



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



In the matter of: )  
 )  
 [Redacted] ) ISCR Case No. 22-02255  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel  
For Applicant: Hasina Lewis, Esq.

02/15/2024

---

**Decision**

---

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 28, 2021. On March 17, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Service (DCSA CAS) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines H and E. The DCSA CAS acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016).

Applicant answered the SOR on May 9, 2023, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 23, 2023, and

he provided Applicant with copies of the documentary evidence he intended to submit at the hearing. (Hearing Exhibit I) The case was assigned to me on November 10, 2023. On December 1, 2023, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted on January 16, 2024. The hearing was postponed because of inclement weather and rescheduled for January 29, 2024. I convened the hearing as rescheduled. Government Exhibits (GX) 1, 2, and 3 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through D, which were admitted without objection. DOHA received the transcript (Tr.) on February 6, 2024.

### **Findings of Fact**

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.c and denied the allegation in SOR ¶ 2.a. Her admissions are incorporated in my findings of fact.

Applicant is a 37-year-old business analyst employed by a federal contractor since July 2020. She has taken college-level courses but has not received a degree. She married in 2012 and divorced in 2021. She has three children, ages 16, 13, and 11.

Applicant has worked for federal contractors since April 2006, with periods of unemployment from August to October 2011, November 2018 to February 2019, and January to July 2020. She has held a security clearance throughout this employment.

When Applicant submitted her SCA in February 2012, she answered "No" to the question, "In the last seven (7) years, have you illegally used any drugs or controlled substances?" (GX 1 at 42) When she submitted another SCA in October 2021, she answered "Yes" to the same question. In response to the question about the nature, frequency, and number of times used, she stated, "It reduces my anxiety. Usage is once a year at most." She estimated that she first used it in May 2002 and that her most recent use was in October 2020. When asked if she intended to use it in the future, she responded, "To reduce anxiety, no intent to use it again." (GX 2 at 50-51)

When Applicant was interviewed by a security investigator in January 2022, she admitted that she used marijuana from May 2002 to October 2020 "with various friends and acquaintances," such as a female friend and an ex-boyfriend. When she responded to DOHA interrogatories in March 2023, she stated that her first use of marijuana was in May 2002 and her last use was in October 2020. She described her frequency of use as "rarely." She stated that she did not intend to use it in the future. (GX 3 at 2-3)

At the hearing, Applicant testified that she was not sure why she did not disclose her marijuana use in 2002 in her 2012 SCA. She testified that she used marijuana only twice in her lifetime, once in 2002 and once in 2020. (Tr. 18, 22) Her use in 2002 was outside the seven-year window for the question in the SCA. (Tr. 15) She was only 16 years old at the time, and her 18-year-old sister, who lived in her own apartment, offered her marijuana. After Applicant's parents found out about her marijuana use, they

prohibited her from going to her sister's apartment. (Tr. 43) Applicant testified that, after the incident with her older sister, she did not use it again, because she was playing sports, went on to college, and then was raising children. (Tr. 43-44) She decided to disclose her marijuana use in her 2021 SCA, even though she knew there could be adverse consequences, because she wanted "to be honest." (Tr. 16)

Applicant testified that when she used marijuana in 2020, she was finalizing her divorce, her children were at home because of COVID, and she was working at home. All these circumstances caused her "a lot of anxiety," and she thought the marijuana would alleviate her anxiety, but it did not. (Tr. 20)

When Applicant used marijuana in 2020, she was with a female friend that she lived with for about a month while she was going through her divorce and her boyfriend whom she had dated for about three and a half years. Her boyfriend used marijuana regularly, and he provided the marijuana that she used on this one occasion in 2020. (Tr. 31-33) She testified that her boyfriend usually did not use marijuana in her presence, because he knew that she did not like the smell and how people acted after using it. (Tr. 34) She is no longer involved with her marijuana-using boyfriend. She still speaks with her female friend, but she has no personal contact because her friend moved to another area. (Tr. 31)

At the hearing, Department Counsel cross-examined Applicant about her use of the word, "rarely," in her response to DOHA interrogatories about the frequency of her marijuana use. She explained that she could not say "never" because she had used it twice, and she did not say "frequent" because it would be incorrect, so she chose to say she used it "rarely" because it was "a rare time" when she used it. (Tr. 22) She testified that her description of her marijuana use was "just poorly worded." (Tr. 37)

Applicant did not report her use of marijuana to her facility security officer (FSO). She testified, "I knew it was an issue, but I didn't know it was something that I had to go report to my FSO." (Tr. 34, 53) She is willing to submit to counseling or drug testing at any time. (Tr. 42) She testified that she now deals with anxiety by exercising. (Tr. 27) She has not sought any treatment from a medical professional for her anxiety. (Tr. 35)

When Applicant used marijuana in October 2020, she held an active secret clearance, but her job did not involve handling classified materials. She testified that she had not had access to classified information for a "very long time." However, she holds a public trust position and has access to sensitive information. (Tr. 45-47)

A former coworker submitted a letter attesting to Applicant's dedication, attention to detail, reliability, and trustworthiness. (AX A) Applicant's close friend for 20 years considers her a dedicated mentor, with exceptional judgment and "unwavering dedication to upholding the highest standards of integrity, honesty, and professionalism." (AX B) Applicant's FSO, who is also her close friend, describes her as "a trustworthy and honest person who is loyal to her work with the government." (AX C)

A friend who has known Applicant for 20 years submitted a letter attesting to her integrity, reliability, and kindness. The friend states that Applicant is a devoted mother who instills a strong value system in her children. She describes Applicant as a sincere, dependable, and compassionate friend who adapts to challenging situations with an uplifting attitude and positive outlook. (AX D)

### **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 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. 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.” 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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.

## Analysis

### Guideline H (Drug Involvement and Substance Misuse)

The concern under this guideline 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 SOR alleges that Applicant used marijuana with varying frequency from about May 2002 to October 2020 (SOR ¶ 1.a), that she used marijuana with varying frequency from about May 2012 to about October 2020 while granted access to classified information (SOR ¶ 1.b), and that she used marijuana from about February 2012 to about October 2020 after submitting an SCA (SOR ¶ 1.c). She admitted all three allegations in her answer to the SOR.

SOR ¶¶ 1.a and 1.c are established by Applicant's admissions and her testimony at the hearing. However, her admission of SOR ¶ 1.b is undermined by her testimony at the hearing, where she testified that she has not had access to classified information for a very long time. There is no evidence in the record contradicting her testimony on this point. A security clearance alone does not grant an individual access to classified materials. In order to gain access to specific classified materials, an individual must have not only eligibility (i.e., a security clearance), but also must have signed a nondisclosure agreement and have a "need to know." See ISCR Case No. 20-03111 at 3 (App. Bd. Aug.

10, 2022). I am not satisfied that Applicant's admission of this allegation was based on a correct understanding of the nature of a security clearance. I conclude that SOR ¶ 1.b is not established by her admission, but that it was sufficient to place her on notice that she was alleged to have used marijuana while holding a sensitive position.

Applicant's admissions of SOR ¶¶ 1.a and 1.c and the evidence in the record are sufficient to establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

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

Use of marijuana while holding a sensitive position is sufficient to establish a AG 25(f), but it was not specifically alleged.

The following mitigating conditions are potentially applicable:

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; 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.

AG ¶ 26(a) is not established. The first prong of AG ¶ 26(a) (happened so long ago) focuses on whether the drug involvement was recent. There are no bright line rules for determining when conduct is recent. The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time

has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant's last use of marijuana was in August 2020, more than three years ago. However, it occurred after she submitted her most recent SCA and while adjudication of her security clearance was pending. Under these circumstances, it was "recent."

Applicant's belated disclosure of her marijuana involvement in her 2020 SCA is commendable. However, her testimony at the hearing that she used marijuana only twice in her lifetime and only once since after her most recent SCA is inconsistent with other record evidence. When she submitted her SCA in October 2021, she stated that she used it "once a year at most." When she was interviewed by a security investigator in January 2022, she said she used it "with various friends and acquaintances." When she responded to interrogatories, she said that she used it "rarely." It was only after she received the SOR and testified at a hearing that she claimed that she used it only once after submitting the 2012 SCA. "Once" is less frequent than "once a year" or "rarely." Her testimony at the hearing that she used it only "once" strongly suggests that she was attempting to minimize the frequency of her use, because she realized after receiving the SOR that her security clearance was in jeopardy. Her apparent effort to minimize her earlier admissions about the frequency of her drug use leaves me with doubts about the credibility of her testimony. It also causes me to question her current reliability, trustworthiness, and judgment.

A security clearance investigation is not a forum for an applicant to split hairs or parse the truth narrowly. The government has a compelling interest in protecting and safeguarding classified information. That compelling interest includes the government's legitimate interest in being able to make sound decisions, based on complete and accurate information, about who will be granted access to classified information. An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002)

AG ¶ 26(b) is partially established. Applicant has not fully acknowledged the extent of her drug involvement. While she no longer associates with her marijuana-using boyfriend, it is not clear whether she has changed her environment. She has not submitted a statement of intent to abstain from drugs and an acknowledgement that further drug abuse is grounds for revocation of national security eligibility.

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

The SOR alleges that Applicant falsified her February 2012 SCA by deliberately failing to disclose her marijuana use beginning in May 2002. The security 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

The relevant disqualifying condition under this guideline is:

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.

This disqualifying condition is not established. Applicant admitted using marijuana in May 2002, but there is no evidence that she used it again before she submitted her 2012 SCA. Her admitted use of marijuana in May 2002 was outside the seven-year window of the question about prior drug use. The evidence is insufficient to show that she falsified her 2012 SCA. No other disqualifying conditions under this guideline are established.

### **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):

- (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.

I have incorporated my comments under Guidelines H and E in my whole-person analysis and applied the adjudicative factors in 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 her drug involvement.



### **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
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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.

LeRoy F. Foreman  
Administrative Judge