



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



In the matter of: )  
)  
) ISCR Case No. 22-00805  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

12/22/2023

**Decision**

HALE, Charles C., Administrative Judge:

Applicant did not mitigate security concerns raised under Guidelines H (drug involvement and substance misuse), and E (personal conduct). Security concerns under Guideline J (criminal conduct) are mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 31, 2022, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, J, and E. Applicant responded to the SOR on September 30, 2022, and requested a hearing before an administrative judge. The case was assigned to me on June 1, 2023.

The hearing was convened as scheduled on July 6, 2023. Government Exhibits (GE) 1 through 8 were admitted in evidence without objection. The Government's disclosure letter dated October 31, 2022, was marked as Hearing Exhibit (HE) I. Applicant testified and offered no additional evidence. He declined to have the record held open. The Defense Office of Hearings and Appeals (DOHA) received the transcript (Tr.) on July 17, 2023.

## Findings of Fact

Applicant is a 24-year-old employee of a defense contractor working as an inspector. He has worked for his current employer since 2017. He seeks to reestablish his security clearance. He earned his high school diploma in 2017 and has completed some apprentice courses but has not obtained a degree. He previously held a security clearance from December 2017 until it was suspended in September 2021. He is single, lives with his partner, and they have three young children. (GE 1 at 12, 14, and 21; Tr. 17-18.)

In Applicant's Answer to the SOR, he admitted the three Guideline H allegations. SOR ¶ 1.a, that he purchased and used marijuana with varying frequency from about January 2012 through January 2019. SOR ¶ 1.b, that he purchased and used marijuana as set forth in subparagraph 1.a after being granted access to classified information in 2018. SOR ¶ 1.c, that in January 2019 he was arrested and charged with (1) sell, give, or distribute more than one-half ounce, but less than five pounds of marijuana, a felony, and (2) carrying concealed weapon. He pled no contest to a reduced drug charge of sell, give, or distribute less than one-half ounce (misdemeanor). He was sentenced to 12-months' confinement (11 months suspended), and three-years' probation, which ended in October 2022.

Applicant stated he started to use marijuana when he was 13 and from 2012 to 2017 he smoked marijuana on a daily basis (Tr. at 18-19.) He stopped smoking marijuana from March 2017 to about February 2018, which was around the time he was hired by his employer, but he could not recall why he stopped. (Tr. at 20.) In his security clearance interview he told the investigator he stopped to prepare for attending college and apprentice school where he knew he would be required to pass a drug screening. (GE 3 at 6.) After February 2018 he described his usage as "more of a weekly basis...not every day." (Tr. at 20.) He estimated he would probably purchase about an ounce of marijuana a week. (Tr. at 20-21.) When he resumed smoking marijuana in February 2018 he held a clearance; had been granted to classified information, and he acknowledged in his testimony it was not allowed. (Tr. at 21-22; GE 1 at 27.) He explained his duties generally and generally what his security clearance had allowed him access to inspect until it was suspended. (Tr. at 22.)

In January 2019, Applicant was pulled over and the officer smelled marijuana in the vehicle. A search of the vehicle found about seven ounces of marijuana in a glass cistern, which he purchased for about \$1,000. (Tr. at 24, 25-26; GE 5.) He denied any intentions to sell the marijuana. (Tr. at 26.) He told the investigator he would purchase enough to avoid the long drive. (GE 3 at 5.) The felony charge was reduced to a misdemeanor as part of a plea agreement. He served the unsuspended portion of his sentence on weekends, paid a fine, and served probation for three years. (Tr. at 24.) The carrying a concealed weapon charge was dismissed. He claimed that he was legally carrying the weapon. He testified; "trying to do my due diligence in reading it upon the law on how to carry my weapon. And, I believe I had it contained legally. It was in a bag that was zipped up that I couldn't reach in the back of the vehicle." (Tr. at 27.) It was inside

the bag with the marijuana. (Tr. at 34.) The weapon was not registered in his name but stated it was a gift to him from his brother. (Tr. at 27, 34; GE 3 at 7.) He reported the incident to his supervisor and no action was taken by his employer. (GE 3 at 7.)

Applicant stated he stopped using marijuana after January 2019 because the arrest was “like a reality check, you know, how fast things can go wrong.” (Tr. at 28.) He explained to the investigator that he has his children to live for now and cannot risk being fired because of illegal drugs. He does not want his children around illegal drugs. (GE 3 at 7.) He has not attended any substance abuse courses. He no longer associates with people who use marijuana. He has never failed an employer drug test. (Tr. at 29.) There are no further terms on his conviction. (Tr. at 39.) He stated in response to DOHA interrogatories he had no intention of further use of marijuana. (GE 3 at 13.)

Applicant in his Answer denied SOR ¶ 2.a. Department Counsel queried Applicant about the denial and pointed out this was a cross-allegation of SOR ¶ 1.c. In response to Department Counsel’s question, Applicant responded he is not disputing the Guideline J allegation. (Tr. at 28.)

SOR ¶ 3.a cross-alleges the SOR ¶¶ 1.a through 1.c, which Applicant denies but admitted SOR ¶¶ 1.a through 1.c. The underlying facts were discussed above under Guideline H. I applied those facts discussed above to SOR ¶ 3.a.

Applicant denies SOR ¶ 3.b, that he: Falsified material facts on a Questionnaire for National Security Positions (SF-86) executed on August 18, 2021, by answering “No” to:

Section 23-Illegal Use of Drugs or Drug Activity Illegal Use of Drugs or Controlled Substances: 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 testified he believed it was a clerical error and “when [he] first lied about it in 2017. When [he] went back and when [he] went to refill this out, a lot of things [he] didn’t change, and [he] believe[s] this is one of the pages [he] missed, just skipped through.” (Answer and Tr. at 30-31.) He believed he was being open and honest in his application when discussing the discrepancy with the security clearance investigator. (GE 3 at 6.)

Applicant denies SOR ¶ 3.c, that he: Falsified material facts on an SF-86 dated August 18, 2021, by answering “No” to:

Section 22-Police Record Police Record (EVER): Other than those offenses already listed, have you EVER had the following happen to you? Have you EVER been charged with an offense involving firearms or explosives?.”

Applicant reported the incident in the drug section of the SF-86. (GE 1 at 27, 34.) He testified “I didn’t state something, but I believe it was stated in another question, and that’s why I didn’t restate it.” (Tr. at 16-17.)

Applicant admits SOR ¶ 3.d, that he: Falsified material facts on an SF-86 executed on September 26, 2017, pertaining to “Section 23-Illegal Use of Drugs or Drug Activity” when he stated “No” to whether he had illegally used drugs or controlled substances in the last seven years. (Answer and Tr. at 30-31.) He acknowledged the lie in his testimony, “When I filled out the one in 2017, I did lie knowingly about my marijuana usage. I was 18, freshly coming out of high school, and really didn’t know what I was getting into when I done that one.” (Tr. at 16.) His reason for not revealing his marijuana use at the time; “I thought it would affect my employment.” (Tr. at 31.)

Applicant very credibly described the difference between the man he was in 2019 and the man he has become. Four years ago, he would come home, smoke marijuana, and go to sleep. He would get off work, smoke and sleep until about 1800, 1900, 2000, then get up and eat, maybe smoke again, and just do nothing, lay around the house all day. (Tr. at 38.) He is now a father of three, his oldest child was born in August 2020. He normally works during the week from 0500 to 1300. When he gets home, he takes care of the yard and works on his truck because the children are napping until 1600. When they wake up he is with the children making them a snack and taking them to an activity like a jump park, painting, or playing in the sprinkler and after that it would be dinnertime. After dinner there is some more playtime and then it is time to “change diapers, [and] get ready to go to bed.” (Tr. at 38.) Typically, the weekend is spent just trying to keep the children busy and “not making a mess inside the house.” (Tr. at 36) He offered as examples attending group children’s readings at a local bookstore or going to the beach. His hobby is working in the driveway on his two vehicles. Aside from a “cold beer on a hot day” otherwise he does not drink. (Tr. at 37-38.)

## **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 are potentially applicable in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant admitted he used marijuana after being granted access to classified information and purchased marijuana. AG ¶¶ 25(a) and 25(c) are applicable. 25(f) is not applicable. The SOR did not allege use while granted access to classified information, it alleged use “after being granted access to classified information in or around 2018.” I find SOR 1.b for Applicant as a duplicate allegation to SOR 1.a.

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; 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.

The evidence establishes that Applicant knew throughout the periods of time alleged that his use and purchases of marijuana were prohibited under Federal law. He continued to purchase and use marijuana after applying for a security clearance and after

being placed on notice that such conduct after being granted access to classified information was inconsistent with holding a security clearance. In doing so, Applicant not only knowingly violated Federal drug laws but also disregarded security clearance eligibility standards. This behavior raises substantial questions about Applicant's judgment, reliability, and willingness to comply with laws, rules, and regulations. See ISCR Case No. 20-02974 (App. Bd. Feb. 1, 2022). Applicant's statement in the interrogatories of his intent not to use illegal drugs in the future does not mitigate the scope of these security concerns. Nor does the passage of a little over a year since he completed probation eliminate those concerns for an applicant who knowingly violated Federal drug laws and continued to use marijuana for at least 12 months after being granted a security clearance. None of the mitigating conditions are applicable.

### **Guideline J: Criminal Conduct**

AG ¶ 30 expresses the security concern for criminal conduct:

Criminal activity creates doubt about a person'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.

The following disqualifying conditions under AG ¶ 31 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.

Based on Applicant's admissions and the evidence in the record, the above disqualifying condition applies.

The following mitigating conditions under AG ¶ 32 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; 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.

AG ¶ 32(a) and (d) apply. While Applicant failed to mitigate the Guideline H concerns involving his drug use after being granted access to classified information he has substantially changed his life from when the criminal behavior happened. He has matured into a responsible father such that it is unlikely he will involve himself again in

criminal behavior. He completed the terms of his probation and there has been no recurrence of criminal activity. He has expressed remorse and has credibly established in his testimony and statements during his security clearance interview that his focus is now on his family. He has demonstrated he is successfully rehabilitated and accepts responsibility for his actions. The criminal conduct security concerns are mitigated.

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

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

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. The following disqualifying conditions are potentially applicable:

(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

(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;

(2) while in another country, engaging in any activity that is illegal in that country;

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

SOR 3.a cross-alleges the conduct set forth in SOR 1.a-1.c, which Applicant admitted and included marijuana use after being granted access to classified information. AG ¶ 16(e) is applicable to SOR 3.a.

SOR 3.b-3.d allege Applicant deliberately failed to disclose certain behavior on his SF-86. Applicant admitted and the record supports that he deliberately failed to disclose



or concealed his purchases and use of marijuana prior to September 26, 2017, as alleged in SOR 3.d. AG ¶ 16(a) is applicable to SOR 3.d.

For SOR 3.b-3.c, Applicant testified he believed SOR 3.b was a clerical error and for SOR 3.c his disclosure in one section covered the issue and that he thought he had covered the concerns. “Applicant’s statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they were not binding on the Administrative Judge.” ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019) the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant’s *mens rea* in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant’s intent or state of mind may not always be based on an applicant’s statements, but rather may rely on circumstantial evidence. *Id.*

AG ¶ 16(a) not applicable to SOR 3.c. Applicant thought he had covered the drug use concerns with his disclosure in one section would cover the issue and as a result he thought he had covered the concerns.

The record evidence establishes AG ¶ 16(a) in relation to SOR 3.b.

The following mitigating conditions under AG ¶ 17 are potentially applicable:

(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.

The mitigating condition AG ¶ 17(a) is established for SOR 3.b. I am satisfied that Applicant did not deliberately fail to disclose the information described in SOR 3.b. He reported his 2019 arrest for drug misconduct in his 2021 e-QIP and he discussed his drug use with the investigator during his security clearance interview.

The mitigating condition AG ¶ 17(c) is established for SOR 3.d. Applicant candidly testified that his 2017 omission was intentional. Given his age and experience and how much time has passed, as well as the evidence he has now focused his life on his family and work, he has mitigated the security concerns for SOR 3.d.

Applicant used marijuana after being granted access to classified information,

which had been obtained after intentionally failing to disclose his drug use history. Personal conduct security concerns for SOR 3.a are not mitigated under AG ¶ 17(c).

### **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 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 Guideline H, Guideline J, and Guideline E in my whole-person analysis.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guidelines H and E. However, he has mitigated Guideline J security concerns.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph: 1.b:	For Applicant
Paragraph 2: Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Paragraph 3: Guideline E:

AGAINST APPLICANT

Subparagraph 3.a:

Against Applicant

Subparagraphs 3.b-3.d:

For Applicant

**Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale  
Administrative Judge