



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



In the matter of:

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Applicant for Security Clearance)

ISCR Case No. 24-02106

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel

For Applicant: *Pro se*

08/06/2025

Decision

BLAZEWICK, Robert B., Chief Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On January 9, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and E.

Applicant responded to the SOR on January 27, 2025 (Answer) and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on February 26, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 4, 2025. He timely submitted documentation, which were labeled as Applicant's Exhibits (AE) A through I. The case was assigned on May 7,

2025. The Government exhibits included in the FORM and AE A-I are admitted in evidence without objection.

Findings of Fact

The SOR alleges that Applicant used marijuana from May 2008 to March 2022 (SOR ¶¶ 1.a, 2.a); that he used marijuana while working on school grounds from October 2016 to February 2019 (SOR ¶¶ 1.b, 2.a); that he used an illegal drug (marijuana) after being granted a security clearance in November 2021 (SOR ¶¶ 1.c, 2.a); and that he falsified material facts on his security clearance application (SCA) in 2021 when he failed to disclose his marijuana use (SOR ¶ 2.b). In his Answer, Applicant admitted all the allegations without further explanation.

Applicant is 31 years old. He is engaged, has never married, and does not have children. He earned a general educational development certificate (GED) in 2012 and did not serve in the military. He has been employed with a defense contractor since December 2020 and switched to a different defense contractor in December 2023. He was granted a clearance in 2021. (Items 3-5; AE B)

Applicant first completed a SCA in June 2021. When asked whether he had used any illegal drugs or controlled substances in the last seven years, he answered "no." In December 2023, he completed a second SCA. When asked whether he had used any illegal drugs or controlled substances in the last seven years, he answered "yes," and reported that he had used marijuana from May 2008 to March 2022, including while holding a security clearance. He stated he used marijuana to help with back pain because he wanted to avoid addictive pain medications, and that the frequency of his use started as weekly but decreased as he got older. He stated that he does not intend to ever use marijuana in the future and that he is "100% sober." The second SCA also included several other pieces of information not included in the first SCA, such as his educational background and three additional relatives. (Items 3-4)

Applicant was interviewed by a background investigator in September 2024. He stated that he used marijuana from May 2017 to March 2022 recreationally with friends about twice a month. He would typically smoke marijuana alone or with one of two friends. He purchased marijuana from dispensaries in his state several times. He also admitted that he used marijuana several times with his friend while in a cleared position. He regretted doing this and did not realize how significant it was. He eventually stopped using marijuana entirely because he did not like how it made him feel, he wanted to advance in his career, and he knew it was federally illegal. He told the investigator that he does not intend to use marijuana again. (Item 5)

During his 2024 background interview, Applicant also admitted that, while working at a high school from October 2016 to February 2019, he smoked marijuana at least twice with his coworker on school grounds. At the time, he did not think about the

fact that school zones prohibited drug use. He did not recall getting caught or receiving any warnings or reprimands. (Item 5)

In his December 2024 response to an interrogatory, Applicant reported marijuana use from May 2017 to March 2022, with a twice-monthly frequency. He reported that he did not have any intentions of future use due to concerns for his career and personal health and well-being. (Item 5)

In his March 2025 response to the FORM, Applicant submitted a written statement in which he explained that the omission of his drug use on the first SCA was not intentional or deliberate, but rather a misunderstanding of the reporting requirements. He stated his last use of marijuana was "over a year ago" and that he has completely severed ties with the individuals with whom he used drugs. He explained that his personal life is very different now: he is engaged, his fiancée has two children, and they are purchasing a home together. He is also very dedicated to his work and advancing in his career. He expressed deep remorse and acknowledged his past mistakes. He is willing to submit to additional monitoring, training, and drug testing. (AE B)

Applicant submitted seven letters of support from supervisors and colleagues. They praise his dedication, honesty, professionalism, trustworthiness, generosity, and integrity. (AE C-I)

Policies

This case is adjudicated under Executive Order (EO) 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) implemented by the DOD on June 8, 2017.

"[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." EO 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.” EO 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* 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* at 531.

Analysis

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 and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position.

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;

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's involvement was weekly or twice monthly over the course of 14 years and did not occur under circumstances making recurrence unlikely. The key issue is whether it is mitigated by the passage of time. The first prong of AG ¶ 26(a) (happened so long ago) focuses on whether the drug

involvement was recent. There are no bright-line rules for determining when conduct is recent. If the evidence shows that a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant reported using marijuana from 14 years old to at least 28 years old, ceasing three years ago—several months after he had been granted a security clearance. While under some circumstances a three-year period could be considered a significant period of time, when contrasted with Applicant's 14-year history of marijuana use and the fact that his drug use was not able to be examined and adjudicated in his first background investigation due to his failure to disclose it, it is not a sufficiently lengthy period of abstinence to fully establish the mitigating condition.

Furthermore, the information he has provided about his marijuana use has been inconsistent: as discussed below, he initially reported that he did not use marijuana at all. He then reported wildly varying dates of use, either beginning in May 2008 or May 2017, and he listed his last date of use as March 2022. In March 2025, however, he described his last use as “over a year ago.” While technically he could be referring to March 2022, it is an odd way to describe three years of sobriety and calls his last-use date into question. On his second SCA, he reported taking marijuana for back pain to avoid more addictive drugs, but elsewhere he reports using marijuana recreationally with friends. It also seems unlikely he was using marijuana to treat back pain at the age of 14. With this degree of conflicting, inconsistent information in the record, it is not possible to draw reasonable, favorable conclusions regarding whether sufficient time has passed since his last use.

In addition to the inconsistencies noted in Applicant's reporting, he has also displayed a pattern of particularly poor judgment and disregard for rules and regulations when it comes to how his marijuana use impacts his employment, specifically using during work on school grounds while working at a high school and use after being granted a security clearance and while working in a cleared position. Although the use on school grounds was at least six years ago, the behavior is still relevant given the later use of marijuana after being granted a security clearance and while working in a cleared position. Both of these positions required a high level of trust in Applicant, including trust that Applicant would comply with his employer's prohibitions against drug use. Applicant betrayed that trust in both positions over the course of years. His repeated pattern of poor judgment and disregard for rules and regulations is unmitigated and an ongoing concern.

Taken together, the span of use, the unresolved inconsistencies in Applicant's reporting about his use, and the exceedingly poor judgment he exercised when choosing to use marijuana in positions of trust, cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 26(a) is not established for Applicant's

marijuana use, his use while working on school grounds, and his use after being granted a security clearance and while working in a cleared position. (SOR ¶ 1.a-c)

AG ¶ 26(b) is not fully established. Applicant Exhibit B essentially serves as a signed statement of intent, and in it, Applicant attests that he has disassociated from drug-using associates and has changed or avoided the environment where marijuana was used. He also submitted numerous recommendations regarding his character. Though I gave considerable weight to this evidence, his lengthy history of drug use, inconsistent narrative of his drug use, and his use while at work on school grounds, and his use while granted a security clearance and while working in a cleared position lessens the credibility and sincerity of his statement and the impact of his recommendations.

Guideline E, Personal Conduct

The security concern 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 national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, 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; and

(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,

untrustworthiness, 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:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations.

Applicant was a regular user of marijuana for over a decade and chose to use drugs while working at a high school and after being granted a security clearance and while working in a cleared position. As discussed in my Guideline H analysis above, taken together, this behavior illustrates a pattern of poor judgment and rule-breaking and clearly establishes AG ¶¶ 16(c) and 16(d) with respect to SOR ¶ 2.a.

Though Applicant initially admitted to allegation SOR ¶ 2.b in his Answer, in AE B he denied deliberately falsifying material facts as alleged. When a falsification allegation is controverted, as in SOR ¶ 2.b, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004). An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010).

Applicant did not graduate high school, instead earning a GED. He did not serve in the military. His 2021 SCA was the first time he had applied for a security clearance. Of particular significance is the fact that he omitted a number of facts on the first SCA, which indicates that the drug use-related omission was likely an oversight or accident by a person with no prior experience working with the government or holding a security clearance. Applicant was forthcoming in reporting his drug use on the second SCA and in his subsequent background interview. In light of these facts, and in the absence of evidence of deliberate falsification, I am not persuaded that Applicant deliberately falsified material facts with regard to his drug use. AG ¶ 16(a) is not established for the conduct alleged in SOR ¶ 2.b.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

- (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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

In light of my findings under Guideline H, neither AG ¶ 17(c) nor AG ¶ 17(d) are established for ¶ 2.a. Although Applicant provided evidence that he has changed his behavior and that he is highly regarded in his field, the concerns surrounding Applicant's overall course of conduct when he was using marijuana undercut the evidence in mitigation.

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 H and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). 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).

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 4999 U.S. 905 (1991). Applicant has not overcome this presumption. After weighing the disqualifying and mitigating conditions

under Guidelines H and E and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his drug involvement and substance misuse and personal conduct.

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 (Drugs/Misuse): AGAINST APPLICANT

Subparagraphs 1.a-1.c: Against Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: For Applicant

Conclusion

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

Robert B. Blazewick
Chief Administrative Judge