



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



In the matter of:

_____)
_____)
_____)

Applicant for Security Clearance)

ISCR Case No. 24-00139

Appearances

For Government: Aubrey De Angeles, Esq., Department Counsel

For Applicant: *Pro se*

02/21/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, and exhibits, Applicant did not mitigate criminal conduct, personal conduct, and drug involvement and substance concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On July 18, 2024, the Defense Counterintelligence Security Agency DCSA) Consolidated Adjudications Service (CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the criminal conduct, personal conduct, and drug involvement and substance misuse guidelines the DSCA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); *Defense Industrial Personnel Security Clearance Review Program*, Department of Defense (DoD) Directive 5220.6 (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on July 18, 2024, and requested his case be decided on the written record. Applicant received the File of Relevant Material (FORM) on October 18, 2024, and was instructed to file any objections to the FORM or supply additional information for consideration within 30 days of receipt. Applicant did not file objections to the FORM or supply new information. The case was assigned to me on December 23, 2024.

Summary of Pleadings

Under Guideline J, Applicant allegedly was charged in July 2021 with threat of violence. Allegedly, he was found guilty and fined \$400.

Under Guideline E, Applicant allegedly falsified his electronic questionnaires for investigations processing (e-QIP) he executed in July 2023 by omitting (a) his use and purchases of marijuana from at least 2014 until at least July 2021 and (b) his 2021 threat of violence conviction. Allegedly he falsified material facts about his criminal history in an August 2023 personal subject interview (PSI) with an authorized DoD investigator, when he initially denied any interaction with law enforcement before being confronted by the investigator with his 2021 charge and conviction of threat of violence. Allegedly, he received a memo of expectations from his employer in June 2023 regarding a reported verbal exchange with a coworker in which Applicant reportedly used language in an exchange with a coworker that incited violence and violated employer policies that prohibit workplace harassment and bullying.

Under Guideline H, Applicant allegedly used marijuana from at least 2014 to at least July 2021 with varying frequency. Allegedly, Applicant purchased marijuana with varying frequency from at least 2014 to at least July 2021.

In Applicant's response to the SOR, he failed to answer the allegations covered by SOR ¶ 1.a. Applicant's non-response to the allegation will be entered as a negative response. Addressing the remaining allegations covered by the SOR, Applicant is denied each of the allegations covered by SOR ¶¶ 2.a -2.b, and 3.a-3.b. He provided no explanations or clarifications of his answers.

Findings of Fact

Applicant is a 29-year-old employee of a defense contractor who seeks a security clearance. The admitted allegations are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant married in August 2021 and has no children. (Item 3) He earned a high school diploma in June 2017 and reported no military service. (Item 3)

Since September 2021, Applicant has worked for his current employer as a technician. (Item 3) He reported multiple periods of unemployment between April 2013 and January 2021. He has never held a security clearance.

Applicant's Threat of violence charges

When first interviewed by an investigator of the Office of Personnel Management (OPM) in August 2023, Applicant denied any interaction with police for anything other than a police stop. (Item 5) Once confronted by the investigator, he admitted to an incident in 2021 that may have resulted in a domestic violence charge (i.e., his confronting a tenant with a baseball bat that resulted in a police citation and a subsequent guilty conviction. (Item 5-6) His conviction carried a \$400 fine. (Item 5) To date, Applicant has neither offered remorse nor provided evidence of rehabilitation. The incident and surrounding circumstances are cross-alleged under Guideline E.

Applicant's e-QIP omissions and work place violation

Asked to complete an e-QIP in July 2023, Applicant failed to disclose his drug use upon potential penalty of perjury for falsely certifying the truth of the information provided in the e-QIP out of concern for his job. (Items 3) He further falsified his 2023 e-QIP by omitting his daily use of marijuana as a teenager and purchases of the drug between 2014 and 2021. (Items 4-5) In the same, e-QIP, he failed to disclose his 2021 threat of violence charge (Items 4-5) Absent any credible saving explanations for his omissions, inferences are warranted that his e-QIP omissions were deliberate and reflective of knowing and willful falsification.

When asked about any prior drug use and interactions with police in his ensuing personal subject interview (PSI) in August 2023, Applicant provided mixed responses. While he is credited with voluntary disclosures of his past marijuana activity, he failed to disclose his 2021 Threat of Violence charges until confronted by the interviewing OPM agent. (Item 5) Considering his voluntary, good-faith disclosure of his past marijuana use and purchases in her PSI, inferences are warranted that his e-QIP omissions of his past marijuana activity were corrected. Because he withheld disclosure of his 2021 threat of violence charge until confronted by the investigator, favorable inferences of voluntary correction cannot be accorded to Applicant.

Besides his e-QIP and PSI candor lapses, Applicant was cautioned in a June 2023 Memorandum of Expectations about participating in a verbal exchange with a co-worker using language that incites violence in the workplace. (Item 5) According to his employer's memo, verbal exchanges like Applicant's cited heated argument with a coworker that can be perceived as a threat to incite workplace violence violated company policies that prohibit workplace harassment and bullying. (Item 5) Although Applicant denied receiving the company memo, he admitted to engaging his coworker in an argument days before the memo over would prevail in a hypothetical fight. (Items 3 and 5) So, too, he admitted to being written up (along with his coworker) by his supervisor for threats and talk of fighting. And, despite his denials, he is of record in

signing his employer's Memo of Expectations, dated June 2023, following his verbal exchange with his coworker

Applicant's drug-use history

Applicant was introduced to marijuana in high school. From at least 2014 to at least July 2021, he used and purchased marijuana with varying frequency. (Items 3 and 5) In his interrogatory responses and PSI, he admitted to using marijuana daily in high school and enjoying the carefree feeling he derived from the highs produced by the marijuana he smoked with friends or by himself. (Item 5) He told the investigator he obtained his marijuana in small personal amounts through known business sources or from friends of friends. (Item 5)

Afflicted with depression, Applicant later obtained a medical marijuana card in his community of residence. Altogether, Applicant admitted to using marijuana only occasionally through a medical marijuana card between August 2016 and July 2021. (Item 5) Drug testing administered to him by his employer in 2021 produced negative results for marijuana. (Item 5)

While Applicant no longer associates with individuals who use marijuana or other illegal drugs, he has pursued no drug counseling and made no expressed written commitment to abstain from marijuana. Impressions drawn from his PSI exchanges with the interviewing OPM investigator support the drawn inference that he ceased using marijuana out of concern for losing an opportunity for a better job with his current employer. (Item 5) Applicant's drug use and purchases are cross-alleged under Guideline E.

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These AG guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. The AG guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns, if any. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent herein:

Criminal Conduct

The Concern: Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations. AG ¶ 30.

Personal Conduct

The Concern: Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, and trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers

during national security investigative or adjudicative processes . . . AG ¶ 15.

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of 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.

Burdens of Proof

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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See also Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s use of marijuana over a period of several years (2014 through July 2021) Considered together, Applicant’s involvement with federal-banned illegal drugs raises questions over whether his use of marijuana reflects actions incompatible with the good judgment, reliability, and trustworthiness requirements for gaining access to classified information. Additional security concerns are raised over Applicant’s 2021 threat of violence charges and his omissions of his 2021 charges and past use of federally banned drugs in the e-QIP he completed in July 2023 and repeated in part in his August 2023 PSI interview.

Criminal Conduct Concerns

Security concerns are also raised over Applicant’s July 2021 threat of violence charge that produced a guilty finding and a \$400 fine. Applicable under the criminal conduct guideline is DC ¶ 31(b), “evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.” Applicant’s 2021 Threat of Violence charge and resulting disposition attributable to him on the charge represents a serious breach of good judgment and respect for the criminal laws in force in his state of residence. for which he has shown no remorse or taken any initiatives to demonstrate rehabilitation.

Applicant’s awareness of the seriousness of his 2021 incident is reflected in his decision to omit the charge from his 2023 e-QIP. (Item 4) The 2021 incident itself while isolated represented a serious breach of peace that was sanctionable. Absent evidence of remorse and initiatives designed to show rehabilitation, none of the potentially available mitigating conditions are available to him.

Drug Involvement Concerns

Applicant’s admissions to using federally banned marijuana over a multi-year period with varying frequency raise security concerns over judgment and risks of recurrence. On the strength of the evidence presented, two disqualifying conditions (DCs) of the AGs for drug involvement apply to Applicant’s situation: DC ¶¶ 25(a), “any substance misuse,” 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of illegal drugs or drug paraphernalia”; and 25(g), expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such use.”

Disqualifying drug use is particularly serious when it continues to occur over an extended stretch of many years (as here). See ISCR Case No. 06-18270 at 3 (App. Bd. Nov. 7, 2007) (drug use in violation of an employer’s drug policy). Applicant’s continued

use of marijuana even after becoming aware of a federal ban on marijuana use (even for medicinal purposes) is considered reckless and incompatible with an applicant's claim of intended future avoidance of marijuana use. See ISCR Case No. 19-00540 at 2 (App. Bd. Dec. 13, 2019).

In Applicant's case, his July 2021 decision to cease using marijuana following a lengthy history of marijuana use was closely linked to his prospects of obtaining a job with his current employer. Decisions to cease using federally banned drugs that are closely associated with job applications reflect conditions that cannot be squared with commitments to permanent abstinence from the use of illegal drugs. So, not only is Applicant's decision to cease his marijuana use in 2021 an implicitly conditional one, but it is a commitment that is undercut by his initial withholding of his drug use when questioned by an interviewing OPM investigator in August 2023. See ISCR Case No. 11-04395 (App. Bd. Oct. 5, 2012).

Without more time in sustained abstinence from marijuana use and a probative commitment to sustained abstinence of use of the federally banned drug, none of the mitigating conditions are available to Applicant at this time. A recurring cycle of illegal drug use following a grant of access to classified information (as in Applicant's case) is more predictive of the future and incompatible with the application of any of the mitigating conditions covered by guideline H. See, e.g., ISCR Case No. 11-00193 (App. Bd. Jan. 24, 2013).

While this is not a close case, even close cases must be resolved in the favor of the national security where doubt exists. See *Dept. of Navy v. Egan*, *supra*. Quite apart from any reservations about judgment the Government may have for the clearance holder employed by a defense contractor, the Government has the right to expect the keeping of promises and commitments from the trust relationship it has with the clearance holder. See *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

Personal Conduct Concerns

Security concerns are raised over Applicant's e-QIP of his 2021 threat of violence charges and use of federally banned marijuana. Only his marijuana use omission was voluntarily corrected (although much later) in his ensuing August 2023 PSI.

Applicable DCs are ¶¶ 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 16(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 official government representative," apply to Applicant's situation.

Based on the evidence presented, none of the mitigating conditions apply to the facts of Applicant's case. By failing to disclose information in his-QIP about his 2021 threat of violence charges, past use of marijuana (spanning 2014 and 2021), and by failing to provide prompt, good faith corrections and clarifications of his e-QIP omissions prior to his 2023 PSI, Applicant exhibited serious lapses of candor and judgment. See ISCR Case No. 01-06166 at 4 (App. Bd. Oct. 25, 2001) (piecemeal disclosures that are neither prompt nor free of confrontation do not satisfy the prompt prong of MC ¶ 17a of Guideline E); ISCR Case No. 93-1390 at 5 (App. Bd. Jan 27, 1995) (good-faith disclosures of deliberate omission made months after the applicant's initial falsification failed to meet the prompt prong of the prompt, good faith mitigating condition in place).

Whole-person assessment

From a whole-person perspective, Applicant has failed to establish enough independent probative evidence of his overall trustworthiness, reliability, and good judgment required of those who seek eligibility to hold a security clearance or sensitive position. He lacks enough positive reinforcements and time in abstinence from criminal involvement, active use of federally controlled marijuana, and demonstrated candor to facilitate safe predictions he is at no risk of recurrence of any activity incompatible with the reliability and trust requirements of security clearance eligibility. Considering the record as a whole at this time, there is insufficient evidence of sustainable mitigation in the record to make safe predictable judgments about Applicant's trusted ability to avoid criminal activity, the use of illegal drugs, and lapses of candor in the foreseeable future.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person, I conclude criminal conduct, drug involvement and personal conduct security concerns are not mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE j (CRIMINAL CONDUCT):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
GUIDELINE E (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparagraphs 2.a-2.e:	Against Applicant
GUIDELINE H (DRUG INVOLVEMENT):	AGAINST APPLICANT
Subparagraphs 3.a-3.b:	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Roger C. Wesley
Administrative Judge