



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



In the matter of:)
)
) ISCR Case No. 24-02077
)
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

12/17/2025

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the sole security concern that was alleged under Guideline H and cross-alleged under Guideline E. Eligibility for access to classified information is granted.

Statement of the Case

On January 3, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing a single security concern under Guideline H (drug involvement and substance misuse) that was cross alleged under Guideline E (personal 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on January 8, 2025, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on February 4, 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 7, 2025, and he elected not to respond. The case was assigned to me on July 3, 2025. The Government's documents identified in its FORM as Government Exhibits (GE) 1 through 5 are admitted in evidence without objection.

On September 2, 2025, Department Counsel provided Applicant's updated Questionnaire for Investigations Processing (SF86), certified by Applicant on August 11, 2025, which I marked as GE 6 and admitted in evidence without objection. I marked as Hearing Exhibit 1 Applicant's email stating he did not have any objection to GE 6.

This decision was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

Findings of Fact

Applicant admitted the SOR allegations in his Answer. He is 32 years old, married, and he has two minor children. He has owned his home since February 2023. (GE 1-6)

Applicant graduated from high school in 2012 and enlisted as active duty in the U.S. military from February 2013 to January 2022, when he was honorably discharged. He was deployed to Afghanistan twice, from March 2014 to November 2014 and from December 2015 to September 2016. He was unemployed from January 2022 to May 2022, during which time he attended online courses and earned information technology certifications in May 2022. He worked as a technician for previous defense contractors from May 2022 to March 2024. Since then, he has worked as a technician for his current employer, also a defense contractor. He was first granted a security clearance in approximately 2013. (GE 3, 4-6)

Applicant purchased and used marijuana in July 2024 while holding a sensitive position, i.e., one in which he held a security clearance. (SOR ¶¶ 1.a, 2.a; GE 1-2, 4, 6) In addition to his admissions in his Answer, Applicant disclosed this information during his August 2024 background interview, in his November 2024 response to interrogatories, and in his August 2025 security clearance application (SCA). (GE 4, 6) During his background interview, Applicant disclosed that he and his spouse discussed trying marijuana after consuming alcohol on a night out in July 2024. While his spouse had previously used marijuana, he had not, and he wanted to experiment with her. They purchased a marijuana cigarette at a local dispensary and smoked half of it in their backyard. The next morning, he realized he had used marijuana while holding a security clearance and immediately regretted his exercise of bad judgment. He indicated only his spouse was aware of his one-time drug use. He expressed this was the only occasion in which he had ever used marijuana, and he wanted to be forthright with the U.S. Government about his mistake. (GE 4)

When Applicant disclosed his July 2024 use of marijuana in his November 2024 response to interrogatories, he acknowledged he was informed, in February 2013 when he became a member of the U.S. military, that marijuana use remains federally illegal.

With his interrogatories, he was provided two memoranda issued by the Director of National Intelligence, titled “Adherence to Federal Laws Prohibiting Marijuana Use” and “Security Executive Agent Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position,” dated October 25, 2014, and December 21, 2021, respectively. He noted that he had read both memoranda and he expressed an intent not to continue to use illegal drugs in the future. (GE 4)

Applicant stated in his Answer:

I, [Applicant], admit to using a controlled substance. This happened around July of 2024. My wife and I had a couple of drinks and decided to try it. Afterwards, I realized that I had made a terrible mistake and regretted my choice immediately. I am not proud of what I did, and it was out of character for myself. I served nearly nine years active-duty [U.S. military] and went to Afghanistan twice for my country. This was a one-time thing, and it will never happen again. I do not have a problem nor will I ever. I am dedicated to always doing the right thing, even when no one is looking. I made the choice to tell the truth to my investigator about this matter. I admit that I made a mistake[,] and I have taken that mistake and learned from it.

. . . I, [Applicant], admit to having a lapse in judgement. This event has happened one time and one time only. I am not a repeat offender, nor do I have a history of doing things like this. I consider myself to be very trustworthy and honest. I can admit that I made a mistake. There was no dishonesty involved. When the time came, I was forthcoming and honest when telling my investigator about the mistake I had made. I did not withhold any information from him. I know who I am as a person, and I know that I will never do something like this ever again. I know that I am a trustworthy person and can be depended on. I will not let one mistake define me as a person, because I am better than the mistake I made. All I can do is continue to move forward and be better than I was yesterday. (GE 2)

Applicant also disclosed his July 2024 use of marijuana in his August 2025 SCA, in response to “**Section 23 – Illegal Use of Drugs or Drug Activity . . . In the last seven (7) years**, have you illegally used any drugs or controlled substances? . . .” He marked “Yes” and disclosed that he used marijuana in July 2024. He also marked “Yes” in response to the question that asked, “Was your use while possessing a security clearance.” He stated:

Had a lapse in judgment and experimented with my wife recreationally. Only tried/used the one time and never since. . . . As stated before, I had a lapse in judgment. I realize that I made a mistake and will not use the substance ever again. I made a mistake[,] and I have acknowledged that. I am not a repeat offender. This was very out of character for me[,] and I regret the choice I made every day. (GE 6)

Applicant stated in his response to interrogatories he neither socializes with individuals who use illegal substances nor frequents places where he has reason to believe illegal substances are being used. He also stated he is subject to random drug tests by his employer but had not yet been subjected to such a test, and he had never tested positive for any illegal substances on any drug test. (GE 4)

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 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(c), 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."

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 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 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 and substance misuse as:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant: "(a) any substance misuse . . ."; "(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia"; and "(f) any illegal drug use while granted access to classified information or holding a sensitive position."

Applicant purchased and used marijuana in July 2024 while holding a sensitive position, i.e., one in which he held a security clearance. AG ¶¶ 25(a), 25(c), and 25(f) are established.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

(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.

Applicant purchased and used marijuana on one occasion in July 2024, while holding a security clearance. He did so despite knowing, since February 2013 when he enlisted in the U.S. military, that marijuana remains federally illegal. There is no

evidence that he previously or has since purchased or used any other illegal drug. He was forthright about his marijuana involvement while holding a clearance and disclosed it during his August 2024 background interview, in his November 2024 response to interrogatories, and in his most recent SCA from August 2025. He expressed immediate regret and remorse for his exercise of bad judgment. While he acknowledged that his spouse has used marijuana in the past and used it with him in July 2024, he maintained he does not socialize with anyone who uses illegal substances. He did not provide a signed statement of intent as contemplated under AG ¶ 26(b)(3), but he did express an intent, in his signed November 2024 response to interrogatories, not to continue to use illegal drugs in the future. Given that Applicant's purchase and use of marijuana, while holding a clearance, occurred only one time, in July 2024, he does not socialize with anyone who uses illegal substances, he disclosed his marijuana involvement during multiple points in the security clearance process, and he expressed his remorse and intent not to use in the future, I find that AG ¶¶ 26(a) and 26(b)(1) are established.

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 is potentially applicable in this case:

(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. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

For the same reasons set forth above in my Guideline H analysis, the evidence is sufficient to raise AG ¶¶ 16(e) and 16(e)(1) as disqualifying conditions.

Conditions that could mitigate the personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(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.

For the same reasons as set forth above in my Guideline H analysis, I find that AG ¶¶ 17(c), 17(d), and 17(e) are established as to SOR ¶ 2.a.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in this whole-person analysis. I considered Applicant's honorable service in the U.S. military and his two deployments to Afghanistan. Overall, the record evidence leaves me without questions or doubts as to Applicant's continued eligibility and suitability for a security clearance. I conclude Applicant mitigated the drug involvement and substance misuse and personal conduct security concerns.

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

Subparagraph 1.a:

For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge