



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: September 12, 2025

In the matter of:

Applicant for Security Clearance

ISCR Case No. 24-01023

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Samir Nakhleh, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On November 26, 2024, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) (SEAD 4) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On July 31, 2025, Defense Office of Hearings and Appeals Administrative Judge Mark Harvey denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Background

Applicant, in his early 30s, earned two bachelor's degrees in 2019 with majors in applied physics and mechanical engineering. Following his graduation, he began working as a civilian engineer with the U.S. military, for which he submitted an initial security clearance application (SCA) in May 2019, was granted national security eligibility, and held a Secret security clearance. Applicant submitted a new SCA in July 2023 in anticipation of beginning employment with a

government contractor later that year. He disclosed no illegal drug use in the 2023 SCA; however, during the associated interview two months later, Applicant volunteered that he purchased and used marijuana while holding his security clearance, including in the summers of 2020 and 2021. Applicant explained that he used marijuana at times when he was home and alone during the COVID-19 pandemic, and averred that there was no likelihood of future use, citing his many goals and understanding of the gravity of the conduct.

Under Guideline H, the SOR alleged that Applicant used marijuana from about 2020 to 2021 while employed in a sensitive position, and his deliberate failure to disclose that use on his 2023 SCA was alleged under Guideline E. In response to the SOR, Applicant admitted both allegations. Noting that almost four years had passed since Applicant's last marijuana use, the Judge applied mitigating conditions AG ¶¶ 26(a) and 26(b)¹ to the Guideline H concern, found that Applicant "established a pattern of abstinence of marijuana possession and use," and concluded that his "marijuana use does not cast doubt on his current reliability, trustworthiness, and judgment." Decision at 9. As discussed more fully below, however, the Judge resolved the Guideline E concern against Applicant. For the following reasons, we affirm.

Discussion

On appeal, Applicant's Counsel contends that the Judge erred in his analyses under Guideline E and the Whole-Person Concept. Regarding the former, Counsel challenges the Judge's finding that Applicant intentionally falsified his 2023 SCA on two bases, arguing first that "the record demonstrates that this was not a deliberate attempt to mislead" and that "Applicant credibly testified that he misunderstood the scope of the question." Appeal Brief at 6. Counsel also argues that the Judge's "finding of falsification rests exclusively" on Applicant's 2023 SCA. *Id.* Counsel's arguments not only troublingly misrepresent Applicant's hearing testimony, but also ignore significant contrary record evidence, beginning with Applicant's repeated acknowledgements about the intentionality of his omission.

Throughout his investigation and adjudication, Applicant acknowledged that his failure to disclose reportable marijuana involvement on his 2023 SCA was intentional. During his August 2023 pre-interview phone call, Applicant alerted the investigator that he had marijuana use to report and explained that he failed to do so on his 2023 SCA "due to fear." Government Exhibit 3 at 8. Applicant then admitted the intentional falsification in response to the SOR allegation. Finally, at hearing, Applicant described his failure to disclose as "another lapse in judgment," and clarified that "it was less fear" and "more so a lapse in judgment and a mistake at the time." Tr. at 18, 22-23.

Counsel's attempt – made for the first time on appeal – to reframe this admitted and proven intentional conduct as an inadvertent "mistake" is without merit. At no time during his hearing testimony or any other point in his adjudication did Applicant suggest that his failure to disclose

¹ 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; (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.

was due to misunderstanding the SCA question. Contrary to Counsel's argument, the evidence that Applicant intentionally falsified his 2023 SCA is robust, and the Judge's finding is sustainable.

Counsel's related argument – that the adverse Guideline E finding is based exclusively on the 2023 SCA – is similarly unpersuasive and warrants discussion. In support of his argument, Counsel contends that “there is no evidence [that Applicant] has ever attempted to mislead his employer or security officials beyond this single lapse in judgment.” Appeal Brief at 4. Putting aside that this branch of Counsel's argument seems to acknowledge the intentionality of Applicant's omission and runs afoul of his earlier assertion of simply misunderstanding the SCA question, Counsel here overlooks that Applicant has, in fact, misled security officials beyond his 2023 SCA falsification.

Specifically, Applicant disclosed no marijuana use on his initial SCA in 2019, and he explicitly denied any marijuana history beyond the 2020 to 2021 involvement at hearing:

DEPARTMENT COUNSEL: Had you ever used marijuana in high school or during college?

APPLICANT: I had not.

...

DEPARTMENT COUNSEL: When you completed your security clearance application, the first one, on May 15th, 2019, right after you finished college, were you truthful about whether you had used illegal drugs in the past seven years previous to that?

APPLICANT: Yes.

DEPARTMENT COUNSEL: To include your graduation . . . earlier that month in May of 2019.

APPLICANT: Yes.

Tr. at 28. Only upon further questioning directly by the Judge did Applicant eventually disclose that he used marijuana semi-regularly while in college:

JUDGE: [Y]ou are saying today that you did not use marijuana in high school or college. You want to stick with that?

APPLICANT: Sir, I did not use it in high school, but I did use it in college.

JUDGE: About how many times did you use it in college?

...

APPLICANT: I would say probably once every two months or so.

Tr. at 29. Applicant's college era marijuana use should have been disclosed on both his 2019 and 2023 SCAs. It was not. Rather, Applicant concealed the information on both applications and continued to do so during his eligibility interview and well into his hearing.

The Directive is clear that an applicant's failure to respond truthfully and candidly during a national security investigation is of special concern, specifically stating that the "refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives" in connection with an investigation and adjudication will normally result in an unfavorable eligibility determination. AG ¶ 15. In cases involving the deliberate omission, concealment, or falsification of material information, an applicant has a "heavy burden in demonstrating evidence of reform, rehabilitation, or changed circumstances sufficient to justify a conclusion that it is clearly consistent with the national interest to grant him access to classified information." ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002). While the Judge commended Applicant's eventual (albeit, incomplete) disclosure to the investigator in 2023, he ultimately concluded that the concern raised by Applicant's 2023 SCA falsification was amplified by his 2019 SCA falsification and that the pattern of omissions prevented full mitigation of the personal conduct security concerns. Decision at 12. The Judge's explanation for his adverse resolution of the Guideline E concern is well supported by the record and Appeal Board precedent and we find no reason to disturb it on appeal.

Conclusion

Applicant has not established that the Judge's adverse decision was arbitrary, capricious, or contrary to law. Our review of the record confirms that the Judge examined the relevant evidence and articulated a satisfactory explanation for the decision, which is sustainable on this record. "The general standard is that a clearance may be granted only when 'clearly consistent with the interests of the national security.'" *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988). "Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." AG ¶ 2(b).

Order

The decision in ISCR Case No. 24-01023 is **AFFIRMED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board