



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



## **Appearances**

For Government: Cynthia Ruckno, Esq., Department Counsel  
For Applicant: *Pro se*

08/19/2025

## Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under E (Personal Conduct) and Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is denied.

## **Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 5, 2024. On February 13, 2025, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines E and H. The Department of Defense acted under Executive Order (Exec. Or.) 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (December 10, 2016).

Applicant answered the SOR on March 1, 2025, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on April 9, 2025. On April 10, 2025, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He acknowledged receipt of the FORM by on April 18, 2025, and submitted a handwritten Response. The case was assigned to me on August 5, 2025.

The SOR, Applicant's Answer, and his FORM Response are the pleadings in the case. Applicant did not include any additional evidence with his Answer or FORM Response. FORM Items 3 and 4 are admitted into evidence without objection.

### **Findings of Fact**

Applicant is 20 years old. He graduated high school in 2023. He currently works as a delivery driver for a delivery service and a backroom associate for a department store. He has never been married and does not have children. He completed his SCA in June 2024. He has not registered for Selective Service. (Item 3.)

**SOR ¶ 1.a You were fired from your employment in about October 2023 for stealing. You are not eligible for rehire.** Applicant admits he was fired for stealing a candy bar and a beverage from his employer's snack store. He acknowledged in his Answer he was wrong:

[S]eeing other employees get away with it I could say influenced the one time I didn't pay for the items. Unfortunately, I lost my job and realized why you should just do the right thing.

Applicant discussed the incident with a DoD investigator during his security clearance interview. He told the investigator when he was confronted by his employer, he admitted he had not paid for the items. He was not allowed to make reimbursement and was terminated. He had worked for his employer as a package handler from June 2022 until he was fired in October 2023. His SCA reveals that he did not report any other disciplinary issues, misconduct, or performance issues with any of his other employers.

**SOR ¶ 2.a. From about September 2021 until at least August 2024 you used Marijuana with varying frequency.** Applicant admits to using the marijuana during this timeframe, he described his usage as "on and off for a couple of months." In his interview with a DoD investigator, he described how he ingested an entire marijuana cigarette daily before he goes to sleep and that his initial use was based on curiosity, his continued use was because it made him feel more relaxed before he went to sleep. He noted his marijuana use was while he was "in school and in sports and [that it] never impacted either of those." In his SCA he explained he intended to research marijuana's affects and if it prevented him from getting certain jobs, he would not use it. (Answer; Item 3; Item 4.)

**SOR ¶ 2.b From about September 2021 to until at least August 2024, you purchased Marijuana on various occasions.** Applicant admits he purchased marijuana during this period. In his Answer he stated, “I had a lack of intent to violate laws only buying personal use amounts not absurd amounts.” He told a DoD investigator he purchased approximately seven marijuana cigarettes per week from his friend at a cost of approximately \$30. (Answer; Item 4.)

**SOR ¶ 2.c. You intend to continue to use Marijuana in the future.** Applicant in his SCA explained he intended to research marijuana’s affects and if it prevented him from getting certain jobs, he would discontinue marijuana use. He similarly told a DoD investigator if an employer does not allow marijuana use, he would not use it. In his Answer, he explained he didn’t know about the laws of obtaining and keeping a security clearance and again reiterated “that to get and obtain the job [he] wouldn’t use in the future.” After his June 2024 SCA and September 2024 DoD interview the Government issued interrogatories in December 2024. In this response to the Government interrogatories, he listed August 2024 as his last date of use and said that had “no” intentions of further use. (Answer; Items 3 and 4.)

Applicant continued to use and purchase marijuana after submitting his SCA and up until his September 2024 security clearance interview. (Item 4.) In his Response to the FORM, he affirmed he no longer uses marijuana and that he has changed his environment. Applicant noted in his Response that the context of his future use was based on it being legal in the state and that he was not working in a position requiring a security clearance. He asserts is not a party person and most of the people he associates with do not use marijuana. (FORM Response.)

## Policies

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and

endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the 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. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## Analysis

### Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's admitted theft use raises concerns under AG ¶ 16, and the following is applicable in this case:

- (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.

The following mitigating condition is potentially relevant:

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 it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

AG ¶ 17(c) is established. Applicant admitted his mistake of taking the candy bar and drink to his employer, on his SCA, in his interview, and in both his Answer and Response. He has no other history of conduct of theft , which would cast doubt on his reliability, trustworthiness, or good judgment. The personal conduct security concerns are mitigated.

#### **Guideline H, Drug Involvement and Substance Misuse**

The concern under this guideline 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.

Applicant's admissions in his Answer to the SOR and elsewhere in the record are sufficient to raise security concerns under AG ¶ 25, and the following are applicable:

- (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
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

The following mitigating conditions are potentially applicable:

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 of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

AG ¶ 26(a) is not established. Applicant has a recent history of illegally using and purchasing marijuana in violation of state and federal law from 2021 until 2024. His last drug involvement was in August 2024, two months after he had completed his SCA. He has stated an intent to abstain from marijuana use if his future employment requires it, but not because the law requires it. His one year of abstinence is not long enough to overcome security concerns raised by his years of repeated drug use. His actions raise questions about his ability and willingness to comply with laws, rules, and regulations.

AG ¶ 26(b) is not established for SOR ¶¶ 2.a and 2.b. Applicant has a recent history of illegally using and purchasing marijuana in violation of state and federal law from 2021 until 2024. He stated in his security clearance interview and in written interrogatories that he intends to abstain from all drug involvement and substance misuse only if his job requires it. He describes changing his social environment. However, he has not had enough time to establish a sufficient pattern of abstinence. His responses reflect his intent to abstain from use of marijuana in the future. AG ¶ 26(b) is established for SOR ¶ 2.c.

## **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines E and H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant's marijuana use is recent and continued after he completed his SCA. I considered that he disclosed personal conduct on his SCA and that he has no other incidents in the workplace. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary in the future to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not warranted. In the future, he may well demonstrate persuasive evidence of his security worthiness.

After weighing the disqualifying and mitigating conditions under Guidelines E and H and evaluating all the evidence in the context of the whole person, I conclude Applicant mitigated his personal conduct concerns but has not mitigated the concerns raised by his drug involvement.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline E: FOR APPLICANT

Subparagraph 1.a: For Applicant

Paragraph 2, Guideline H: AGAINST APPLICANT

Subparagraphs 2.a-2.b: Against Applicant  
Subparagraph 2.c: For Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale  
Administrative Judge