



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



Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

07/08/2025

Decision

Lokey Anderson, Darlene D., Administrative Judge:

Statement of the Case

On November 18, 2018; March 5, 2019; May 25, 2023; and June 6, 2023, Applicant submitted security clearance applications (e-QIPs). (Government Exhibits 1, 2, 3, and 4.) On March 6, 2025, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse; Guideline E, Personal Conduct; and Guideline J, Criminal Conduct. The action was taken 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) effective within the DoD after June 8, 2017.

Applicant answered the SOR on March 9, 2025, and requested a hearing before an administrative judge. The case was assigned to me on May 5, 2025. The Defense Office of Hearings and Appeals issued a notice of hearing on May 8, 2025, and the hearing was convened as scheduled on June 18, 2025. The Government offered thirteen exhibits, referred to as Government Exhibits 1 through 13, which were admitted without objection. The Applicant called two witnesses and offered two exhibits, referred to as Applicant's Exhibits A and B, which were admitted into evidence without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 30, 2025.

Findings of Fact

Applicant is 25 years old. He has a fiancé and a six-month-old-son. He has a high school diploma, some college, and military training. He is employed by a defense contractor as a Qualify Assurance Supervisor. He is seeking to obtain a security clearance in connection with his employment.

Applicant has a history of drug involvement, dishonesty, and criminal conduct that occurred from about December 2016 through January 2023. He began working for his current employer in September or October 2023 on a temporary basis, and became permanent in December 2023. (Tr. p. 30, and Government Exhibit 1.) Applicant admits to each of the allegations set forth in the SOR. (Applicant's Answer dated March 9, 2025.)

From about December 2016 until January 2023, Applicant used marijuana with varying frequency. He began using marijuana during his sophomore year in high school once every few months. In total, from his sophomore year to his senior year, he estimated that he used marijuana between 10 to 20 times. In college, after suffering a football injury, he used it the summer of May 2018, about three times. (Tr. p. 45.)

Six months later, in November 2018, he enlisted in the United States Navy and completed his first security clearance application. (Government Exhibit 1.) In response to Section 23, concerning Illegal use of Drugs or Drug Activity, the question asks if he has ever used any illegal drugs. Applicant answered "NO." This was a false response. He testified that he did not disclose his marijuana use on his application because he believed that if he did so, he would not be able to do the job that he was signing up to do. (Tr. p. 48.)

Applicant also completed a DD FORM 1966/Record of Military Processing for Armed Forces of the United States dated November 5, 2018. This form asked the Applicant if he had ever used any narcotic or mind-altering substance? Applicant initialed, "NO." (Government Exhibit 6.) This was a false response. Applicant failed to list his marijuana use from December 2016 through November 2018. He also signed a

Drug and Alcohol Abuse Statement of Understanding on November 5, 2018, acknowledging the zero-tolerance drug policy, and that the Navy will take disciplinary action against those who engage in drug use. (Government Exhibit 7.)

Applicant began his service in the Navy in February 2019. He testified that he went through boot camp, and at some point during an interview, he disclosed that he had used marijuana. He was also told that he may have to undergo a polygraph. In March 2019, he completed a second security clearance application. (Government Exhibit 2.) In response to Question 23, this time, he disclosed some marijuana use, limited to 10 times in 2016 through March 2017. He did not reveal that he used it at any time during college. He stated that he had no intent to use marijuana again. To corroborate his intent, in April 2019, he was interviewed by a DoD investigator and stated that he had no future intentions to use marijuana. (Government Exhibit 5.)

Despite what he said on his security clearance applications, and to the investigator during his interview in April 2019, from March 2019 until January 2023, Applicant continued to use marijuana sporadically while serving in the Navy, in a sensitive position, and while possessing a security clearance. The first time he used marijuana in the Navy was when he was leaving A school in 2020. The next day he was driving to see his parents in State A and his brother in State B. He explained that he had 30 days off before he had to report to duty, and did not expect to take a drug urinalysis. He smoked one marijuana joint the night before he left on his trip. When he returned to duty, a drug screening urinalysis was administered, and he passed. (Tr. pp. 53-54.)

The second time he used marijuana while on active duty in the Navy was the following year in December 2021, around or during Christmas. He was with friends he had not seen since high school, and one evening, he smoked a marijuana joint with them. When he returned to duty, a drug screening urinalysis was administered, and once again he passed. (Tr. pp. 54-56.)

The third time he used marijuana in the Navy was in December 2022. He explained that he had broken up with his girlfriend that he had been living with for about two years. He was staying in someone's apartment from the ship who was already being out-processed for marijuana usage. It was during Christmas break, Applicant was trying to cope with his break-up, and he made a bad decision to use marijuana. Then after Christmas break, in January 2023, when he returned to work, a drug screening urinalysis was administered. On this occasion, to avoid popping positive, Applicant provided someone else's urine for the drug screening urinalysis, instead of his own. (Tr. p. 56-59.)

About a month later, on January 18, 2023, Applicant was accused of providing a fake urine sample during the unit screening urinalysis conducted in December 2022. On that day Applicant used marijuana again. He then went to the doctor for what is described in his medical records as anxiety and depression. Applicant was

administered a drug screening urinalysis, and he tested positive for marijuana. He did not tell the doctor that he had used marijuana that day. (Tr. p. 52, and Government Exhibit 10.)

Applicant was punished for this fraudulent scheme. At Captain's Mast, he received non-judicial punishment under Article 15 of the Uniform Code of Military Justice for the offenses. of Article 81: Conspiracy; Article 82: Soliciting Commission of Offense; Article 92: Failure to Obey an Order; Article 93: Cruelty and Maltreatment; Article 112a: Wrongful Use of a Controlled Substance; and Article 117: False Official Statement. He was sentenced to 60 days of restriction, forfeiture of half of his monthly pay for two months, and a reduction in rank to E-4. Applicant received some counseling from the Navy for his drug use and believes that it was very helpful. He was subsequently discharged from the Navy for misconduct-drug abuse in March 2023. (Government Exhibits 11 and 13.)

Unrelated to his marijuana use, while serving in the Navy, in about June 2021, Applicant was detained by police and charged with Soliciting a Prostitute. Applicant explained that from an on-line escort service he arranged to meet a woman at a hotel for sexual services. He arrived at the designated hotel expecting to pay for sex and found out it was a sting operation. Applicant was detained and given a citation for Solicitation of Prostitution. In court, he was required to pay a fine and attend classes with sex addicts and prostitutes before the charge was dismissed. (Tr. pp. 76-81.)

Applicant was proud to testify that he comes from a long family history of military service. His great-grandfather and grandfather served in the Air Force. His father retired with 20 years in the Marine Corps; and his brother served in the Army. No one had served in the Navy, and so he joined. (Tr. p. 37.)

Two witnesses who both hold security clearances, testified on Applicant's behalf. They both think highly of the Applicant. One of the witnesses, an E-9 Master Chief Petty Officer, met Applicant as a child at the age of 10 or 11, and knew his parents, when his father was a Marine. Applicant and her son are best friends. She is still active duty. She stated that she knew that there was a hiccup in his Naval career. She believes that he was young and dumb and has since matured. She knew nothing about his history of marijuana use. The other witness, who was at one time Applicant's supervisor testified that Applicant has an ability to grasp and obtain important information. He was aware of Applicant's discharge from the Navy for recreational drug use but was not aware of any other incidents or Government concerns. He believes Applicant had a lapse in judgment and immaturity possibly brought on from peer pressure and curiosity. (Tr. pp. 24-31.)

A letter of recommendation from Applicant's former chief, who was his direct supervisor in the Navy, from 2020 through January 2023, during their time on board the ship, indicates that Applicant was an exceptional sailor, consistently rising above his peers in both work ethic and performance. He was a reliable and diligent professional.

He consistently demonstrated accountability and unwavering commitment to growth. Each time a mistake was made, he took full responsibility, made the necessary correction, and ensured that it was not repeated. He demonstrated resilience, integrity, and trustworthiness. His professionalism and leadership make him a valuable asset to any organization. Applicant has his highest recommendation. (Applicant's Exhibit A.)

Applicant's annual performance review for 2025, which was his first full year at his current company, indicates that in every category, his work performance is "exceptional" and his overall rating "exceeds expectations." (Applicant's Exhibit B.)

In considering the "whole person concept" the court must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. Not alleged in the SOR, but considered in this case, which goes directly to the question of Applicant's credibility, is the fact that the Applicant, for his new employment, completed a more recent security clearance application dated June 6, 2023. In response to Section 23, Illegal Use of Drugs or Drug Activity, which asks him if in the last seven years he has used any drugs or controlled substances. He answered, "NO." (Government Exhibit 4.) This was a false response. Applicant again was not truthful.

Policies

When evaluating an applicant's suitability for a security clearance, 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 to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing 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 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the "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 applies for access to classified information seeks to enter 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 the applicant may deliberately or inadvertently fail to protect or 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 adverse 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 Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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.

From March 2019 through January 2023, Applicant used marijuana while on active duty in the United States Navy, while in a sensitive position, and while possessing a security clearance. His conduct shows immaturity, a pattern of questionable judgment, unreliability, untrustworthiness, and an inability to comply with rules and regulations. Applicant claims that his last use of marijuana was in January 2023. Given his pattern of drug use that continued after telling the Government several times that he had no intention to use in the future, there is no convincing evidence that he has actually quit using marijuana. If he has quit using marijuana since January 2023, insufficient time has passed without drug use to convince the government that he will not return to his old ways.

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. Five 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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(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.

(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.

(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 judgement, 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.
- (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.

There are conditions mitigating security concerns under AG ¶ 17. However, none of them are applicable here.

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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;
- (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; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant deliberately concealed his marijuana use on his application for military enlistment of January 5, 2018; on his security clearance application of November 14, 2018; and on his most recent security clearance application of June 6, 2023. He also provided a fake urine sample to the Navy, instead of his own, to avoid popping positive on a drug screening urinalysis in December 2022. These facts raise serious questions about Applicant's credibility. He has not been honest, truthful, or candid with the Government in many aspects. In fact, when Applicant stated on his security clearance application and during his interview with DoD in April 2019, that he had no future intent to use marijuana, he then continued to use it. Applicant has not demonstrated that he can be trusted. Thus, it is not clear whether he has actually stopped illegal drug use. In totality, his conduct still shows a high degree of immaturity and poor judgment. None of the mitigating conditions are applicable here.

Guideline J, Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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 ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (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.

The guideline at AG ¶ 31 contains conditions that could mitigate security concerns. Neither of the conditions are applicable.

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (c) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement

Applicant committed criminal misconduct in June 2021, when he was arrested and charged with Solicitation of Prostitution; and in December 2022, when he provided the Navy with someone else's urine during a unit screening urinalysis in order to avoid popping positive for marijuana. Engaging in a fraudulent scheme of this sort was egregious and violated Navy rules and regulations and Federal law. The disciplinary action taken against him resulted in his removal from military service. Applicant's criminal conduct demonstrates immaturity, poor judgment, and unreliability. It also gives rise to serious concerns about his credibility and trustworthiness, both because of the nature of the offenses, and the circumstances surrounding the offenses. The before-mentioned disqualifying conditions have been established and are not mitigated.

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 relevant 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H, E, and J in my whole-person analysis. Based upon the facts and analysis set forth above, Applicant has failed to provide sufficient evidence to demonstrate that he meets the qualifications for a security clearance at this time. In the event that he maintains a drug free lifestyle and can be open, honest, and candid with the Government, and no longer engages in criminal conduct, he may meet the eligibility requirements sometime in the future, but not at this time.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse, Personal Conduct, and Criminal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:

AGAINST APPLICANT

Subparagraphs 1.a. through 1.c.

Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.e.	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a.	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge