



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



Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: Jeffrey S. Gard, Esq.

04/10/2025

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Security concerns under Guideline H, drug involvement and substance misuse, were mitigated. Applicant's eligibility for a security clearance is denied.

History of the Case

On April 5, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. The DCSA acted under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on April 23, 2024. He requested a hearing. The case was assigned to me on October 3, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 16, 2024, and the hearing was held as scheduled on February 13, 2025. The Government offered exhibits (GE) 1 through 4,

which were admitted into evidence without objection. The Government's exhibit list and pre-hearing discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified, and offered exhibits (AE) A through F, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on February 24, 2025.

Findings of Fact

Applicant admitted all the SOR allegations. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 24 years old. In May 2023, he graduated from college with a bachelor's degree. He is single, has never married, and has no children. He has worked as an engineer for his current employer, a defense contractor, since July 2023. Previously, from July 2022 to mid-August 2022, he worked for the same employer as an intern when he was still in school. He then received a fulltime job offer from the company in December 2022. He first completed a security clearance application (SCA) in May 2022, in conjunction with his summer internship. He was granted an interim secret clearance. In December 2022, he completed his second SCA, in conjunction with his acceptance of a fulltime position. He was granted an interim top secret clearance. (Tr. 23-24, 29, 31, 34, 38; GE 1-2)

Under Guideline H, the SOR alleged Applicant used marijuana, with varying frequency, from about August 2019 to about April 2022 (SOR ¶ 1.a); and that he purchased marijuana from about October 2021 to about April 2022. (SOR ¶ 1.b)

Under Guideline E, the SOR alleged Applicant falsified his December 2022 SCA when he failed to disclose his marijuana use and purchases as described above. (SOR ¶¶ 2.a and 2.b) It also alleged that Applicant gave false answers to an investigator when he denied any past drug use during his background interview (BI) in October 2023. (SOR ¶ 2.c)

During Applicant's testimony, he admitted all the allegations, as he had in his SOR answer. He first used marijuana in the 2019 timeframe when he was in college. He used marijuana recreationally about once a week by smoking it or taking edible gummies. He did not use any other drugs. He resides in a state where recreational marijuana use, possession, and purchases are legal under state law. He purchased marijuana at state-regulated marijuana dispensaries, or obtained it from friends, at various times between October 2021 and April 2022, for personal use. He stopped using and purchasing marijuana in April 2022, when he was 21. He passed a preemployment drug test for his internship. He did not use marijuana during his internship or since he began his fulltime employment. He does not intend to use it in the future. He continues to associate with friends who use marijuana but they respect his decision to abstain. (Tr. 26-27, 29-30, 34-37; GE 1; SOR answer)

In May 2022, Applicant filled out an SCA for his internship position. In section 23 of the SCA, he was asked if in the last seven years, he had ever used or purchased illegal drugs. He answered "no," which was false based upon his later admissions that he used and purchased marijuana within the past seven years. Based upon this falsified SCA, he was granted an interim secret clearance. This falsification was not alleged in the SOR. I will not use this evidence for disqualification purposes, but I may use it to assess credibility, mitigation and the whole-person factors. (Tr. 24-27; GE 2; SOR answer)

In December 2022, Applicant filled out an SCA upon accepting a fulltime position. In section 23 of the SCA, he was asked if in the last seven years, he had ever used or purchased illegal drugs. He answered "no," which was false based upon his later admissions that he used and purchased marijuana within the past seven years. Based upon this falsified SCA, he was granted an interim top secret clearance. (Tr. 24-27; GE 1; SOR answer)

Applicant testified that his failure to list his prior drug use and purchases was not because he was confused by the status of marijuana under state law. He knew his marijuana use and purchases were illegal under federal law at the time he completed his SCAs. The reason he failed to list his drug history was because he was afraid of losing his job opportunity if he admitted his marijuana use and purchases. (Tr. 24-25)

In September 2023, Applicant was interviewed by a Government investigator. He was specifically asked by the investigator whether his previous answers on his SCA about his past drug history were correct. He falsely stated that they were correct. This falsification was not alleged in the SOR. I will not use this evidence for disqualification purposes, but I may use it to assess credibility, mitigation and the whole-person factors. (Tr. 40-41; GE 3 (September 11, 2023, BI))

In October 2023, Applicant was reinterviewed by a Government investigator. He was again specifically asked by the investigator whether his previous answers on his SCA about his past drug history were correct. He, once again, falsely stated that they were correct. The investigator then confronted Applicant with other information about his past drug use and purchases developed during the investigation. At that point, Applicant admitted his drug use and purchases, as described above. (Tr. 40-41, 43-44; GE 3 (October 10, 2023, BI))

Applicant blames his falsification actions on being immature at the time and being scared for his future. He claims to have learned much from that experience and understands that telling the truth is the best policy, even if it means he may suffer adverse personal consequences. He informed his work supervisor about his drug history and his falsifications. (Tr. 45, 50)

Whole-Person Information

An excerpt from Applicant's 2023 performance form indicates that he is a fast learner and valuable contributor. He was noted as a team player and a great partner. (AE F)

Three personal friends and eight work colleagues, including his direct supervisor, provided character letters in support of Applicant. Other than Applicant's claim that he informed his supervisor of his drug history and falsifications, there is no indication in the submitted letters that the authors were aware of those facts. The general tone of all the letters was that Applicant is a dedicated worker and a valued, trusted, and reliable employee. He is a trusted and reliable employee. He is a good friend who is loyal, compassionate, and trustworthy (AE A-E)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 commonsense decision. According to AG ¶ 2(a), the entire process is a careful weighing 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.

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 to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government

reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an 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.

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 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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Two are potentially applicable in this case:

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

Applicant used marijuana, from 2019 to April 2022, and purchased it, from 2021 to April 2022 on various occasions. His admissions support these allegations. I find AG ¶¶ 25(a) and 25(c) apply.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

(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.

From 2019 to April 2022, Applicant used and purchased marijuana occasionally. He credibly stated that he stopped using it in April 2022 because he would soon graduate from college and he no longer desired to purchase or use it. He stated he has not used it since that time, and there is no evidence to the contrary. All his marijuana use was in a state which legalized marijuana use and his use was before he worked for a federal contractor. He passed a preemployment drug test before he was hired for his current position. While he still associates with some friends who use marijuana, he has no desire or intent to use any illegal drugs in the future. AG ¶ 26(a) applies. His two-plus years of abstinence, under these circumstances, are sufficient to demonstrate a pattern of abstinence to make AG ¶ 26(b) also applicable.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security 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, 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.

16. Conditions that could raise a security concern and may be disqualifying include:

(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; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Applicant admitted that he deliberately provided false information about his drug history on his December 2022 SCA and during his October 2023 BI to an investigator. Both AG ¶¶ 16(a) and 16(b) apply.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following relevant:

(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.

Applicant's falsifications are not minor offenses. He, in essence, gave false information about his drug history four different times, e.g., on his May 2022 SCA, on this December 2022 SCA, during his September 2023 BI, and during his October 2023 BI, before he was confronted, and finally admitted his drug history. I recognize that he was young and wanted to secure a particular job, but that is no excuse for falsifying vital information on multiple occasions necessary for an accurate background investigation. While he stated that he learned a valuable lesson from this experience, which I believe he did, his past actions still cast doubt on his reliability, trustworthiness, and judgment. AG ¶ 17(c) does not apply.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all 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 considered Applicant's age, and the supportive statements of his coworkers and friends. However, I also considered Applicant's multiple falsifications during his investigation.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the drug involvement security concerns, but he failed to mitigate the personal conduct security concerns under Guideline 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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	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.

Robert E. Coacher
Administrative Judge