



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



In the matter of: )  
)  
) ISCR Case No. 22-00432  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Nicholas Temple, Esquire  
For Applicant: Debra D’Agostino

09/30/2022

**Decision**

LYNCH, Noreen A., Administrative Judge:

**Statement of the Case**

On May 5, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). The action was taken under *Executive Order (Exec. Or.) 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 DOD on June 8, 2017. Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on June 6, 2022. Applicant received the FORM on June 7, 2022. Applicant did not object to the Government’s evidence, and he provided a response to the FORM through counsel. (Item 6). The Government’s evidence, included in the FORM and identified as Items 1 through 5, is admitted without objection. The case was assigned to me on February 7, 2022. Based on my review of the documentary evidence, I find that Applicant has not mitigated security concerns under the drug involvement guideline or the personal conduct guideline.

## Findings of Fact

Applicant is 40 years old. He is married and has four children. He has been employed as a chief technical officer since August 2010. He reports no military service. (Item 3) Applicant has held a security clearance for more than a decade. He completed his latest security clearance application (SCA) on May 5, 2021.

The SOR alleged, under Guideline H, that Applicant used marijuana with varying frequency from about January 2000, to the present (1.a); used marijuana with varying frequency from 2014 to the present, while granted access to classified information 1.b; was arrested in about August 2005 and charged with possession of marijuana (1.c); and intends to continue using marijuana in the future. (1.d) In his Answer, Applicant admitted the SOR allegations under Guideline H with explanations. The SOR alleged, under Guideline E, that Applicant falsified his March 9, 2011 SCA by failing to report his full illegal drug usage in the last seven years in response to Section 23. (2.a); and his January 26, 2010 SCA by stating that his 2005 arrest was the only time that he had used marijuana (2.b); and it also cross alleged the information from SOR 1.b and 1.d. Applicant admitted the Guideline E allegations with explanations. (Item 1)

In his answer to the SOR, Applicant admitted the SOR allegations ¶¶1.a through 1.d, as stated above. He stated that his occasional use of marijuana did not compromise his reliability, trustworthiness, integrity, or dedication to the United States. He emphasized that he never used or had been under the influence during work or while accessing classified information. He claimed that he stopped using marijuana completely from about 2011 to 2014, while working for the Federal Government. He stated that he stopped due to agency regulations. Applicant emphasized that his arrest occurred over 15 years ago and that the record was expunged over ten years ago. He further noted that this was the only incident he ever had with law enforcement. In the final part of his answer, he stated that his expected use will be “consistent with past use, which will be occasional and limited.” Applicant stated that “his openness and honesty about his past, present, and future use of marijuana should prove that he is trustworthy and deserving of a favorable determination.” (Item 2)

As to the SOR allegations ¶¶ 2.a through 2.c, Applicant admitted that he only disclosed on his 2011 SCA the 2005 arrest for marijuana but not the other times he used marijuana. It was his understanding that the use of marijuana would always result in an unfavorable adjudication. He was “worried that if he answered “Yes”, he would not receive a clearance and lose his job, not be able to take care of his family or pay his mortgage. (Item 2)

Applicant completed his most recent SCA on May 5, 2021. (Item 3) He disclosed two decades of marijuana use and indicated his intent to cease his further use of marijuana” on an unspecified date in the future, as he values his clearance above the occasional use of marijuana. (Government Response to Applicant’s FORM Response); (Item 6) He admitted on his own volition that he was not candid in describing his past

marijuana use on his latest SCA. He asserted that he was forthcoming and honest in his answer to the May 2022 SOR issued to him, aware that his doing so may result in his loss of a security clearance. (Item 2)

In Applicant's response to his first SCA in 2010, he disclosed his 2005 arrest for possession of marijuana and resisting arrest, as required. (Item 5). Ultimately dismissed and expunged from Applicant's record, he expressed embarrassment over this incident in his answer. He stated that he was hanging out with the wrong people and committed to staying away from marijuana. "I have not and will not make the bad decisions that put me in that situation again." In Applicant's March 2011 SCA he reiterated the same concerning his marijuana use on the 2010 SCA. (Items 4, 5)

In Applicant's response to FORM through counsel, he admitted that he felt sick and disappointed with himself for using marijuana again after he decide to stay away from marijuana. On the January 2010 SCA, he only reported the 2005 arrest for possession of marijuana and not the total use. (Item 6); and that he again reported inaccurately on his March 2011 SCA; and that he was granted a secret clearance and stated that he did not use marijuana at that time. He also indicated that he did not use marijuana for a period but then resumed use in mid-2014. He noted that his clearance was deactivated from February 2018 through April 2020. On his May 5, 2021, SCA, Applicant characterized all of his marijuana use as recreational and asserted that he ceased use from 2010 through 2014. (Item 3 and Item 6)

Applicant noted that he is the primary earner in his family and is engaged with the community. He coaches his son's baseball team and volunteers. (Item 6)

Under Guideline E, the SOR alleged that Applicant falsified material facts on his 2010 and 2011 SCA by deliberately failing to disclose the full use of his illegal use of marijuana that he illegally used for 20 years. SOR ¶¶ 2.a and 2.b. The SOR also cross alleged the information set forth in SOR 1.b and 1.d. Applicant admitted the E allegations and that he was intending to use marijuana in the future. (Item 2) He believes it does not affect his judgment or reliability and that the Government should not be concerned.

## **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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied 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 access to classified information will be resolved in favor of 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, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

## **Analysis**

### **Guideline H, Drug Involvement and Substance Misuse**

The security concern for this guideline is set forth in AG ¶ 24, where it is noted that the illegal use of a controlled substance, and the use of other substances that can 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. This is 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.

Applicant’s admissions establish that he used marijuana as alleged in the SOR for nearly two decades and while holding a security clearance. The record also establishes that Applicant used illegal drugs after being employed with a Federal contractor and after completing his earlier security clearance application; a 2005 arrest for marijuana possession; and Applicant’s statement that he would continue to use it recreationally. Applicant’s use of marijuana after he knew that his position with a federal contractor required him to refrain from using illegal drugs shows a reckless disregard for rules and regulations. This is sufficient to raise AG ¶ 25(a): any substance misuse, AG ¶ 25(c) illegal possession of a controlled substance, including ... purchase or sale; AG ¶

25(f) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse. The Government's substantial evidence, as provided by Applicant's admissions, thus raises security concerns under Guideline H. Therefore, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate related security concerns.

Under Guideline H, conditions that could mitigate security concerns arising from drug involvement and substance misuse are enumerated. The following mitigating conditions under AG ¶ 26 potentially apply to Applicant's case:

(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 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's last use of marijuana, an illegal substance, took place in 2020. He has just recently stated that he would abstain from marijuana use because it is a tangible threat to his security clearance. He believes his open and honest response to his 2021 SCA should prove that he is trustworthy. He argued that although he has been an active drug user for 20 years and is finally forthright, the Government should ignore the former illegal marijuana use. This does not mitigate his case. This conduct casts doubt about his judgment and reliability. I find that none of the mitigating conditions apply.

### **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.

Applicant admitted that he intentionally falsified his 2010 and 2011 SCAs regarding the extent of his drug use. In his answer to the SOR, he admitted each allegation, but believes they should be mitigated by his disclosures on his 2021 SCA, and that he now deserves a favorable determination. Applicant also stated that he

would continue his recreational use in his answer to the SOR. I find that Applicant intentionally falsified material facts on his March 2011 and January 2010 SCAs by deliberately minimizing his illegal drug use. He knowingly violated federal law and agency policy for his own personal benefit.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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.

Applicant provided false information because he feared he would lose a security clearance. He falsified two separate SCAs. He made no effort to correct the falsifications until his 2021 SCA because he did not want to lose his job and needed the security clearance. The offenses are not minor, and he believes now that he has answered questions accurately he should be rewarded with a security clearance. His lack of candor and inconsistent statements cast doubt on his reliability, trustworthiness, and good judgment. He has not presented sufficient evidence to mitigate the personal conduct concerns. Any doubts must be resolved in favor of the Government. I find none of the mitigating conditions apply in this case.

### **Whole-Person Concept**

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(d). The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record.

I have doubts as to Applicant's trustworthiness, judgment, and reliability. Any doubts must be resolved in favor of the Government. Under these circumstances, I find Applicant has not mitigated the security concerns raised under drug involvement and

substance misuse, nor under personal conduct due to intentional falsification of his 2010 and 2011 SCAs. Clearance is denied.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a -2.c:	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 a security clearance. Eligibility for access to classified information is denied.

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Noreen A. Lynch  
Administrative Judge