



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



In the matter of:)	
)	
)	ISCR Case No: 22-00472
)	
Applicant for Security Clearance)	

Appearances

For Government: Daniel P. O’Reilley, Esq., Department Counsel
For Applicant: Anita Gorecki-Robbins, Esq.

10/02/2023

Decision

HESS, Stephanie C., Administrative Judge:

Applicant has not mitigated the Guideline E (Personal Conduct) security concerns raised by his intentionally false statements during his 2021 and 2019 background investigations. He has also failed to mitigate the and Guideline H (Drug Involvement and Substance Misuse) security concerns raised by his recent marijuana use while holding a security clearance. Access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on February 26, 2021. On April 27, 2022, the Department of Defense (DOD) sent him a Statement of Reasons (SOR), alleging security concerns under Guidelines E and H. The DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6 (Directive), *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended; and the adjudicative guidelines effective (AG) June 8, 2017.

Applicant answered the SOR requested a decision on the record without a hearing. Defense Office of Hearings and Appeals (DOHA) Department Counsel submitted the Government’s written case and on August 12, 2022, a complete copy of the file of relevant

material (FORM), which included Government Exhibits (GX) 1 through 4. Upon receipt of the FORM, Applicant elected to retain counsel and requested that his case be converted to an in-person hearing. Applicant's counsel entered her appearance on September 6, 2022, and reaffirmed Applicant's request for an in-person hearing. On September 8, 2022, Department Counsel submitted a memorandum to the Defense Office of Hearings and Appeals' (DOHA) administrative department requesting that the FORM be converted to a hearing.

Department Counsel was ready to proceed on September 12, 2022, and the case was assigned to me on April 27, 2023. On June 21, 2023, DOHA notified Applicant that the hearing was scheduled for July 20, 2023. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 4 were admitted into evidence without objection. Applicant testified and Applicant's Exhibits (AX) A through G were admitted without objection. DOHA received the transcript (Tr.) on July 27, 2023.

Procedural Issue

On September 12, 2022, Department Counsel amended the SOR to include ¶ 2.c, which alleges that Applicant falsified his October 2019 e-QIP by failing to disclose his marijuana use within the past seven years. The amended SOR required Applicant to circle either "admit" or "deny" and initial beside his response. Applicant circled "admit." He also attached a response to the SOR and the amended SOR wherein he admitted the three Guideline E falsification allegations but denied that his failure to disclose the information was intentional.

Findings of Fact

Under Guideline H, the SOR alleges that Applicant used marijuana with varying frequency from approximately May 2016 to December 2018 and that he used marijuana in about October 2020 while granted access to classified information. He admits each of these allegations. Applicant's admissions are incorporated in my findings of fact.

Under Guideline E, the SOR alleges that Applicant falsified his February 26, 2021, e-QIP by intentionally failing to disclose his marijuana use in about October 2020; by intentionally failing to disclose his 2020 marijuana while possessing a security clearance; and that he falsified his October 1, 2019, e-QIP by intentionally failing to disclose his marijuana use from approximately May 2016 to December 2018.

Applicant, 26, is a senior information technology consultant currently employed by a defense contractor since November 2019. He received his bachelor's degree in May 2019. (GX 3.)

Applicant completed his first e-QIP in 2019. He answered "No" to the question that asked if he had used any illegal drugs or controlled substances in the last seven years. He was granted a secret security clearance in November 2019. (GX 3; GX 4.)

On his February 2021 e-QIP in response to the same question about his drug use in the last seven years, Applicant stated that he used THC (marijuana) “less than three times in college” and listed his dates of use as May 2016 (estimated) to December 2018. When asked to provide an explanation of why he did not intend to use marijuana in the future, Applicant stated “I will/have not been using this drug prior to my initial employment due to security clearance regulations that THC is an illegal substance per governmental law.” (GX 1.)

On March 23, 2021, Applicant underwent a personal subject interview (PSI) as part of his background investigation. He verified the investigator’s summary of the interview in response to DOHA’s interrogatories on April 6, 2022. During his PSI, Applicant told the investigator the information on his February 2021 e-QIP was accurate except that he also used marijuana one more time in October 2020 while possessing a security clearance. He stated that he did not know why he did not list this most recent use. He then stated he “did not report this most recent use to his organization because he did not know what the repercussions would have on his job status.” He further stated that he “wasn’t told what the reporting requirements were and was therefore not sure if he would be required to report his use to his organization.” (GX 2.)

In his answer to the amended SOR, Applicant stated:

In 2019, I completed an e-QIP for my first professional job. It was the first time I had applied for a security clearance. I did not disclose that I had used marijuana between 2016 and 2018. . . . I blame my own omission on my ignorance of the process as well as my failure to pay attention to detail when completing such forms. At the time, I did not fully understand the significant consequences my actions could have on my future and my ability to progress in my chosen field. I did not receive an in-brief at my new job explaining the e-QIP process and the pitfalls.

From 2016 to 2018, I was in my first few years of college, and I used marijuana with friends. I was young and immature and not thinking about how my decisions could negatively impact my future. The use was infrequent and never resulted in anyone questioning my judgment, character, or reliability.

Applicant further stated, “the 2020 use was an outlier and not consistent with my behavior and 2020.”

I was put in for a higher level fill out another e-QIP when I completed the e-QIP on February 26, 2021, I unintentionally omitted my use of marijuana in October 2020. . . . During my interview with the investigator, I realized I had omitted the 2020 use when completing the e-QIP and I reported it. I did so because my failure to include the information on the form was an oversight. It was not intentional. . . .

During his testimony, Applicant stated:

And when it came to the marijuana section, I mean at the time I was right out of college, I was scared if I were to say yes or no. What does that mean if I were to get rejected? That's a huge impact on my job, right. So I think not understanding the process and being truthful in your answers, no matter what that is if it's going to negatively impact you are not a thing that's really the main thing. (Tr. 23.)

So during the time, so my interview, if I recall, was back in 2021. And during the time, I was answering all the questions... And she asked if I recall doing marijuana. Have I ever done it? And I was, like, yes. I have done it in 2016 and 2018, throughout college, very briefly, periodically. I was, again, I was a college student. . . . I was very busy all the time, but I say I maybe did it twice a year. (Tr. 24.)

So that's something that I, looking back on, if I were to go and resubmit the form again, no matter what I've done, parking tickets, if I've gotten arrested, you have to put it on there. You can't lie about that. Because there's always ways to find that out, whether it's in the court or if there sifting through your friends. There's always ways to find things. So I think it's just the right thing to do, is just be honest and truthful. (Tr. 25.)

During cross-examination, the following exchange occurred:

DEPARTMENT COUNSEL: When you completed your first e-QIP in October of 2019, you did not disclose your marijuana use while in college.

APPLICANT: Yes, sir.

DEPARTMENT COUNSEL: And you're saying it's because you breezed through the form and missed the questions about that?

APPLICANT: Breezed through the form and then just being nervous about submitting the, well, if I were to say yes, I had smoked marijuana from 2016 to 2018 when I graduated, I would be scared of that. That was going to impact my ability to obviously move from [my former state of residence], and start a new life, and working in this field, so yes.

DEPARTMENT COUNSEL: Okay. So you chose not to include that information, because you were concerned it would affect your chances of getting a job?

APPLICANT: Yes, sir. (Tr. 39.)

While holding a security clearance, Applicant used marijuana in October 2020 while attending a party:

APPLICANT'S ATTORNEY: So even at the party, did you realize how stupid you were?

APPLICANT: Yes. So admittedly I took a couple of hits of it, and I immediately realized – and I jumped, what are you doing? Why are you doing this? So I immediately removed myself from the situation. There was [sic] people that were around me that they were mutual friends or friends of friends. And I was, like, why am I doing this? Like, if I were to get caught, or if somebody were to find out about this, that's not good. (Tr. 26.)

When asked by Department Counsel if he was aware that holding a security clearance meant that he could not use marijuana or other illegal substances, Applicant stated, "I did understand that, to be honest, at the time. I did." (Tr. 42.)

The following exchange regarding Applicant's failure to disclose his October 2020 marijuana use while holding a security clearance on his 2021 e-QIP occurred during cross-examination:

DEPARTMENT COUNSEL: And this form was filled out February 2021.

APPLICANT: Yes, sir.

DEPARTMENT COUNSEL: Approximately four months after you used marijuana at the party.

APPLICANT: Yes, sir.

DEPARTMENT COUNSEL: You did not list that marijuana use on this form. Why not?

APPLICANT: Again, I'd say it's negligence, the process, and being afraid of what the ramifications would be if I were to say yes on this occurrence in October that I did use marijuana for -- I did use marijuana.

So again, like I've said before, being not mature to the process, not understanding the ramifications I would have behind that if I were to submit fictitious or false information, or hide the information, what it would have on my career.

So going back, if I were to go back, if I had the ability, I would say yes, absolutely, I did do that.

Because again, I think with the maturity and where I'm at now in understanding the process, that is my due diligence, and that's the right thing to do. But that's my response, sir.

DEPARTMENT COUNSEL: So just so you understand, we want to know if your omission of that fact was deliberate or intentional. And it sounds like it was deliberate that you, on purpose left that information off of this form. Is that correct?

APPLICANT: Yes, sir.

DEPARTMENT COUNSEL: So your claims of making mistakes, or being negligent in filling out this form, aren't really accurate, then.

APPLICANT: I wouldn't say that.

DEPARTMENT COUNSEL: Well, we discussed earlier, the first form you filled out, the first clearance you filled out, you didn't list the information about your college drug use, because you were afraid you would get the clearance. Is that right?

APPLICANT: Yes, sir.

DEPARTMENT COUNSEL: And then the second form you filled out, you didn't list the fact that you used marijuana at a party while holding a clearance, because you were afraid of the consequences.

APPLICANT: Yes, sir.

DEPARTMENT COUNSEL: Is that right?

APPLICANT: Yes, sir. That's correct.

DEPARTMENT COUNSEL: So it was a willful omission, it wasn't just negligence. Is that correct?

APPLICANT: No. It was willful, but to be honest, that's something I honestly even buried, because I wasn't there for an extended use of time using marijuana. I literally, I buried it. And is that the right thing to do? No, of course not. But was it intentional to leave it off there, to answer your question, yes, I did intentionally leave it off there, off the form.

DEPARTMENT COUNSEL: And do you understand why that's more significant to us than using marijuana three times in college?

APPLICANT: Yeah, absolutely. Because, I mean, while having a clearance, and if you're going to lie about that, I mean, that doesn't show trustworthiness and that somebody who holds a clearance, like, what else am I going to lie about, right? So trust me, I completely understand that process now. So, yes, I understand.

DEPARTMENT COUNSEL: So why should we believe you now?

APPLICANT: Again, this is something that I have -- this has been sitting on me for over a year now, since this has gone down. And I think it goes back to my maturity of understanding the process and having more responsibilities now. I'd say it's the responsibility aspect of it and where I've grown professionally and maturity-wise.

I think it's -- again, that was something that I should have disclosed, of course. But I did not. And that was just due to being afraid of the ramifications and what's going to happen after that. So that's it. (Tr. 47-50.)

Applicant stated in his PSI, in his answer to the amended SOR, and during his testimony that he does not associate with people who use illegal drugs. (GX 2; Tr. 27.)

Applicant started college in 2016 at a private then-college now university, in his home state. In describing his college background during direct examination, Applicant stated:

But, yeah, so during that four years, I played baseball in college. I took around 18 to 21 credit hours a semester because, obviously baseball, it's like a full-time job itself. And then also I did have a full-time job to provide for myself as well, because obviously being in college, I mean, I never got a handout, right. (Tr. 15-16.)

When asked by his attorney what year he graduated, Applicant stated, "2019, May 2019." (Tr. 16.)

The following exchange occurred during cross-examination:

DEPARTMENT COUNSEL: What was your GPA [in college]?

APPLICANT: So my graduate GPA, I believe, was 3.5, 3.5 or 3.6.

DEPARTMENT COUNSEL: Did you maintain a 3.5 GPA while playing baseball all four years?

APPLICANT: Yes, sir. (Tr. 38.)

However, on his 2019 and 2021 e-QIPs, Applicant listed his college attendance dates as August 2015 to May 2019 and answered “No” in response to the question that asked whether or not he received a degree/diploma. Under the heading “EDUCATION” in the summary of Applicant’s March 2021 PSI, it states that Applicant volunteered that he attended the university he listed on his e-QIPs from August 2015 until May 2019, “but was issued the bachelor’s degree in December 2020.” He told the investigator that he was not sure why he listed this information incorrectly on his e-QIP. (GX 3; GX 1; GX 3.)

Under the heading “DEVELOPED EDUCATION,” the PSI summary states that Applicant volunteered that from June 2019 until December 2020 he attended an online university. Applicant explained that he did not know why he did not list the additional university. He explained that he took courses at the online university because they were less expensive. He then transferred the credits to his original University which issued his bachelor’s degree. He completed his coursework online while working for his current employer. Applicant’s resume lists his education as having received a bachelor’s degree from the original university he attended but does not list the date of graduation. (GX 2; AX D.)

Above the signature line on the e-QIPs that Applicant completed and signed in 2019 and 2021 is a paragraph entitled “Certification.” The paragraph contains the following language:

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. . . . I understand that a knowing and willful false statement on this form can be punished by a fine or imprisonment or both (18 U.S.C. 1001). I understand that intentionally withholding, misrepresenting, falsifying, or including classified information may have a negative effect on my security clearance, employment prospects, or job status, up to and including denial or revocation of my security clearance, or removal and department from Federal service.

The chief executive officer, who also serves as the facility security officer at Applicant’s place of employment, strongly supports Applicant’s maintaining his security clearance, citing his exceptional performance in servicing the company’s clients. In his letter of recommendation, he states:

I have read the DOHA report and that [Applicant] made errors in his reporting; I understand the errors made and have counseled him on ensuring that his documentation is accurate and timely. (AX A.)

A vice president for over 13 years at Applicant’s place of employment, who considers himself a close mentor to Applicant who has guided him throughout his professional career, also strongly recommends that Applicant maintain his security clearance. In his letter of recommendation, the vice president states:

I've seen many young individuals make many mistakes similar to what [Applicant] did and I have had the opportunity to assist them in correcting these mistakes. In [Applicant's] case, I firmly agree that it was a simple mistake that he made and has learned a valuable lesson. (AX B.)

Applicant's 2021 and 2022 annual performance reviews rated him as outstanding. Since he informed his employer about the issues with his security clearance, Applicant has been assigned the tasks of conducting security awareness training and of assisting new-hires in completing their e-QIPs. (AX E; Tr. 21-22.)

Applicant's fiancée stated in her letter of recommendation that she and Applicant have been together for eight years and were soon to be married. She describes Applicant as kind, considerate, thoughtful, and as a person who radiates care towards everyone he encounters. She describes their daily life together and their hope for a family in the future where they will fill their household with "honesty, integrity, and fulfillment." (AX C.)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable, and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the

applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Guideline E, Personal Conduct

The concern under this guideline 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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16: Conditions that could raise a security concern and may be disqualifying include:

AG ¶ 16(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

AG ¶ 16(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.

AG ¶ 17: Conditions that could mitigate security concerns include:

AG ¶ 17(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(b): the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

AG ¶ 17(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;

AG ¶ 17(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;

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;

AG ¶ 17(f): the information was unsubstantiated or from a source of questionable reliability; and

AG ¶ 17(g): association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt

upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

The primary problem with Applicant's explanations regarding his falsifications on his 2019 and 2021 e-QIPs is that they are inconsistent. He simply cannot keep his story straight. In his answer to the amended SOR, he stated that his omissions on both e-QIPs were unintentional. He attributed his omissions on his 2019 e-QIP to his "ignorance of the importance of the process" and his "failure to pay attention to detail when completing such forms."

However, in his testimony, Applicant stated that he intentionally failed to list his 2016 to 2018 marijuana use on his 2019 e-QIP because he was afraid that he would not get the job for which he was applying.

In his answer to the amended SOR, Applicant stated that he unintentionally omitted his October 2020 marijuana use while holding the security clearance on his February 2021 e-QIP, emphasizing that his failure to include the information was an "oversight" and "not intentional."

During his March 2021 PSI, Applicant told the investigator that he did not know why he failed to list his 2020 marijuana use on his e-QIP, but stated that he did not report the use to his organization because he was concerned that it could have an impact on his employment status.

During his testimony, Applicant stated he lied on his 2021 e-QIP about using marijuana while holding a clearance because he was scared about what would happen with his job.

Additionally, Applicant's statements regarding the frequency of his marijuana use from 2016 to 2018 are inconsistent. On his 2021 e-QIP, he stated that he used marijuana in college less than three times. Less than three times definitionally means one or two times. However, during his testimony, he said that for the three years he used marijuana in college, he used it once or twice a year. He then stated that he used marijuana a total of three times in college.

Applicant's various statements about his October 2020 marijuana use while holding a security clearance and the reason for his failure to report it on his 2021 e-QIP are inconsistent and overall implausible. He asserted that the omission was an oversight and unintentional. He also stated that he had suppressed the memory of this incident and did not remember it until his PSI in March 2021. I find this assertion to be unconvincing.

Further, Applicant's repeated inability to unequivocally state the frequency of his marijuana use throughout the security clearance process raises doubts about his credibility and candor. I find it implausible that Applicant used marijuana a total of four times in his life and cannot recall at least some of the details of each of the circumstances and arrive at an accurate count.

Applicant made multiple references to his unfamiliarity with the security clearance process and lack of understanding of the potential impact that intentionally falsifying his responses on a security clearance application could have on his ability to obtain or maintain a security clearance. First, telling the truth is a fundamental tenet of our society's general ethical framework. As a general rule, it is not acceptable to lie. After falsifying material facts on his first e-QIP in October 2019, Applicant signed the document, thereby certifying that his responses were true to the best of his knowledge under penalty of Federal law. The ramifications for intentionally providing false information on the e-QIP are set forth above the signature line in plain English. At his next opportunity to provide the Government with accurate information for assessing his security worthiness, he opted to lie again.

Throughout the security clearance adjudication process, Applicant failed to fully accept responsibility for his conduct. He first attributed his failure to tell the truth on not paying attention when completing the e-QIP and on his lack of understanding of the security clearance process. When he ultimately admitted to intentionally falsifying his responses in 2019 and 2021, he stated that he lied because he was concerned about the impact his conduct would have on his career path.

Applicant also made several statements while testifying that raise concerns about his credibility and trustworthiness. He stated that he graduated from his original university in May 2019 and that he played baseball for the four years he attended that school. This is not what he told the investigator during his PSI and it is not the information that he provided on his 2019 and 2021 e-QIPs.

Applicant also stated that if he had it all to do over again, he would list any and all derogatory information as required on the e-QIP, regardless of whether he had parking tickets or had gotten arrested, stating, "You can't lie about that. "Because there's always ways to find that out. . . ." In describing the circumstances of his October 2020 marijuana use and his recognition of his poor judgment at the time of use, his stated concerns were about whether or not someone saw him using marijuana or if he got caught doing it. He does not demonstrate an understanding of his obligation to be honest and forthcoming and to conduct himself in a manner consistent with those granted access to classified or sensitive information. AG ¶¶ 16(a) and 16(b) apply. None of the mitigating conditions apply.

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances . . . 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.

Applicant's admissions, corroborated by the record evidence, establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse; and

AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position.

The following mitigating conditions are potentially applicable under this guideline:

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; and

AG ¶ 26(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;
- (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.

"An applicant who uses marijuana after having been placed on notice of its security significance, such as using after having completed a clearance application, may be lacking in the qualities expected of those with access to national secrets." ISCR Case No. 17-03191 at 3 (App. Bd. Mar. 26, 2019.) "An applicant's misuse of drugs after having been placed on notice of the incompatibility of drug abuse with clearance eligibility raises questions about his or her judgment and reliability." ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019.)

Applicant's October 2020 marijuana use while holding a security clearance was recent and casts doubt on his current reliability, trustworthiness, and good judgment. He used marijuana after completing a security clearance application, undergoing a background investigation, and while holding a security clearance. He was aware that his marijuana use while holding a security clearance was a policy violation and illegal but chose to use it anyway. He then lied on his February 2021 e-QIP by failing to disclose his marijuana use in October 2020. He also used marijuana at least three times between 2016 and 2018. He lied about this marijuana use on his March 2019 e-QIP by failing to disclose it.

He also lied about it on his February 2021 e-QIP by failing to accurately disclose the frequency of his use. Because of his lack of credibility as set forth in the discussion under Guideline E, Applicant's stated intention not to use marijuana in the future carries little if any weight. His assertions that he no longer associates with people who use marijuana do not mitigate his conduct. AG ¶¶ 25(a) and 25(f) apply. Applicant has not mitigated the Guideline H concern.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines H and E and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his conduct. Accordingly, I conclude he has not carried his burden of showing that it is clearly consistent with the national interest to grant his eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H (Drug Involvement):	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Stephanie C. Hess
Administrative Judge