



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



In the matter of:)	
)	
)	ISCR Case No. 22-01333
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

07/28/2023

Decision

WHITE, David M., Administrative Judge:

Applicant used marijuana with varying frequency from 2004 to 2018. He falsified his 2018 security clearance application by denying his illegal drug use and continued using marijuana after receiving a clearance until confronted with a polygraph test in 2021. Resulting security concerns were not mitigated. Based upon a review of the record as a whole, national security eligibility for access to classified information is denied.

History of Case

On July 22, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued 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 Security Executive Agent Directive (SEAD) 4 National Security Adjudicative Guidelines (AG), which came into effect on June 8, 2017.

Applicant submitted his written Answer to the SOR on August 8, 2022. He admitted the SOR allegations in SOR ¶¶ 1.a, 1.b, 2.a, and 2.b, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on December 1, 2022. DOHA issued a Notice of Hearing on December 13, 2022, setting the hearing for January 26, 2023. On that date, Department Counsel offered Government Exhibits (GE) 1 through 4 into evidence. Applicant testified, but offered no documentary evidence. All exhibits were admitted without objection. I granted Applicant's request to leave the record open until February 15, 2023. for submission of documentary evidence in mitigation. Applicant timely submitted a statement of intent and five character-reference letters, which I marked Applicant's Exhibits (AE) A and B and admitted without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on February 3, 2023.

Findings of Fact

Applicant is 36 years old. He recently married, for the first time, and has no children. He earned a high school diploma in June 2005 and a Computer Support Technician Certificate from a technical college in May 2015. He began his current employment as a computer network support technician with a major defense contractor in August 2014, and has held a security clearance since 2018 in connection with that work. He never served in the military or held a Federal civil service position. (GE 1; Tr. 7-8, 25-28.)

On May 24, 2018, Applicant submitted his initial Electronic Questionnaires for Investigations Processing (e-QIP) to apply for a security clearance that he needed to move into a position involving access to classified information. As alleged in SOR ¶ 2.b, he responded, "No," to the question in Section 23 asking, "**In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance.**" He was granted a final Secret clearance by the DoD CAF in August 2018. (GE 1; GE 4, Tr. 27-30.)

In early 2021 Applicant decided to improve his potential employment opportunities by applying for a part-time second job with a government agency (GA). The job required a Top Secret clearance. He was not asked to submit another e-QIP, but underwent an enhanced background investigation. During his initial interview during May 2021, he told the GA investigator that he had not used illegal drugs, including marijuana. He was then scheduled to take a July 2021 polygraph test. During the pre-polygraph interview on the test date, he admitted that he had smoked marijuana. The details of the investigation by the GA were not entered into this record. However, Applicant confirmed that he first disclosed his previous use of marijuana to security officials during that July 2021 interview. Due to the resulting security concerns, the GA denied him a clearance and did not hire him. (GE 2; GE 3; Tr. 24, 29-31, 47-49.)

After he confessed his drug use to the GA in July 2021, he told his full-time employer's security officer (FSO) about his previously undisclosed drug use. That security officer directed him to complete another e-QIP, in which he wrote that he had used marijuana between April 2004 and May 2021 in the form of THC candy consumption or smoking. He said this was "very very infrequent" and occurred a total of approximately 20 times. This information was forwarded to the DoD CAF, for its consideration whether his DoD Secret clearance should be revoked. During an interview with an investigator from the Office of Personnel Management (OPM) on March 28, 2022, he reiterated that he smoked marijuana approximately 20 times during the reported dates, but said that he had difficulty providing an accurate approximation. He said that he never purchased marijuana, but used it "at parties and sometimes after work," and that he had not sought professional counseling or treatment for marijuana use. His testimony during the hearing was broadly consistent with these assertions. (GE 2; GE 3; Tr. 31-34.)

Applicant testified that his most recent period of marijuana use occurred during the COVID-19 pandemic, when he started a second job moonlighting in a bar and restaurant. He worked there from October 2020 until May 2021. He said he and friends from that employment would go out after the bar closed to share marijuana at parties. His description of this activity portrayed a regular pattern during this seven-month period. He claimed that these marijuana parties took place on days when the bar closed earlier in the evening, rather than on the nights when it closed in the early morning hours. However, he also said that he did participate when he had to work the next morning at his weekday job with the defense contractor. It is unusual that the bar where he worked would have closed early on Friday and Saturday nights, but after midnight on Sundays through Thursdays preceding his workdays. Those incongruent assertions raise significant credibility issues, as do his repeated and vague minimizations in describing his drug-use history while holding and seeking to upgrade his security clearance. (Tr. 35-40, 45-47.)

In his 2021 e-QIP, Applicant said that he was "in search for a drug awareness class." In response to DOHA interrogatories he said, "I have research [sic] some drug improvement class, but was unaware which one would fit the [GA] criteria." During his hearing testimony he said that he had not attended any such programs. He described his continuing use of marijuana until May 2021 as, "a bad choice in judgement," "a bad choice," and "a lapse in judgement." He further stated that he is, "committed to not taken [sic] any more substance," and "there will be no further use after incident." He no longer parties with his former coworkers from the bar. The record contains no evaluation from a doctor or other medical professional assessing the level of Applicant's drug abuse, or expressing a prognosis for future abstinence. (GE 2; GE 3; Tr. 38, 45.)

Applicant testified that, while applying for his initial security clearance with the defense contractor, he intentionally falsified his 2018 e-QIP because he knew that an honest disclosure of his recent marijuana use would reduce his chances to obtain the job and a security clearance. He also testified that he knew his marijuana use was illegal at the time. As noted above, he initially attempted to deceive the GA investigators concerning his ongoing marijuana use again in 2021, but admitted it when he was confronted with taking a polygraph examination. (GE 1; GE 3; Tr. 29-31, 42-44.)

Applicant also provided a post-hearing written statement of intent and “agreement to not engage in any marijuana and any other drugs use while contracted for the US Federal Government.” He also agreed “to abide by all laws, rules and regulations pertaining to marijuana use.” (AE A.)

Applicant’s parents and sister wrote letters describing him as enthusiastic, ambitious, persistent, and a great leader who learns from his mistakes and takes charge to come up with different ways to accomplish tasks. His manager wrote that he always works hard, operates in an ethical manner, performs at a very high level, and has a supportive loving family. Applicant’s wife describes him as “a reliable, trustworthy, straightforward, honest man.” She said he has “always abided by the protocols and procedures of his work, taking classification seriously, never sharing private information, and always stepping in to help his coworkers.” She said, “His integrity is extremely important to him and others recognize him for it.” (AE B.)

Policies

When evaluating an applicant’s national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, each guideline lists potentially disqualifying and mitigating conditions. 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 AG ¶ 2 describing the adjudicative process.

The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(b) and 2(c), the entire process is a conscientious scrutiny of several variables known as the whole-person concept. The administrative judge must consider all available, pertinent, and reliable information about the person, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for national security eligibility 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. I have avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states, “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for national security eligibility seeks to enter 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 eligibility for access to classified information or assignment in sensitive duties. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of protected information.

Section 7 of EO 10865 provides, "Any determination under this order adverse to an applicant shall be a determination 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 concerns under the guideline for drug involvement and substance misuse are 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.

AG ¶ 25 describes two conditions that could raise security concerns and may be disqualifying based on the SOR allegations in this case:

(a) any substance misuse (see above definition); and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant admittedly used marijuana with varying frequency from April 2004 to May 2021. His use included multiple occasions after August 2018 when he was granted national security eligibility and began working with classified information. This establishes security concerns under ¶¶ 25(a) and (b). Accordingly, the burden to mitigate these concerns shifts to Applicant.

AG ¶ 26 provides two conditions that could mitigate the drug-related security concerns raised in this 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 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.

In my analysis, I have taken administrative notice of the Security Executive Agent (SecEA) *Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position*, dated December 21, 2021. In her *Guidance*, the SecEA noted the increased number of states that have legalized or decriminalized the use of marijuana. She reaffirmed the 2014 SecEA memorandum regarding the importance of compliance with Federal law on the illegality of the use of marijuana by holders of security clearances. She provided further clarification of Federal marijuana policy, writing that this policy remains relevant to security clearance adjudications, “but [is] not determinative.” She noted that the adjudicative guidelines provided various opportunities for a clearance applicant to mitigate security concerns raised by his or her past use of marijuana.

Viewed in the context of the whole person, Applicant failed to mitigate the security concerns raised by marijuana use from his junior year of high school through May 2021, when he was confronted with a pending polygraph examination likely to reveal his persistent false denials of this drug abuse some three years after his initial clearance. He knew that his drug involvement was both illegal and contrary to security policies, yet it continued due to his admitted bad choices and lapses in judgment. He claims to have no intention to use in the future, and to have stopped associating with his friends in the places where they used drugs. However, only his self-serving statements support these assertions, which were not addressed by the friends and family members who wrote letters on his behalf. His admitted long history of drug abuse ended only two years ago, and only when he was faced with a polygraph examination.

This evidence does not establish that drug abuse is unlikely to recur, and it casts continuing doubt on Applicant's current reliability, trustworthiness, and judgment. Substantial mitigation under AG ¶¶ 26(a) and 26(b) was not established. Other potential mitigating conditions are inapplicable in the absence of prescription drug abuse or any evidence of drug treatment.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns 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 the national security investigative or adjudicative processes.

AG ¶ 16 describes two conditions that could raise security concerns and may be disqualifying under the facts alleged in the SOR:

(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 deliberately falsified his 2018 e-QIP concerning his use of marijuana with varying frequency since 2004, because he knew it to have been illegal and detrimental to obtaining his national security eligibility. He admits that he intended to conceal this information. He also attempted to conceal his continuing drug abuse after obtaining a clearance when he applied to the GA in 2021, because he admittedly knew that it would negatively affect his personal and professional standing. The record evidence clearly establishes "special interest" security concerns under AG ¶¶ 15, 16(a), and 16(e).

AG ¶ 17 includes three conditions that could mitigate the security concern arising from Applicant's personal conduct:

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant provided insufficient evidence to establish mitigation under any of the foregoing conditions. He finally admitted the falsification in 2021 when confronted with the GA polygraph examination, but this was neither a prompt nor a good faith effort to correct the concealment that he had attempted to continue earlier that year. He only confessed to his company FSO after the GA denial of his clearance became a matter of record, which was not the type of "positive step" that would demonstrate trustworthiness or significantly reduce vulnerability. Applicant's falsification and concealment were not minor offenses. They occurred over a recent three-year period, and under circumstances that were not unique. He engaged in purposeful deception concerning information that he knew to have security significance, in order to pursue what he perceived to be his self-interest. His conduct casts continuing doubt on his reliability, trustworthiness, and judgment.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is a mature adult, who intentionally attempted to conceal his past drug abuse, failing to demonstrate either rehabilitation or accountability for his misuse of marijuana before and during the time he was granted a security clearance. He failed to convincingly demonstrate his intention to

abstain from further substance misuse. He provided insufficient evidence of his trustworthiness, responsibility, and willingness to comply with rules and regulations. The potential for pressure, exploitation, or duress remains undiminished. Recurrence of substance misuse is not unlikely given his history.

Overall, the evidence creates significant doubt as to Applicant's eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising under the Drug Involvement and Substance Misuse and the Personal Conduct guidelines.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant or continue Applicant's security clearance. National security eligibility for access to classified information is denied.

DAVID M. WHITE
Administrative Judge