



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-02350
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Rhett E. Petcher, Esq., Department Counsel  
For Applicant: *Pro se*

01/22/2024

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**Decision**  
\_\_\_\_\_

DORSEY, Benjamin R., Administrative Judge:

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

**Statement of the Case**

On April 12, 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, and Guideline E, personal conduct. Applicant responded to the SOR on May 17, 2023 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on October 3, 2023.

The hearing was convened as scheduled on December 14, 2023. I admitted Government Exhibits (GE) 1 through 4 in evidence without objection. Applicant testified but did not present documentary evidence. I received a transcript (Tr.) of the hearing on December 21, 2023.

## Findings of Fact

Applicant is a 36-year-old employee of a government contractor for which he has worked since May 2019. He has taken some college courses but has not earned an undergraduate degree. He has earned a firefighter and electrical-technician certificate. He has never married and has no children. (GE 1, 2)

Applicant has been involved with marijuana for many years. At all times relevant to this security clearance investigation, marijuana purchase and possession (and therefore its use) has been illegal. From about 2006 through April 2022, he purchased and used marijuana with varying frequency. He began using marijuana when he was about 16 years old to self-medicate his depression and anxiety. The longest he went without using marijuana during this time was about six months. In about March 2006 and March 2008, he was charged with possession of marijuana and pleaded guilty to the charges both times. In about April 2019, after undergoing employer-required urinalysis testing, he tested positive for tetrahydrocannabinol (THC), a chemical found in marijuana. That same month, his employer, Company A, terminated his employment because of this positive urinalysis test. He claimed he stopped his marijuana involvement in April 2022 because he worked on a military base where marijuana use was prohibited. He asserted that he will not use marijuana in the future if it is prohibited by the terms of his employment, but otherwise he may use it again. (Tr. 22-26, 31; Answer; GE 2-4)

Despite being required to do so, Applicant failed to disclose his illegal drug use and his April 2019 employment termination on his March 2022 Electronic Questionnaire for Investigations Processing (SF 86). During his June 2022 security interview, he lied to an authorized DOD investigator, telling the investigator that he resigned from the company from which he was terminated. Applicant told the DOD investigator that he had been terminated from this employment only after the investigator confronted him with that information. He then provided truthful information concerning his marijuana involvement while explaining to the DOD investigator that his employment termination resulted from marijuana use. While the DOD investigator did not confront him specifically about his marijuana involvement, Applicant disclosed this marijuana involvement after being confronted about a different intentional misrepresentation. (Tr. 26-30; Answer; GE 1-3)

In his Answer, Applicant admitted his marijuana purchase, use, criminal charges, and positive urinalysis test. He admitted that his employment with Company A was terminated because of his positive urinalysis test. He also admitted that he had falsified material facts about his marijuana involvement and employment termination on his SF 86, and that he had lied about his employment termination to a DOD investigator. He admitted that he certified his SF 86 knowing that he misrepresented material facts on that application. He claimed that he omitted this information because he was embarrassed and as a form of self-sabotage, because he did not think he would keep his job for very long. He has since realized that he enjoys his work and finds it fulfilling. As he wants to keep his job, he is now more interested in obtaining a security clearance. He claimed he is not a dishonest person. He asserted that he self-sabotaged

himself by intentionally failing his urinalysis test because he hated his job with Company A and thought testing positive for marijuana would get him fired. (Tr. 16-21, 26-30; Answer; GE 1, 2)

## **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);
- (b) testing positive for an illegal drug; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant purchased and used marijuana with varying frequency between 2006 and April 2022. In April 2019, he tested positive for THC after urinalysis testing. The above listed disqualifying conditions are established.

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 over 15 years. The amount of time that he could have been abstinent (since April 2022) is insignificant in comparison. He continued to use marijuana after twice being convicted of marijuana possession and losing a job because of it. He also used it after completing the SF 86. Given these considerations, he has provided insufficient evidence that his marijuana involvement is unlikely to recur. While he has acknowledged his drug involvement, he has not provided evidence showing his action 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 involvement and employment termination on his SF 86. In June 2022, he also deliberately lied to a DOD authorized investigator about his employment termination. 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; and

(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.

Applicant did not correct his omission or concealment of his employment termination prior to being confronted by the DOD investigator with the truth. He corrected his concealment of his marijuana involvement after having been confronted about his employment termination because the true nature of his termination involved his marijuana use. Given these circumstances, I find that his efforts to correct the concealment of his marijuana involvement were not prompt or made in good faith. 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 with respect to two separate aspects of his background. Therefore, he has not shown that the offense is minor, his behavior was infrequent, it happened under unique circumstances, or it 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.

## 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 have incorporated my comments under Guidelines H and E in my whole-person analysis.

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 drug involvement and substance misuse or personal 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: Subparagraphs 1.a-1.e:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline E: Subparagraphs 2.a-2.e:	AGAINST APPLICANT 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