



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



In the matter of: )  
)  
) ISCR Case No. 23-00432  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

01/10/2024

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

**Statement of the Case**

On May 31, 2023, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guideline E. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR on June 20, 2023, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on August 8, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 9, 2023, scheduling the hearing for September 28, 2023. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 and 2, which were admitted into evidence. Applicant testified on his own behalf. The record was left open until October 27, 2023, for receipt of additional documentation. Applicant offered

documents, which I marked Applicant's Exhibit (AppX) A, and admitted into evidence. DOHA received the transcript of the hearing (TR) on October 10, 2023.

### **Findings of Fact**

Applicant admitted to the allegations in SOR ¶¶ 1.a. through 1.c., with explanations. At the hearing, Department Counsel amended the SOR adding allegation ¶ 1.d, which reads as follows:

You falsified material facts on an Electronic Questionnaire for Investigations Processing (e-QIP), executed by you on or about August 4, 2022, in response to Section 23, Illegal Use of Drugs or Drug Activity. In the last seven (7) years, have you illegally used any drugs or controlled substances, use of a drug or controlled substance, including injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance? You answered "No" and, thereby, deliberately failed to disclose that you, in fact, used marijuana in June of 2022. (TR at page 39 line 3 to page 41 line 13.)

Applicant neither admitted or denied this additional allegation; and as such, I consider it denied. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact. Applicant is a 22-year-old employee of a defense contractor. He has been employed with the defense contractor since July of 2022. Applicant has a high school diploma. He is unmarried, and has no children. (GX 1 at pages 5, 8~9, 10 and 17.)

### **Guideline E - Personal Conduct**

1.a. In about February 2022, Applicant was terminated from his previous employment for employee theft of merchandise. He admits he was terminated, but avers he felt pressure to sign a statement of guilt because he knew of the theft by his fellow employees. Applicant claims that this was only guilt by association. (TR at page 18 line 9 to page 25 line 21.) This claim is not believable.

1.b. Applicant admits that he used marijuana on "one occasion" in June 2022. (TR at page 33 line 13 to page 35 line 6.)

1.c. Applicant answered "No," in his response to Interrogatories dated March 25, 2023, as to past marijuana use. (GX 2 at page 7.) As Applicant already admitted this one-time usage during an Enhanced Subject Interview in October 2022 (GX 2 at page 4), he "thought the question referred to EVER using a substance other than [sic] the one time admitted use." (TR at page 28 line 24 to page 37 line 19, and Answer.) This allegation is found for Applicant.

1.d. Applicant answered “No” to Section 23 on his August 2022 e-QIP as to past illegal use of drugs in the last seven years. (GX 1 at page 24.) As he used marijuana two months earlier in June 2022, noted above, this was willful falsification. This allegation is found against Applicant.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of a number of variables known as the whole-person concept. The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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, 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 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order (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 E - Personal Conduct**

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

(c) 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two 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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and

regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant was terminated from his employment in February 2022 for malfeasance, used marijuana in June of 2022, and falsified his e-QIP in August 2022. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

- (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
- (f) the information was unsubstantiated or from a source of questionable reliability.

None of these apply. Applicant did not make a good-faith effort to correct his e-QIP falsification. Personal Conduct is found against Applicant.

### **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 facts and circumstances surrounding this case. I have incorporated my comments under

Guideline E in my whole-person analysis. Applicant is respected in his community. (AppX A.)

Overall, however, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Personal Conduct security concerns.

### **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 E:	AGAINST APPLICANT
Subparagraphs 1.a. and 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant national security eligibility. Eligibility for access to classified information is denied.

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Richard A. Cefola  
Administrative Judge