



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



In the matter of:)
)
) ISCR Case No. 24-01588
)
Applicant for Security Clearance)

Appearances

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

07/23/2025

Decision

PRICE, Eric C., Administrative Judge:

Applicant mitigated Guideline E (Personal Conduct) security concerns, but did not mitigate Guideline H (Drug Involvement and Substance Misuse) security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 5, 2023. On December 13, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines E and H. The 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

On December 17, 2024, Applicant answered the SOR and requested a decision on the written record in lieu of a hearing. On February 25, 2025, Department Counsel submitted the Government's File of Relevant Material (FORM) including documents identified as Government Exhibits (GE) 1 through 4. GE 1 is the SOR and Applicant's

Answer, which are the pleadings in the case. Applicant received the FORM on March 5, 2025. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted an undated response to the FORM. There were no objections by Applicant, and GE 1 through 4 are admitted into evidence. The case was assigned to me on June 10, 2025.

Findings of Fact

In Applicant's December 17, 2024 response to the SOR, he admitted SOR ¶¶ 1.a, 2.a-2.b, and 2.d. He denied SOR ¶ 2.c with an explanation. (GE 1) His admissions are incorporated in my findings of fact.

Applicant is a 24-year-old tool room attendant employed by a federal contractor since November 2023. He graduated from high school in 2019. He is not married and has no children. He has not had a security clearance. (GE 2)

SOR ¶ 1.a alleges Applicant was fired from employment at an auto dealership in about April 2023 for violating his employer's drug policy by bringing a marijuana vape pen onto company property. He had a marijuana vape pen in his pocket from the previous night and brought it to his workplace by accident. The vape pen fell out of his pocket, and he admitted that it was his when asked by a manager. He has not used marijuana at his place of employment. The use of marijuana is lawful in State A, where he lived and was employed. (GE 1-4) His former employer's records show Applicant "was aware this is a violation of the handbook." (GE 4 at 2)

SOR ¶¶ 2.a and 2.b allege he purchased and used marijuana from about 2021 to October 2024 , and SOR ¶ 2.d cross-alleges the conduct alleged in SOR ¶ 1.a. In his December 17, 2024 response to the SOR, Applicant admitted the allegations. He denied that he intended to continue to use marijuana in the future, SOR ¶ 2.c, stating he had "no interest to continue usage, as I understand the implications associated with it." (GE 1)

In his December 5, 2023 SCA, Applicant denied illegally using or purchasing any drugs or controlled substances in the last seven years. (GE 2 at 27-28) The sentence in the SCA immediately preceding questions about the illegal use of drugs or controlled substances states: "The following questions pertain to the illegal use of drugs or controlled substances or drug or controlled substance activity in accordance with Federal laws, even though permissible under state laws." (GE 2 at 27) During a January 19, 2024 subject interview (S/I) with a government investigator, he voluntarily disclosed he smoked marijuana or consumed marijuana edibles purchased from a dispensary about four times a week from 2021 until the date of his S/I. He used marijuana to relax and to help him sleep. He stated his intent to continue to use marijuana responsibly. He did not list his drug use on his SCA due to oversight and reported no negative impacts on his personal or professional life due to his marijuana use. (GE 3 at 10)

In his October 25, 2024 response to interrogatories, Applicant reported first purchasing and using marijuana in December 2021. He used it three to four times a week and last used it on October 12, 2024. He purchased marijuana every few months and last

purchased it on October 15, 2024. (GE 3 at 2-3) He stated his intentions for future use were “Responsible Recreational. None if required,” and that he used it in accordance with state law in his free time and never at work. “If abstinence is required for my career, I will do so.” (GE 3 at 2-3) He reported that he first became aware that marijuana use remained illegal under federal law in October 2024, when he reviewed the interrogatories, and then stated he did not intend to continue to use marijuana in the future. (GE 3 at 4-5) He sees one friend about twice a year who uses marijuana and stated that if in an environment where marijuana was being used, he “can make good decisions and refuse.” He reported that he was required to take a pre-employment drug test for his current employer, that he was not subject to random drug tests by his employer, and that he had not tested positive for any illegal substances on any drug tests. (GE 3 at 5-6)

In his undated response to the FORM, Applicant cited his commitment to his job and the military community he supports. He noted his work around classified information and processes. He cited his honesty and transparency with the government investigator. He noted his family’s military history and focus on integrity, honesty, and discipline. He pledged his willingness to do anything necessary to maintain the trust and responsibility of a security clearance. He admitted to making some mistakes in the past and believes that “honesty is the only way forward.” He also submitted a “Physician Statement” dated February 12, 2025, that stated he was permitted to use, possess and/or cultivate medical marijuana under the law of State A until February 12, 2026. (FORM response)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no 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 applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” EO 10865.

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and common sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all available, reliable

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

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. 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. Directive ¶ E3.1.15 states an “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 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.

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

Analysis

Guideline E, Personal Conduct

The security concern under this guideline 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. . . .

Applicant’s admissions and other record evidence show he violated his employer’s drug policy by bringing a marijuana vape pen onto company property in State A. This establishes the following disqualifying conditions under AG ¶ 16:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, trustworthiness, 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. This includes, but is not limited to, consideration of: (2) any disruptive, violent, or other inappropriate behavior....; and

(f) violation of a written or recorded commitment made by the individual to the employer as a condition of employment.

The following mitigating condition under AG ¶ 17 is potentially applicable:

(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.

This mitigating condition is established. Applicant's unintentional possession of a marijuana vape on his employer's property in a state where marijuana use was lawful was minor and occurred more than two years ago under circumstances unlikely to recur. It does not cast doubt on his current reliability, trustworthiness, or good judgment.

Guideline H, Drug Involvement and Substance Abuse

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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, varying statements regarding his intent to use or not use marijuana in the future, and his medical marijuana card dated February 15, 2025 obtained after stating he had no intent to continue using marijuana, establish the following three disqualifying conditions under AG ¶ 25:

(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 under AG ¶ 26 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.

The DOHA Appeal Board recently noted that “the evolving landscape of marijuana law and policy in the United States informs us that simple recreational marijuana use no longer holds the same severe negative implications as many other illegal drugs [recreational marijuana use may deserve less, or even no negative inference],” which is “especially . . . true when the use occurs permissibly under state law.” ISCR Case No. 24-00914 at 3 (App. Bd. April 9, 2025) (citations omitted).

Several factors are important in the assessment of mitigation of marijuana possession and use: the duration of abstinence; state law; company policy; use after completion of an SCA; use while holding a sensitive position; use while having access to classified information; and broken promises not to use in the future. See ISCR 24-01001 (App. Bd. Apr. 22, 2025) (affirming denial of security clearance; factors: one year of abstinence from marijuana use; used marijuana after completion of an SCA; used marijuana after promising not to use marijuana on SCA and during an OPM interview); ISCR Case No. 24-01005 at 5 (App. Bd. Apr. 11, 2025) (denial of security clearance reversed; factors: two years of abstinence from marijuana use; no marijuana use while holding a security clearance or occupying sensitive position; marijuana possession and use permissible under state law; no marijuana use after notice that marijuana use was federally illegal; visible commitment to abandoning all future drug involvement).

Applicant purchased and used marijuana from December 2021 until October 2024. He stated his intent to continue to use marijuana responsibly in January 2024. In his October 25, 2024 response to interrogatories he stated his intent to continue to use marijuana responsibly (in accordance with state law) but said he would abstain from further use if required to qualify for a security clearance. While reviewing the interrogatories Applicant realized the use of marijuana remained prohibited under federal law and then stated he did not intend to use it in the future. In his December 17, 2024, response to the SOR, he stated that he had "no interest to continue usage, as I understand the implications associated with it." On February 15, 2025, he obtained a medical marijuana card that permitted him to use, possess and/or cultivate medical marijuana under the law of State A until February 12, 2026.

There is no evidence Applicant purchased or used marijuana in a state where such conduct was prohibited under state law, and I find that his purchases from dispensaries and use of marijuana in State A were lawful under state law. He is credited with voluntarily disclosing his involvement with marijuana during his January 2024 S/I and for the remainder of the security clearance process.

AG ¶¶ 26(a) and 26(b) are not fully established. Applicant's purchase and use of marijuana for more than three and a half years was not infrequent and his purchase and use of marijuana in October 2024 were recent. Although Applicant declared his intent to abstain from using marijuana in the future after learning it was unlawful under federal law, his procurement of a medical marijuana card in State A several months later undermines the credibility of his stated intent to abstain from using marijuana. The evidence is insufficient to establish that his substance misuse is unlikely to recur. His behavior casts doubt on his current reliability, trustworthiness and good judgment.

In addition, Applicant submitted no evidence he has disassociated from drug-using associates and contacts, no evidence that he has avoided the environments where he used drugs, and he has not submitted the signed statement required by AG ¶ 26(b)(3).

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 the 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 E and H in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's age, work history, and that he disclosed his drug involvement and substance misuse in his January 2024 S/I and on multiple occasions thereafter. I considered that there is no evidence he purchased or used marijuana in a state where such purchase or use was prohibited under state law. I considered that after Applicant learned the purchase and use of marijuana was prohibited under federal law, he declared his intent not to use it again on October 25, 2024, and again on December 17, 2024. I also considered that in February 2025, he obtained a medical marijuana card valid for the use, possession and cultivation of marijuana in State A until February 2026.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant’s eligibility for access to classified information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)). Because Applicant requested a determination on the record without a hearing, I had no opportunity to observe his demeanor, assess his credibility, or question him about his past drug use or future intentions. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I have carefully applied the law, as set forth in *Egan*, EO 10865, and the Directive to the facts and circumstances in the context of the whole person. Applicant failed to meet his burden of persuasion, and the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the Guideline E security concerns; however, he failed to mitigate the security concerns raised under Guideline H.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary 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 his current circumstances, a clearance is not warranted. In the future, he may well demonstrate persuasive evidence of his security worthiness.

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

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge