



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



In the matter of:

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ISCR Case No. 24-00603

Applicant for Security Clearance )

**Appearances**

For Government: John Renehen, Esq., Department Counsel

For Applicant: *Pro se*

08/29/2025

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse and personal conduct security concerns. However, he mitigated the alleged criminal conduct concerns. National security eligibility for access to classified information is denied.

**History of the Case**

On April 26, 2024, the Department of Defense (DOD) sent Applicant a Statement of Reasons (SOR) alleging security concerns under Guidelines H (drug involvement and substance misuse), E (personal conduct), and J (criminal conduct). (Item 2) The DOD 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 submitted an undated answer to the SOR and requested a decision based upon the administrative record (Answer). (Item 2) A copy of the file of relevant material (FORM), was provided to Applicant via U.S. mail by letter dated February 14, 2025, and it was resent to him via Federal Express on February 25, 2025. Department

Counsel attached as evidence to the FORM Items 1 through 5. Applicant received the FORM on March 4, 2025, and was afforded a period of 30 days to file objections and submit material in refutation, extenuation, or mitigation. He did not respond, nor did he submit any information. On April 29, 2025, the case was assigned to me. Items 1 through 5 are admitted into evidence.

### **Department Counsel's FORM**

In Department Counsel's (DC) FORM, the facts section stated, "Under Guidelines H and J, the [SOR] alleges Applicant used marijuana ...., and ... was arrested ... ." However, Guideline J, ¶ 2.a, references only the "Information as set forth in subparagraph ¶ 1.b. above," referring to only Applicant's 2008 arrest. Therefore, marijuana "use" was not cross alleged under Guideline J. Furthermore, DC stated Applicant falsified his Security Clearance Application (SCA) under Guideline E, asserting he failed to disclose illegal drug use or purchase in the last seven years. Although the question regarding illegally purchasing drugs is in ¶ 3.b, its language was qualified by referring to "subparagraphs [sic] 1.a. above." Subparagraph 1.a. alleged Applicant's marijuana use but did not allege the illegal purchase of drugs.

I will not consider Applicant's marijuana use disqualifying under Guideline J, as it was not cross alleged by DC. Similarly, Applicant's failure to disclose his purchase of marijuana under Guideline E will not be considered disqualifying conduct, as this purchase was not included as an allegation in the SOR. However, the purchase may be considered during the whole-person analysis and when determining the applicability of mitigating conditions.

### **Findings of Fact**

Applicant, 36, is an instrumentation technician who obtained his high school diploma in 2006. Married since 2020, he has a nearly 5-year-old daughter. He began federal contracting in June 2021 and has been with his current employer since July 2022. This is his first security clearance application. (Items 3-4)

The SOR contained two primary allegations. Under Guideline H, it alleged Applicant used marijuana with varying frequency from approximately 2005 to July 2023, and he was arrested in November 2008 for misdemeanor marijuana possession. This 2008 arrest, which resulted in a *nolle prosequi*, was cross alleged under Guideline J, but his marijuana use was not, as noted above. Additionally, the SOR alleged under Guideline E that Applicant falsified his August 2023 SCA by failing to disclose both his drug use and the 2008 arrest. Applicant admitted all SOR allegations, though he qualified his answer regarding the nondisclosure of the 2008 arrest. (Items 1-3, 5)

During a November 2023 interview with a government investigator, Applicant was primarily questioned about his marijuana use. He initially denied any alcohol or drug-related charges but, upon further inquiry, disclosed his November 2008 arrest. He explained he omitted the arrest from his SCA because he misread the question, believing it asked about arrests in the "past 10 years" rather than "ever." (Items 4-5)

During the interview, Applicant confessed to using marijuana from 2005 until a month before he completed the SCA. He outlined a fluctuating history or pattern of drug abuse: daily use in high school (three times weekly on weekends/parties); weekly use from 2006-2013; bi-weekly use from 2013-2015; and then twice weekly from 2015-2021. After a break from an undated period in 2021 to May 2022, he resumed monthly use until July 2023. (Item 4)

Since 2015, Applicant's consumption methods included edibles and vaping. Over the last decade, he used marijuana with his wife and two specified friends. He did not possess a medical-marijuana card and purchased it weekly (\$20-60) from a friend (no last name given) at a gas station. He indicated his intent to cease marijuana use because of his employment's security clearance demands. However, he clarified he would use it again if no such prohibitions existed. Notably, he admitted to violating all his previous employers' drug policies without self-reporting. (Item 4)

Applicant's April 2024 DOHA interrogatory responses adopted his prior statement verbatim. However, in a separate drug use chart, he reported using marijuana once monthly from 2005 to July 4, 2023, and purchasing it from a friend one to three times monthly between 2015 and 2023. He indicated no future intent to use marijuana, attributing his discontinuation to "career advancement and to obtain a security clearance." In July 2023, I was offered a better opportunity for my family and I had to make some changes in my life. The offer I received doesn't come around often, so I had a choice." He has not undergone drug-related counseling or treatment. (Item 4)

In Applicant's answer to the SOR, he qualified his answer to ¶ 2.a regarding his 2008 arrest. He stated, in part:

I admit. I answered No on the eQIP because I filed paperwork with [state of residence] to have the nolle prosequi expunged and was informed to answer No to this question. During my interview I was honest and informed the interviewer I was arrested in November 2008 for possession of marijuana. Also [I] informed the interviewer I answer[ed] No because my offense was expunged from my police record and the time period of the offence. Also [I] informed the interviewer, I check[ed] [state of residence] case search before submitting eQIP, just to confirm my offence was removed from my record. The interviewer understood and agreed with my explanation. (Items 2-3)

Applicant did not specify who instructed him not to disclose his 2008 arrest on his SCA. Moreover, the written statement, which Applicant adopted in his DOHA interrogatories, solely documented the "ever" versus "10 years" misunderstanding as Applicant's reason for the nondisclosure. He responded "I agree" to ¶ 3.a regarding falsifying his SCA for failure to disclose the 2008 arrest and provided no additional explanation. (Items 2-3)

In Applicant's answer to the SOR, he admitted the following regarding his failure to disclose his drug use in his SCA:

There is no excuse for my answer . . . I was worried about my chances of obtaining a clearance for my new position. During my interview I came forward and informed the interviewer about my use of THC. I [h]ave not use[d] THC since July 2023, before applying to [current company] and before receiving my interim security clearance. I separated myself from any bad influences and [just] focused on my family. (Items 2-3)

Starting in 2017, Applicant's state of residence has allowed the medical use of marijuana, and in 2023, it became legal to use it recreationally.

## **Policy**

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 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 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish 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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters 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 safeguard classified information. Such

decisions entail a certain degree of legally permissible extrapolation of 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**

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, but 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 following condition under AG ¶ 25 could raise a security concern and be disqualifying in this case:

(a) any substance misuse (see above definition).

DNI Memorandum ES 2014-00674, “Adherence to Federal Laws Prohibiting Marijuana Use,” October 25, 2014, indicates:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines . . . An individual’s disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual’s judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

Applicant admitted to using marijuana, with varying frequency, from 2005 to July 2023, discontinuing use due to his security clearance application. Therefore, the evidence raised disqualifying condition ¶ 25(a).

The burden shifted to Applicant to rebut or prove mitigation of the resulting security concerns. AG ¶ 26 provides conditions that could mitigate security concerns in this case:

- (a) the behavior happened so long ago, was so infrequent, or happened under such unusual 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 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.

Applicant discontinued his marijuana use in July 2023, a month before he completed his SCA, and due to his new position requiring a security clearance. He admitted violating work-place orders prohibiting the use of marijuana at all his former positions. He also stated he discontinued his use due to a focus on his family; however, his wife was one of the individuals with whom he used marijuana from 2013 to 2023.

Applicant's extensive marijuana misuse, ongoing for most of his adulthood, demonstrates a pattern of disregard for rules, not a minor lapse in judgment. Security clearance decisions encompass off-duty conduct, as poor judgment in such areas provides a rational basis to question an individual's security worthiness. Additionally, his past behavior of violating other employers' drug policies is particularly troubling. Consequently, due to his long history of drug abuse contrasted with minimal period of abstinence, use of marijuana with his wife, and violations of prior employer policies, Applicant failed to establish mitigation under AG ¶¶ 26(a) or 26(b).

#### **Guideline J: Criminal Conduct**

AG ¶ 30 expresses the security concerns pertaining to criminal conduct:

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 in this case:

- (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 2008 misdemeanor arrest for possession of marijuana establishes the above disqualifying condition.

AG ¶ 32 provides conditions that could mitigate security concerns raised in this case. The following two are potentially 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
- (d) 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.

Sufficient time has passed since Applicant's last alleged criminal behavior. Therefore, AG ¶¶ 32(a) and 32(d) were established.

#### **Guideline E: Personal Conduct**

The concern under this guideline is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; 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.

AG ¶ 16 describes conditions that could raise a security concern and be disqualifying. The following is 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.

Applicant was not forthright regarding his drug use and arrest history in his SCA. In his answer to the SOR, he admitted he did not disclose this information due to wanting to obtain a security clearance. The evidence established AG ¶ 16(a).

AG ¶ 17 describes conditions that could raise a security concern and be disqualifying. The following are potentially applicable in this case:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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 failure to disclose his 2008 marijuana arrest persisted until his second confrontation by the investigator. His inconsistent explanations during the investigation cast doubt on his initial assertion that he did not intentionally falsify his SCA concerning the arrest. While he readily admitted to falsifying his SCA regarding drug use, his later minimization of that use in his response to DOHA interrogatories, after initially admitting to it, further eroded his credibility and the potential for mitigation. Across the adjudication process, Applicant offered varied, inconsistent, contradictory, and self-serving statements regarding his failure to disclose the drug-related arrest. Ultimately, Applicant lacks credibility, and he failed to establish mitigation under AG ¶¶ 17(a) and 17(c).

Based on the record, Applicant is not a suitable candidate for access to classified information at this time. In reaching this conclusion, I also considered the whole-person factors at AG ¶ 2(d). The purpose of the adjudication is to make "an examination of a sufficient period of a person's life to make an affirmative determination that the person is an acceptable security risk." (AG ¶ 2(a)) Furthermore, applicants are not held to a standard of perfection. However, his lack of credibility throughout the adjudication process and lengthy history of drug abuse have not been mitigated.

Accordingly, I conclude that it is not clearly consistent with the interests of national security to grant him access to classified information.

**Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H:                    AGAINST APPLICANT

    Subparagraph 1.a:                          Against Applicant  
    Subparagraph 1.b:                          For Applicant

Paragraph 2, Guideline J:                    FOR APPLICANT

    Subparagraph 2.a:                          For Applicant

Paragraph 3, Guideline E:                    AGAINST APPLICANT

    Subparagraphs 3.a – 3.b:                  Against Applicant

**Conclusion**

I conclude that it is not clearly consistent with the national interest of the United States to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge