



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



In the matter of: )  
)  
) ISCR Case No. 20-02913  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel,  
For Applicant: Ronald C. Sykstus, Esq.

01/31/2023

**Decision**

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the security concerns involving drug involvement and substance misuse and personal conduct. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 11, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse) 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 responded to the SOR on February 18, 2021 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on April 5, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of video teleconference hearing on July 12, 2022, scheduling the matter for a virtual hearing on August 23, 2022. I convened the virtual hearing as scheduled.

At the hearing, I admitted in evidence, without objection, Government's Exhibits (GE) 1 through 4 and Applicant's Exhibits (AE) A through H. Applicant testified and called six witnesses, including his spouse. At Applicant's request, I kept the record open until October 13, 2022, for additional documentation. By that date, Applicant submitted documentation that I marked as AE I and admitted in evidence, without objection. DOHA received the hearing transcript (Tr.) on August 31, 2022.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. He is 44 years old, married, and he has two minor children. He has owned his home since 2009. (Answer; Tr. at 18-20, 76-79; GE 2-3)

Applicant graduated from high school in 1996. He attended a junior college in 2017 and then transferred to a four-year university, where he earned a bachelor's degree in computer engineering in 2002. He earned a master's degree in engineering management in 2005. He worked for a DOD contractor from 2002 to 2007. He then worked for three DOD contractors between 2007 and June 2018. Since then, he has worked as a computer engineer for another DOD contractor. He was first granted a security clearance in approximately August 2002. (Tr. 6-8, 19-23, 35-37, 40, 42; GE 1-3; AE G-H)

Under Guideline H, the SOR alleged that Applicant used and purchased marijuana, with varying frequency, from approximately 1995 to February 2015. (SOR ¶¶ 1.a-1.b) It also alleged that he used marijuana, in approximately May 2003, while granted access to classified information, and in approximately May 2013 and February 2015, while holding a public trust position. (SOR ¶¶ 1.c-1.d) Under Guideline E, the SOR alleged that he falsified his 2002 security clearance application (SCA), by failing to disclose his prior drug involvement. (SOR ¶ 2.a) It also alleged that he falsified his responses to section 23 of his July 2018 SCA, by failing to disclose his use and purchase of marijuana, and by failing to disclose his 2003 marijuana use while granted access to classified information, as set forth in SOR ¶¶ 1.a, 1.b, and 1.c, respectively. (SOR ¶¶ 2.b-2.d)

Applicant experimented with marijuana in high school; he used it approximately four times with friends. He used marijuana 10 times while in junior college, with friends or on his own. He significantly increased his marijuana use to almost daily upon joining a fraternity while attending university. He used marijuana with friends at parties and on his own. He and members of his fraternity also purchased marijuana from a fraternity member's friend, then sold the marijuana to their college friends. Sheriff's officers visited him while in college and confiscated "between a half and three-quarters of a bag" of marijuana from his dorm room. He cooperated with the officers and they did not arrest him. He left the fraternity, disassociated himself from his fraternity friends, and stopped selling marijuana in 1999. He also stopped using illegal drugs, with the exception of marijuana. He continued to use marijuana, decreasing his usage over time until he stopped in February 2002, six months before his graduation. (Answer; Tr. at 23-27, 38-41, 45, 64-68; GE 3-4)

Applicant completed his first SCA in May 2002. Although the 2002 SCA is not in evidence, he recalled completing it. He recalled the questions contained therein pertaining to drug involvement. He admitted to omitting his drug history. He had just graduated from college. He was 24 years old. He did not take the security clearance process seriously. His past drug use embarrassed him. He did not want to jeopardize his ability to obtain a security clearance by disclosing his drug history. (Tr. at 28-29, 40-41, 64; GE 4)

Applicant used marijuana again in May 2003. He was celebrating with friends on the eve of his wedding, and he smoked from a marijuana joint that his friends shared. He knew that he held a security clearance. He attributed this drug use to immaturity. (Tr. at 27-28, 41, 53-55, 68-69; GE 2-4)

In March 2007, Applicant completed a questionnaire for non-sensitive positions (SF85) to obtain eligibility for a public trust position. As of the date of the hearing, this was the only SF85 that he completed. Section 14 of that SF85 inquired only whether Applicant had used, possessed, supplied, or manufactured illegal drugs within the past year. Since he had not used illegal drugs in 2006, he truthfully answered that question. No one informed him that he had access to sensitive information after he completed the SF85. He did not believe he worked with sensitive information. He did not receive annual security training. He was unaware that he still had such access in 2013 and 2015. When he completed another SCA in June 2018, as further discussed below, he did so through the same website he used to complete his SF85. When he saw his completed SF85, he realized that he was likely granted access to sensitive information in 2007, and he estimated that he had such access for a period of between 10 to 15 years. (Tr. at 27-28, 42-44, 55-59, 65; GE 1-2, 4)

Applicant used marijuana again in May 2013 and February 2015, while he had access to sensitive information. In May 2013, he used marijuana on the eve of a friend's wedding, shared by friends of the wedding party. He used marijuana last in February 2015, while on vacation in Jamaica with his spouse. He smoked from a marijuana joint that beach-goers shared. He also purchased and smoked a marijuana joint, and he purchased and ate a marijuana brownie. As discussed above, he was unaware that he had access to sensitive information in 2013 and 2015. (Tr. at 27-28, 44-45, 51, 55-59, 69-71; GE 2-4)

Applicant completed another SCA in July 2018. Section 23 of that SCA inquired about his illegal drug use and illegal drug purchase within the last seven years, as well as any illegal drug use or drug activity while holding a security clearance. He knowingly falsified his responses when he marked "No" and failed to disclose his relevant use and purchase of marijuana, as well as his 2003 use of marijuana while holding a security clearance. He anguished over it for several weeks. He discussed it with his spouse. He sought advice from an attorney, who encouraged him to correct his falsifications. He decided that he did not want to repeat his falsifications every time he was re-investigated, and he was motivated to live by the advice he gives to his children to "be a man of their word and not lie." (Tr. at 29-37, 45-51, 59-64, 73-85; GE 2, 4)

In August 2018, Applicant notified his corporate facility security officer (FSO) that he omitted information on his 2018 SCA. As directed, he then notified his local FSO. He also notified one of his managers, who testified on Applicant's behalf as further discussed below, and this manager scheduled a meeting with his other managers. At this meeting, he informed his managers that he "omitted some information off of my [SCA] and so we talked it over." He disclosed information regarding his drug use and his drug use while holding a security clearance. They chose to retract his 2018 SCA, with the understanding that he would complete another SCA in which he would disclose his drug involvement. An authorized DOD background investigator did not interview him in 2018. (Tr. at 29-37, 45-51, 66, 73-76; GE 2-4; AE I)

Applicant has no regrets about coming forward, stating:

So, I'm falling on the sword trying to correct the record. I feel like I cleansed my soul. I can look back at my kids with a pure heart and a clean conscience knowing that I did the right thing. I obviously messed up, I don't deny that and I'm fixing the record to my personal detriment financially and professionally. But I feel supported by my colleagues, my friends, and my neighbors.

(Tr. at 36)

Applicant completed a third SCA in March 2019. He disclosed all of his prior drug involvement, as discussed above. He was candid about his drug involvement during his subsequent interview by a background investigator in June 2019. He has no future intentions to use illegal drugs. He stated that he has matured and he no longer socializes with individuals who use or sell drugs. If he were to find himself in an environment where drugs are present, he stated that he would remove himself from the situation. His spouse is aware of his past drug involvement. He wants to continue to be a role model for his children, respected by his peers and managers, and an active member of his community. (Tr. at 64, 71-72, 76-85; GE 3-4; AE F)

Applicant is subject to random drug testing by his employer. As of the date of the hearing, his employer had not yet selected him to report for such a test. He stated that he voluntarily submitted to several drug tests through his doctor, and that he tested negative for illegal drugs. In 2019, he provided the background investigator with two urinalysis tests administered in January 2018 and May 2018 reflecting that he tested negative for illegal drugs. (Tr. at 51-53; GE 4)

All of Applicant's witnesses were aware of the SOR allegations, and they vouched for Applicant's trustworthiness, integrity, reliability, and judgment. One witness, a department head for a U.S. Government agency who has held a security clearance since 2007, has known Applicant since 2019. He referred to Applicant as a respected subject-matter expert and his "go-to guy." Another witness, who has worked for the same company as Applicant for 27 years, and who has held a security clearance for 20 years, testified that he has known Applicant since 2018. The witness testified that Applicant served under his supervision from 2018 to 2022, and the witness was one of the

managers to whom Applicant disclosed that he had falsified his 2018 SCA. The witness scheduled the meeting in August 2018 with Applicant and his other managers. The witness described Applicant as an excellent employee. Another witness who testified and provided a letter of support was a retired U.S. Government civilian. This witness never held a security clearance. This witness met Applicant in 2007, when Applicant was hired as a contractor for the agency in which the witness worked. When the witness served as a branch chief in 2012, he oversaw Applicant's work assignments until 2018. He described Applicant as an outstanding colleague with exemplary work ethic and performance. A neighbor, close friend, fellow youth sports coach, and a lieutenant colonel in the U.S. Air Force Reserve who also provided a letter of support, described Applicant as a conscientious individual, willing to admit and correct his mistakes. (Tr. at 76-165; GE 4; AE F, I)

Applicant also provided letters of support from four individuals who attested, in 2018, to his trustworthiness, integrity, reliability, and judgment. One individual, who served as the chief operating officer for a defense contractor and who hired Applicant in 2014, attested to Applicant's exemplary performance. Another individual, an Information Technology Branch Chief who has known Applicant since 2013, stated that he granted Applicant elevated user privileges as a computer engineer. This individual stated that Applicant never once abused his heightened privileges, and this individual would not hesitate to provide Applicant with the same level of access in the future. Two neighbors, one of whom was a fellow youth sports coach and the other, a family friend for more than 30 years, described Applicant as a conscientious individual, willing to admit and correct his mistakes. Performance evaluations from 2018 to 2021 reflect that Applicant's employer rated him favorably, noting that he is a strong performer who has demonstrated high levels of leadership. He is an active member of his community. (GE 4; AE A-F)

### **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(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."

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 Exec. Or. 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 Exec. Or. 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 for drug involvement and substance misuse is set out in 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 notes the following applicable conditions that could raise security concerns under AG ¶ 25:

- (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 used and purchased marijuana from approximately 1995 to 2015. He used marijuana in 2003 while granted access to classified information. He also used marijuana in 2013 and 2015, while holding access to sensitive information. AG ¶¶ 25(a), 25(c), and 25(f) are established.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided under AG ¶ 26. The following are potentially 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; and

(2) changing or avoiding the environment where drugs were used.

I find that AG ¶¶ 26(a), 26(b)(1) and 26(b)(2) are established. Applicant testified that he had no intention to use or purchase illegal drugs in the future. He no longer socializes with individuals who are involved with illegal drugs. If he were to find himself in an environment where drugs are present, he stated that he would remove himself from the situation. The record evidence resolves doubts about Applicant's reliability, trustworthiness, and judgment. I found Applicant to be candid and credible at the hearing. He has taken responsibility for his past drug involvement.

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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

(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 . . . .

Applicant displayed untrustworthiness, questionable judgment, and unreliability when he chose not to list his illegal drug involvement on his 2002 and 2018 SCA's, to include his illegal drug use in 2003 while possessing a clearance. AG ¶¶ 16(a) and 16(e)(1) are established.

I have considered all of the mitigating conditions under ¶ AG 17 and considered the following relevant:

(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 was young and immature when he first applied for a security clearance in 2002. He acknowledged that he failed to take the security clearance process seriously when he completed his 2002 SCA and failed to disclose his past drug involvement. He self-reported his falsification on his July 2018 SCA, as well as the underlying information about his past drug involvement, to his FSO and managers in August 2018. He also disclosed this information to his spouse, friends, and colleagues. He made such disclosures because he sought to take responsibility for his falsifications and his past drug involvement. He then disclosed his past drug involvement on his March 2019 SCA. He was remorseful and understood the severity of failing to properly disclose his drug use on his previous SCAs. I find that ¶¶ AG 17(a), 17(c), 17(d), and 17(e) are established.



## **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 my whole-person analysis. I had the opportunity to observe Applicant's demeanor during his hearing and found that he was credible, candid, and remorseful. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns involving drug involvement and substance misuse and personal conduct.

## **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
Subparagraphs 1.a - 1.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.d:	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 grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge