



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



In the matter of: )  
)  
) ISCR Case No. 22-00727  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Bryan Olmos, Esq., Department Counsel  
For Applicant: *Pro se*

04/25/2023

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse and Guideline E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 8, 2022, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse and 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on September 14, 2022, 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), and Applicant received it on November 8,

2022. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 5. (Item 1 is the SOR.) Applicant did not object to any of the exhibits and they are admitted in evidence. Applicant provided a response to the FORM. It is marked as Applicant Exhibit (AE) A and is admitted without objection. The case was assigned to me on January 27, 2022.

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b and 2.b. He denied the SOR allegation in ¶ 2.a. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 28 years old. He is unmarried and has no children. Since July 2018, he has cohabitated with another. He earned a bachelor's degree in May 2017 and has worked for his present employer since July 2017. He completed a security clearance application (SCA) in May 2018 and was granted a security clearance in October 2018. (Item 3)

Applicant disclosed in his May 2018 SCA that he used marijuana from about September 2009 to January 2012, primarily while attending high school. He began using it weekly and then daily by the time he said he stopped using it. He purchased the marijuana he used. He disclosed that his use negatively impacted his productivity, which is why he stopped. He also noted that he loved his job and wanted to keep it. (Item 3)

In September 2020, Applicant completed a new SCA. He disclosed that in November 2018 the following occurred.

On my first trip to California, I legally purchased items containing THC from a dispensary with the intent of traveling across state lines via airplane and distributing it as gifts to my friends when I returned home to the state of [X], where recreational THC was also legal at the time. (Item 4)

He further stated in his September 2020 SCA: "I was asked to bring souvenirs back from my trip, I thought of the items containing THC as a 'gag gift.'" He said in his SCA, "This was trafficking THC products from one legal state to another legal state but traveled on U.S. airlines across state lines which I believe makes this event illegal." (Item 4)

In October 2020, Applicant was interviewed by a government investigator. He explained that in November 2018 he purchased THC edibles and multiple THC vaporized cartridges. He explained his purchase was one time, and he never used any of the THC products. He stated that his first involvement was in November 2018 and his last involvement with THC was in November 2018. He told the investigator that he thought it would be okay to purchase it because it was legal. He told the investigator that he did not realize it was illegal to transport THC on an airplane, and he only recently found this out. He admitted to the investigator that he was aware purchasing THC was against the rules,

regulations, and procedures while possessing a security clearance. When asked why he decided to purchase the THC, he explained that he did not think he would be reinvestigated for ten years. Applicant was asked by the government investigator about other drug involvement, and he said he had never used THC and cannot comment on how drugs affect his behavior. Applicant did not disclose his 2009 to 2012 marijuana use to this investigator during this interview.

Applicant was re-interviewed by a government investigator on November 12, 2020. He was asked to clarify his statement from his October 2020 interview where he explained the reason he purchased the THC while holding a security clearance was because he did not think he would be reinvestigated for ten years. He admitted he was aware it was a violation of rules, regulations, and procedure to purchase THC products while possessing a security clearance. He told the investigator that he knew that he could not purchase any illegal drug or have any involvement with illegal drugs while holding a security clearance. He said that when he saw the THC products while in California, his thought process was they were legal in California and legal in the state where he had a layover and legal in the state where he was going, so he thought it would be okay to purchase THC as gag gifts for his friends. He said that the latter part of his thought process overtook the part of him holding a security clearance at the time. He acknowledged that he made a poor and wrong choice, and it would not happen again. (Item 5)

Government interrogatories were sent to Applicant, and he was provided a summary of his interviews with government investigators. In June 2022, he made several changes to the summary before indicating it was an accurate reflection of his interview. He did not correct the record or provide an explanation about his failure to disclose to the government investigator his prior drug use from 2009 to 2012.

In Applicant's answer to the SOR, he admitted his marijuana use from 2009 to 2012 and that he purchased marijuana in November 2018. He stated: "I did something that I was absolutely not supposed to do and that it was dumb and dangerous." (Item 2) Applicant denied that he failed to provide accurate information to the investigators. He said, "At no point did I believe the information I had reported on a previous e-QIP for an incident that had occurred more than 7 years prior to the current investigative process was relevant to the investigation." He further stated, "At no point did I falsify any information because I accurately reported that I could not comment on how drugs affected my behavior as my body and mind had matured in the 8 years since the previous incident." He also said, "I had tried to ask the interviewer to elaborate so that I could more accurately understand the scope of what he was asking, as I believed it was a trick question designed to get a response contradicting the incident in subparagraph 1.b, which I was just questioned about." (Item 2)

Applicant never referenced his inability to understand the question that the investigator was asking during his previous interviews. He also did not address his inability when he reviewed his summary of interviews that were provided as part of his interrogatories. (Item 5)

In Applicant's response to the FORM, he said that he answered the questions posed in the interrogatories about the accuracy of the information. He said, "At no point was there a question asked to elaborate on responses given, I was simply asked to correct anything the investigator may have reported incorrectly." He also noted that there was a place to put additional information regarding the matters discussed during the interview. He said:

I did not immediately think to recall how I felt answering each question during the long and intensive interview. Instead, I opted to mention an address change as I have moved nearby at some point during the adjudicative process. Even if I thought that this is what the "additional information" was referencing, I would not begin to understand the scope being asked. . . ." (AE A)

Applicant's FORM response notes that when he completed his 2020 SCA he did not report his 2009 to 2012 drug use because it was outside the seven-year time frame. He decided that because the drug use was outside the seven years he did not have to disclose it in his 2020 SCA or during his subsequent investigative interview. Applicant said he did not falsify material facts during his October 2020 subject interview. He did not provide an explanation for why when he was specifically asked by the investigator about his prior drug involvement, he said he had never used THC and he could not comment on how drugs affect his behavior.

Applicant further stated that "at no point did I contradict any of what was previously reported." He emphasized that he had self-reported the 2018 purchase and transportation of THC, which is indicative of his honesty. He said he has been cooperative, and he is trustworthy. He said he is aware that his conduct was "dumb and dangerous" and made him vulnerable to exploitation and there is not an excuse for his actions. He believes he is trustworthy because he self-reported his purchase and transportation of THC. He indicated this was an isolated incident. He has not been involved in any security violations. He said he is praised for his work performance.

I do not find Applicant's statements and explanations credible. I find he deliberately falsified material facts during his personal subject interview on October 10, 2020, with an authorized investigator with the Department of Defense when he stated he had never used THC and could not comment on how drugs affected his behavior.

Applicant stated in his FORM response the following:

I take my job and national security very seriously. At work I have been praised numerous times for my performance on my project that involves classified information. The information that I am in charge of is invaluable to the nation and our treaties with foreign nations which I take great pride in. At no point have I ever been involved in any sort of leak, and I make sure all information I work with is stored and transferred correctly. I have previously been involved with locking up closed rooms which involved doing

sweeps for any materials that were improperly stored and they've always been thorough with no incidents to date. (AE A)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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. Instead, 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 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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

The security concern relating to the guideline 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant frequently used marijuana from 2009 to 2012 while in high school. In November 2018, after being granted a security clearance in October 2018, Applicant knowingly purchased, possessed, and transported on a U.S. airline traveling cross country THC from one state to another and provided it as a gift for his friends. He stated he was aware the transportation on a U.S. airline cross country likely violated state law. His purchase, possession, and transportation of THC violated federal law. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising under the drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 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 . . .

There is no evidence Applicant used marijuana since 2012. It has been more than 11 years since his last use, and it is unlikely he will use it in the future. I find AG ¶¶ 26(a) and 26(b) apply to his past marijuana use.

Applicant made a conscious decision to purchase, possess, and transport THC on a plane where he flew cross country and then distributed it as a gift to friends in violation of federal law. This occurred a little more than a month after being granted his first security clearance. He was on notice when he completed his May 2018 SCA that the possession, purchase, and transportation of marijuana violated the rules and regulations he was bound to follow while holding a security clearance. He clearly stated in his September 2020 SCA that “[t]his was trafficking THC from one legal state to another legal state but I traveled on U.S. airlines across state lines which I believe makes this event illegal.” (Item 4) He also told the government investigator that he was aware his actions were against rules and regulations for those holding a security clearance. Applicant stated in his response to the FORM that he has actual access to classified information and the importance of his work and securing material, which makes his conduct more egregious. Applicant’s behavior was infrequent and happened in 2018, but it did not happen under unique circumstances. To the contrary, he was well-aware of his choice and when asked by a government investigator why he did it, he said that he did not think he would have a reinvestigation for his security clearance for another ten years, which raises a concern about his thought process in attempting to manipulate the security clearance adjudication process. His behavior casts doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions do not apply.

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

AG ¶ 15 expresses the security concern for 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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

(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; and

(e) personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress b a

foreign intelligence entity or other individual group. Such conduct includes:  
(1) engaging in activities which if known, could affect the person's personal, professional, or community standing.

Applicant told the government investigator when he was interviewed in October 2020 that he had never used THC and did not know how it would affect him. He did not disclose his prior drug use. Applicant claimed because he previously disclosed his prior drug use on his May 2018 SCA, he did not think it was relevant to the investigator, and he did not believe he had to disclose it. I did not find his explanations credible. I have considered that he self-disclosed his purchase, possession, and transportation of THC in November 2018 in his September 2020 SCA. Applicant was aware he was violating rules, regulations, and procedures by purchasing THC while holding a security clearance. I find the above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(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 did not make a prompt good-faith effort to correct his falsification. He was first interviewed in October 2020. He was reinterviewed in November 2020. In June 2022, he was provided a copy of a summary of his interviews. He did not make any relevant corrections or attempts to clarify any misunderstanding. Applicant's conduct in knowingly purchasing, possessing, and transporting THC across the country in a plane shows a serious lapse in judgment. When questioned why he would do this, his response was because he did not think he would be reinvestigated for ten years, which essentially is saying he did not think he would get caught. He did disclose the information in his September 2020 SCA, but then later provided false information to the investigator. It is not for Applicant to make a determination as to what information is relevant or not. His only responsibility is to answer the questions honestly, which he did not. His actions were not minor and did not happen under unique circumstances. Being truthful is at the heart of the security clearance adjudication process. The above mitigating conditions do not apply.

### **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 the 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.

Applicant has not met his burden of persuasion. The record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H, drug involvement and substance misuse, and Guideline E, 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.b:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge