Adderall use in response to section 23 credible. A few months before he completed the November 2023 security clearance application, he told the investigator during his background investigation interview about his Adderall use. I find the omission accidental and immaterial because the Government was previously informed about his Adderall use.

AG ¶ 16(e) applies with regard to Applicant's deliberate failure to list his illegal drug use on his May 2017 and January 2023 security clearance applications. His omission made him vulnerable to exploitation, manipulation or duress because it could potentially adversely affect his professional standing.

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;

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

AG ¶ 17(c) does not apply with respect to SOR ¶¶ 3.b and 3.c. Applicant deliberately falsified his May 2017 e-QIP application by omitting his illegal drug use. He was concerned that his past illegal drug use could jeopardize his career. He perpetuated this lie for over seven years. Not only did he not list his past illegal drug use, he began using marijuana again in 2019 after being granted his security clearance. When he completed his January 2023 security clearance application, he felt that if he disclosed his past illegal drug use his career would be threatened. His conduct was deceitful and raised questions about his trustworthiness and reliability. While Applicant disclosed his past illegal drug use during his July 2023 background investigation interview, it cannot be considered prompt, more than six years passed since his original deliberate falsification of his security clearance application. The Government expects individuals who are granted access to classified information to be truthful and straight-forward at all times.

Intentional falsifications cut to the heart of the security clearance process. It is serious because a person should not receive access to classified information based on false information. A person who lies during the security-clearance process is not trustworthy. They cannot be relied upon to report a security infraction or violation. This mitigating condition does not apply.

AG ¶ 17(e) applies because Applicant has now fully disclosed that his past illegal drug use and admitted that he deliberately failed to disclose his illegal drug use on his May 2017 and January 2023 e-QIP applications. He has been forthcoming since this time and has not illegally used drugs since June 2023. He is no longer vulnerable to exploitation, manipulation, or duress.

Personal Conduct security concerns are not mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 Guideline H and the AG ¶ 2(d) factors in this whole-person analysis.

I considered that Applicant's favorable employment record and academic credentials. I considered the favorable comments from his friends and colleagues. I considered his extensive volunteer activities. While Applicant ultimately disclosed his illegal drug use during his July 2023 background investigation interview and on his November 2023 e-QIP application, security concerns remain because of his previous deliberate omissions on his May 2017 and January 2023 security clearance applications. Not only did he lie about his past drug use, he continued to use marijuana while working for his DOD contractor employer in a sensitive position and after being entrusted with access to classified information. While he stopped using marijuana in either June 2023 and does not intend to use illegal drugs in the future, it is too soon to conclude Applicant will follow through on his intentions because he previously violated the Government's trust by deliberately lying about his illegal drug use on two security clearance applications and continued to illegally use marijuana while in a sensitive position that required a security clearance. After weighing the disqualifying and mitigating conditions under Guidelines H, J, and E and evaluating all the evidence in the context of the whole person, I conclude Applicant mitigated the security concerns raised by his conduct under Guideline J, but did not mitigate security concerns under Guidelines H and E.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT

Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraphs 3.b – 3.c:	Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge