



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



In the matter of: )  
)  
) ISCR Case No. 23-02527  
)  
Applicant for Security Clearance )

**Appearances**

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

07/25/2024

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Guideline H, drug involvement and substance misuse and Guideline E, personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 11, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. The action was taken 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) effective on June 8, 2017.

In an undated answer to the SOR, Applicant elected to have her case decided on the written the record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on March 29,

2024. She was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 4. Applicant did not provide a response to the FORM. The case was assigned to me on July 11, 2024. The Government exhibits included in the FORM are admitted in evidence without objection.

### **Findings of Fact**

Applicant provided a qualified admission to the allegation in SOR ¶ 1.a and admitted ¶¶ 1.b and 1.c. She denied SOR ¶ 2.a. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 29 years old. She graduated from high school in 2013. She is not married and has no children. She began working for a federal contractor in April 2023. (Item 2)

Applicant completed a security clearance application (SCA) in April 2023. In response to questions under Section 23 which asked if she had illegally used any drugs or controlled substance in the past seven years, she responded "no." (Item 2)

Applicant completed government interrogatories in November 2023. She made corrections and additions to the summary of her statement made to a government investigator in August 2023 and then adopted the summary statement and attested to its accuracy. (Item 3)

Applicant admitted in response to SOR ¶ 1.a that from about 2009 to February 2023, she used marijuana with varying frequency. She wrote, "I admit to legal use." She admitted in January 2018 she failed a urinalysis test when she tested positive for tetrahydrocannabinol (THC), and as a result was terminated from her employment (SOR ¶ 1.b). She admitted in about 2014-2015 she used ecstasy on various occasions (SOR ¶ 1.c) (Item 1)

During her August 2023 interview with a government investigator, Applicant explained that in October 2009 she and her friends smoked marijuana during school hours but not on school property. It was reported to the principal of her junior high school. She was 13 years old at the time. She told the government investigator that due to her age she did not understand the legal ramifications. She was suspended from school for a short period and had to perform community service. (Item 3)

Applicant told the government investigator that she used marijuana from 2009 to about February 2023, six months before her interview and two months before she completed her SCA. She used it recreationally, at parties, and peer gatherings while in high school, using it about once a month throughout this period. She originally used it in a cigarette or pipe then began using it in gummies. She further stated that she then obtained a medical marijuana card about a year ago before the interview for moderate

pain attributed to scoliosis. She said she stopped using marijuana due to her employment and her need for a security clearance. She said she has no plans on using marijuana while holding a security clearance. She told the investigator she is not addicted to marijuana and has not had any treatment or counseling regarding its use. She did not believe she used the drug excessively. (Item 3)

Applicant further told the government investigator, that in 2018 while on vacation with her boyfriend in another state, they went to a dispensary and purchased marijuana and smoked it together. She said her employer had a drug testing requirement. In January 2018, after returning from vacation, she participated in a drug test by her employer and the results came back positive for THC. She was terminated from employment due to her employer's drug policy. Marijuana use is legal under state law where Applicant vacationed. Recreational marijuana use is illegal in the state where Applicant worked and was terminated from employment. (Item 3)

Applicant disclosed to the government investigator that from February 2014 to May 2015 she worked on a military base at a food court. She attended a concert with a friend from work. Two other employees that also worked on the military base also attended the concert with them. One worked at the daycare center. Someone in the group brought ecstasy (molly) to the concert. Applicant could not recall which person brought the drug. The drug was offered to Applicant and the others. Applicant accepted the drug and used it. Later while at work, she was approached by an investigator from the Office of Special Investigations (OSI) for the military base and was interviewed about the use and distribution of illegal drugs in the workplace. She disclosed to the investigators that she had used ecstasy at the concert, and she had accepted it from one of the other employees with whom she attended the concert. She was released by the military police and a few days later she was terminated from her job. She said she received a letter barring her from entering the base for three years. Applicant disclosed to the government investigator that she used ecstasy (molly) on about three occasions but not in the past seven years. (Items 3, 4)

The summary of investigation from the OSI states that Applicant confessed to purchasing and ingesting ecstasy. The Government's evidence also included a sworn statement by Applicant made in June 2014. In it she admits using ecstasy a total of three times and she purchased it twice in 2014. (Item 5)

In response to government (not capitalized because not the party here) interrogatories, Applicant indicated she had not used marijuana since February 2023; she did not intend to use marijuana or THC in the future; she had not used any other illegal drugs or substances in the last 10 years; and she no longer associates with individuals who use any illegal drugs. (Item 3)

In Applicant's answer to SOR ¶ 2.a, which alleged she deliberately failed to disclose her past illegal drug use, she stated: "I deny. The question specified illegal use so I answered no due to my use being legal per various state's laws. I had no intent on being misleading or falsifying any information." Applicant did not specifically say what

state she was referring to. However, in the state where Applicant has lived and worked throughout her life, recreational marijuana use is illegal. Medicinal marijuana use became legal in 2018. (Items 1, 2)

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes. It may be considered in the application of mitigating conditions and in a whole-person analysis.

## **Policies**

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 EO 10865 provides that 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 relating to the guideline 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse;
- (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 used marijuana from 2009 to February 2023, approximately monthly, in a state where recreational use is illegal and also in violation of Federal law. She was terminated from employment in 2018 for testing positive for marijuana. She used ecstasy in approximately 2014-2015 on three occasions. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 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 to overcome the 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 being 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; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, "*Adherence to Federal Laws Prohibiting Marijuana Use*," which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines . . . . An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that requires them to use a "whole-person concept." This requires adjudicators to carefully weigh a number of variables in an individual's life to determine whether that individual's behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use

while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

Applicant has a 14-year history of marijuana use. She began using marijuana as a 13-year-old and was suspended from junior high school for using it. She said she was unaware of the legal ramifications at that time. However, it did not deter her from using it throughout high school and beyond on a monthly basis. She also used ecstasy after high school. Her motivation for stopping her marijuana use is because she wanted to obtain a security clearance. She stated in her November 2023 response to government interrogatories that she did not intend to use marijuana in the future and her last use was in February 2023. She said she no longer associates with drug users. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question her about her long history of illegal drug use, her current associations, whether she has changed her environment where drugs were used, or evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). There is no evidence that she has participated in a drug treatment program. I am unable to find that her drug use happened so long ago, was so infrequent, or happened, or happened under such circumstances that it is unlikely to recur or does not cast doubt on her current reliability, trustworthiness, or good judgment. She indicated she had a medical marijuana card for about a year. I was unable to determine if she has any intention of using marijuana for medicinal purposes in the future. Although there is some mitigating evidence, it is insufficient to fully mitigate the security concerns under this guideline.

#### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct:

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. I find the following 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.

Applicant failed to disclose on her April 2023 SCA her use of illegal drugs in the past seven years. She stated in her SOR answer: “The question specified illegal use so I answered no due to my use being legal per various state’s laws. I had no intent on being misleading or falsifying any information.” Applicant did not disclose that use of recreational marijuana in the state where she lives and works is illegal. Her answer is misleading. Regardless, use of marijuana remains in violation of Federal law. She was fired from her job in 2018 for testing positive for THC. She said she stopped using marijuana in February 2023 because she wanted to obtain a security clearance, which minimally reflects her awareness that using marijuana was something she should have disclosed on her SCA. I did not find Applicant’s statements credible. I find by substantial evidence she deliberately failed to disclose her past illegal drug use.<sup>1</sup> The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (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.

Applicant did not make a good-faith effort to correct her omission of her past illegal drug use. The government relies on people to be forthcoming and honest on their SCA, even when it involves derogatory information. AG ¶ 17(c) does not apply because deliberately failing to disclose information on an SCA and swearing to its accuracy is not a minor offense. I find Applicant’s omission is serious and casts doubt on her reliability, trustworthiness, and good judgment.

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<sup>1</sup> Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See, e.g., ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “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); ISCR Case No. 04-07187 at 5 (App. Bd. Nov. 17, 2006).



## 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 the 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 and E, in my whole-person analysis.

Applicant failed to meet her burden of persuasion. 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 failed to mitigate the security concerns under the drug involvement and substance misuse and personal conduct guidelines.

### 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-1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge