



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



In the matter of: )  
)  
) ISCR Case No. 23-00365  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

10/02/2023

**Decision**

Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse, personal conduct, and criminal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 5, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement and substance misuse, Guideline E, personal conduct, and Guideline J, criminal conduct. On May 2, 2023, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on May 11, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 18, 2023, but he did not respond to it. The case was assigned to me on September 22, 2023. The Government exhibits included in the FORM (Items 1-6) are admitted in evidence without objection.

## Findings of Fact

Applicant is a 32-year-old employee of a defense contractor for whom he has worked since 2018. He received a high school diploma in 2009 and has taken some college courses without earning a degree. He has never been married and has no children. He served on active duty with the Army from June 2014 until April 2018, when he earned an honorable discharge. (Items 2-5)

From about October 2006 through September 2022, Applicant used marijuana with varying frequency. At all times relevant to this investigation, marijuana possession (and therefore its use) has been illegal. Despite being required to do so, Applicant failed to disclose this illegal drug use on his February 2022 Electronic Questionnaires for Investigations Processing (2022 e-QIP) or his April 2020 Electronic Questionnaires for Investigations Processing (2020 e-QIP). He possessed a security clearance at certain times while he was using marijuana but, despite being required to do so, he failed to also disclose on his 2022 e-QIP and 2020 e-QIP that his use of marijuana occurred while holding a clearance.

After Applicant denied marijuana use within seven years of submitting his 2020 e-QIP, the DOD authorized investigator who conducted his August 2020 security interview confronted him with information that he used marijuana with varying frequency within that time frame. After being confronted, he lied and said that he only used marijuana with varying frequency between 2011 and 2013. When the investigator asked him about illegal drug use while holding a security clearance, he also lied and told the investigator that he only used "CBD oil" that did not contain marijuana. He untruthfully claimed that he did not list his illegal drug use on his 2020 e-QIP because it was longer ago than seven years. (Items 2-5)

After failing to disclose his illegal drug use, to include his illegal drug use while holding a clearance, on his 2022 e-QIP, Applicant had another interview with a DOD authorized investigator in September 2022. This time, when the investigator asked about his drug use, he admitted his 2006 through 2022 marijuana use, including use while he held a security clearance. When the investigator asked why he did not disclose this information on his 2022 e-QIP, he admitted he intentionally omitted the information because of a sense of fear. (Items 2-5)

Applicant also told the investigator in 2022 the truth about his marijuana usage because he had received a letter in February 2022, asking him to address inconsistencies in his drug use reporting between his 2020 investigation and his 2022 e-QIP. He therefore did not voluntarily divulge his illegal drug use before being confronted. He also continued to use marijuana after receiving this letter. He claimed that he told his supervisor about his illegal drug use and intentional falsifications. He also admitted to the investigator during his 2022 background interview that he made up the story he told during his 2020 background interview, about using CBD oil, to cover for his actual marijuana use. He clarified that he did not use marijuana while he was in the military from 2014 to 2018, but he used it before and after those years. He claimed he has no intention of using marijuana in the future. He volunteered to undergo drug

testing, but there is no evidence that he has been tested. There is also no evidence that he has undergone any drug treatment. He acknowledged using marijuana with his girlfriend and other friends and provided no evidence that he no longer associates with these individuals, or that they no longer use marijuana. (Items 2-5)

In August 2019, after a night out drinking alcohol, Applicant was arrested on suspicion of misdemeanor DUI. He failed a field sobriety test and, after being given a breathalyzer test, his blood alcohol percentage was between .14 and .16 percent. He pleaded guilty to this DUI charge and the court suspended his driver's license for up to one year, required him to undergo impaired driver care management, install an ignition interlock device in his car, and pay fines and court costs. He complied with his sentencing requirements. He divulged this arrest and conviction on his 2020 e-QIP and during the 2020 interview with a DOD authorized investigator. During that interview, he claimed he would never drink and drive again. (Items 2-6)

In his Answer, Applicant admitted the allegations in the SOR, which were related to his marijuana use, his failure to divulge his marijuana use in his 2020 and 2022 e-QIPs, his lying to the DOD authorized investigator in 2020 about his marijuana use, and his 2019 DUI arrest and conviction. His admissions are incorporated in my findings of fact. He provided no additional narrative or explanation with his Answer and did not respond to the FORM.

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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(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.”

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 EO 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* 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 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 several conditions that could raise security concerns under AG ¶ 25. The following is potentially applicable in this case:

(a) any substance misuse (see above definition).

Applicant illegally used marijuana with varying frequency from 2006 until September 2022. The above disqualifying condition is applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. 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;

(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.

Applicant has used marijuana for a lengthy period of time that dwarfs the amount of time that he could have been abstinent (since September 2022). He consistently lied about his use throughout the security clearance process and continued to use it even after believing he had been caught in February 2022. Given his intentional dishonesty and lack of candor, I cannot take him at his word that he will no longer use illegal drugs. While he has acknowledged his drug involvement, he has not provided actions he has taken to overcome his problem. He failed to provide sufficient evidence that his marijuana involvement and the circumstances surrounding it do not cast doubt on his current reliability, trustworthiness, and good judgment. None of the Guideline H mitigating conditions fully apply.

### **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other government official.

Applicant deliberately omitted his illegal drug use from multiple locations on his 2020 e-QIP and 2022 e-QIP. In March 2020, he also deliberately lied to a DOD authorized investigator about his marijuana use. Both of the above disqualifying conditions are applicable.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(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 did not correct his omission or concealment of his marijuana use prior to being confronted with the facts. Instead, he lied to the investigator in 2020 after being confronted, and he waited to disclose the truth until after he received a letter notifying him that there were inconsistencies in his reporting about his marijuana use. AG ¶ 17(a) does not apply.

Deliberately omitting required information and lying to DOD investigators is not minor. Instead, these actions strike at the heart of the security clearance process, which relies on candid and honest reporting. Applicant engaged in this deceitful and misleading activity multiple times over two separate investigations. Therefore, he has not shown that his behavior was infrequent, happened under unique circumstances, or is unlikely to recur. AG ¶ 17(c) does not apply.

While Applicant ultimately acknowledged his intentionally dishonest behavior, he has provided no evidence of counseling or other steps he has taken to alleviate this behavior. Moreover, for the reasons I provided in my analysis of AG ¶ 17(c), I cannot find his behavior is unlikely to recur. AG ¶ 17(d) does not apply.

The only positive step Applicant has taken to reduce vulnerability to exploitation, manipulation, or duress is that he claimed he has told his supervisor about his marijuana involvement and falsifications. AG ¶ 17(e) partially applies but does not overcome his repeated deceitful and untrustworthy personal conduct.

## **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

In 2019, Applicant drove while he was intoxicated and was arrested and convicted. The evidence is sufficient to raise the above disqualifying condition, thereby shifting the burden to Applicant to provide evidence in mitigation.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(c) no reliable evidence to support that the individual committed the offense; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

As it has been about four years since Applicant drove while under the influence of alcohol, at first blush, it would appear that a significant amount of time has passed since he engaged in criminal behavior. However, as he admitted he intentionally omitted and lied about his illegal drug use, he was being untruthful about a material fact relevant to a security clearance adjudication. Falsifying material information in a security clearance adjudication is a criminal offense under 18 U.S.C.A. § 1001. He also was using an illegal drug until September 2022. Therefore, Applicant continued to engage in criminal behavior until September 2022, undercutting his efforts at mitigation under AG ¶ 32(a) and AG ¶ 32(d), which require the passage of time without recurrence of criminal acts. Given the recency of his criminal activity, AG ¶ 32(a) and AG ¶ 32(d) do not apply. AG ¶ 32(c) does not apply because there is reliable evidence of his driving under the influence of alcohol in the form of credible allegations and his guilty plea. None of the Guideline J mitigating conditions apply. The criminal conduct security concerns are not mitigated.

### **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, E, and J in my whole-person analysis. I have also considered Applicant's military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude he did not



mitigate the drug involvement and substance misuse, personal conduct, and criminal conduct security concerns

### **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:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.e:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Benjamin R. Dorsey  
Administrative Judge