



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



In the matter of:	)	
	)	
	)	ISCR Case No. 24-00318
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: George Hawkins, Esq., Department Counsel  
For Applicant: *Pro se*

08/28/2024

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**Decision**

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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 May 7, 2024, 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.

Applicant answered the SOR on May 13, 2024, and elected to have her case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on June 11,

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 2 through 6 (Item 1 is the SOR). Applicant provided a response to the FORM. She did not object to the Government's documents but made comments as to statements made in the FORM and the SOR allegations. Her response to the FORM is marked as Applicant Exhibit (AE) A. She also provided documents regarding her past professional performance that are marked as AE B. The case was assigned to me on August 13, 2024. Items 2 through 6 and AE A and B are admitted in evidence without objection.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a through ¶ 1.d and denied 2.a and 2.b. 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 66 years old. She earned a bachelor's degree in 1987. She married in 1984 and has three adult children. She has worked for a federal contractor since July 2023.

Applicant completed a security clearance application (SCA) in June 2023. Section 23 – Illegal Use of Drugs or Drug Activity states:

We note, with reference to this section, that neither your truthful responses nor information derived from your responses to this section will be used as evidence against you in a subsequent criminal proceeding. As to this particular section, this applies to whether or not you are currently employed by the Federal government. The following questions pertain to the illegal use of drugs or controlled substances or drug or controlled substance activity in accordance with Federal laws, even though permissible under state laws. (Item 3)

In response to Section 23, which asked if Applicant had ever been charged with an offense involving alcohol or drugs, she responded "no." In response to the question if in the past seven years she had illegally used any drug or controlled substance, or been involved in the illegal purchase of any drug or controlled substance, she responded "no." (Item 3)

Applicant was interviewed by a government investigator in August 2023. In April 2024, she completed government interrogatories and affirmed the accuracy of her April 2024 personal subject interview and did not have any additions, corrections, changes, or deletions to it. During the interview, she stated that she had previously worked for a federal contractor from March 1976 to 1987. She was asked if she was ever involved in any criminal offenses involving drugs or alcohol. She told the investigator "no." She was confronted with a March 1994 arrest and charge for possession of less than "50 grams of marijuana, 5 GH and Poss/Dist hypodermic needle." She told the investigator she

believed she only had to disclose any criminal offense within the past seven years. She explained the arrest in 1994 occurred when she and her husband were at home and the police arrived with a warrant to search the premises because the police believed they were dealing drugs. She explained she and her husband smoked marijuana at the time for anxiety. They were both arrested. Her husband was detained for five days, and she was released within hours. She said there was no hypodermic needle found but rather it was her daughter's epi-pen for allergies. She explained that marijuana was found but it was an amount considered for personal use. Marijuana was illegal in her state at that time. According to the FBI reports, the charges were dismissed in 1999. (Item 4, 5)

Applicant was questioned by the government investigator about her past use of illegal drugs. She disclosed that she started using marijuana when she began dating her husband in 1978. She used marijuana from 1978 to May 2023, daily, except for periods when she was pregnant. She used it for recreational purposes and when she was in a bad mood to help her feel better. She said she used it alone or with friends. She no longer associates with these friends. She did not feel dependent on the drug or feel it impacted her judgment, reliability, or trustworthiness. She explained to the investigator that she did not disclose her drug use on her SCA because it fell under the private health care act. She provided no explanation as to why her use of illegal drugs would fall under a medical privacy act. I do not find this statement credible.

Applicant said that her husband purchased marijuana for her when she was employed earlier in her career by a federal contractor between 1978 and 1987, and that she held a clearance at that time. She disclosed she purchased marijuana from 2010 to August 2022. She purchased it from street dealers. Later she purchased it in states where it was legal, so she did not have to purchase it off the street. She said she did not use marijuana during working hours, and she had no intention to use it in the future.<sup>1</sup> (Item 4)

Applicant disclosed to the government investigator that she used cocaine on and off for 10 to 15 years and her last use was in November 2014. Her use was monthly, except when she was pregnant. Her children are not aware of her cocaine use. She stopped using cocaine because she felt "the use needed to go." She did not use cocaine with anyone. (Item 4)

In response to April 2024 government interrogatories, Applicant reported that she first used marijuana in July 1978 and her last use was in May 2023. She used it daily, except during her pregnancies. She said she purchased it off the street from 2010 to 2017, then in State A from 2017 to 2021 while on vacation, and from 2021 to 2022 in State B while on vacation. She reported her cocaine use was from approximately July 2003 to November 2014. The frequency of use was "occasional monthly (except when pregnant)." She reported that she did not associate with persons who use illegal substances or frequent places where she would have reason to believe illegal substances are being used or are in her presence. There is no information as to whether her husband continues to use marijuana, and if he does, whether he uses it in her presence. She

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<sup>1</sup> Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes but may be considered in the application of mitigating conditions and in a whole-person analysis.

reported she no longer uses cocaine because she does not want it in her life. She reported that she stopped using marijuana in May 2023 because she found that yoga and deep breathing helped, and she no longer needed to use it for any reason.<sup>2</sup> (Item 4)

Applicant completed and signed an “Authorization for Release of Medical Information Pursuant to the Health Insurance Portability and Accountability Act (HIPAA)” on June 15, 2023. This authorization is for the release of mental health records in making an eligibility determination for a security clearance. (Item 6)

In Applicant’s answer to the SOR, she admitted her past uses of marijuana and cocaine and the criminal charge as noted above. She denied she intentionally falsified her SCA when she failed to disclose her criminal arrest and charge in 1994. She explained she did not remember having been arrested because it happened 29 years ago, and she did not believe she was actually arrested. She believed she was detained and was unaware she had been arrested until she was confronted with it by the government investigator. She reiterated this explanation in her FORM response. (Item 2)

In Applicant’s answer to the SOR, she denied she falsified her SCA when she failed to disclose her illegal drug use in the last seven years. She stated: “I did not disclose this information for subparagraph 1.a and 1.b because I was using it for anxiety and thought the disclosure was protected under HIPAA Privacy Act.” I do not find this statement credible. She did not disclose her past cocaine use because it was not within seven years. (Item 2) In her FORM response she stated:

I continued to use marijuana for anxiety, stress, and arthritis and was able to purchase it on the streets until it became legal in various states in states where it was legal to be purchased. I obtained a prescription for medical marijuana in February 2023 for stress, anxiety, and arthritis but never used it. (AE A)

In Applicant’s response to the FORM she further stated:

My [judgment] and willingness to follow rules and regulations at work has never been an issue. You will see by my awards, my performance evaluations and my emails thanking me for setting, reviewing, and following rules and regulations. (AE A)

She further stated that as part of a team, she “was responsible for establishing rules and regulations and making sure they were followed . . . .” Applicant stated that she is committed to abstaining from future drug use and is willing to follow rules and regulations. (AE A)

In Applicant's FORM response she provided numerous professional documents and performance evaluations attesting to her professionalism, work ethic, teamwork, initiative, and great attitude among other accolades. (AE B)

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

Applicant used marijuana with varying frequency from about 1978 to May 2023. She purchased marijuana from about 2010 to August 2022. She used cocaine with varying frequency from July 2003 to November 2014. She was arrested in 1994 and charged with possession of marijuana less than 50 grams and possession of a hypodermic needle. 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;
  
- (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.

Applicant has a 45-year history of illegal drug use. She admitted she started using marijuana in 1978 and used it daily until May 2023, except when she was pregnant. At times, her husband purchased it for her, she would purchase it off the street, and later she would purchase it in a state where it was legal, presumably because it could not be purchased legally where she lived. She told the investigator she used it recreationally or when she was in a bad mood to help her feel better. It appears later she self-prescribed marijuana for medicinal purposes but did not obtain a medical marijuana card until February 2023. She also used cocaine monthly from 2003 to 2014.

Applicant stated she stopped using marijuana in May 2023. She stated she does not associate with drug users. She disclosed she began using marijuana when she met her husband. He purchased it for her. It appears they remain married. They were arrested in their home in 1994 where marijuana was found. Evidence was not provided as to Applicant's husband's drug usage and whether he has marijuana in the house or uses it in her presence. There is no evidence that Applicant has participated in a drug treatment program and has received a favorable prognosis from a medical professional. There is insufficient evidence, other than Applicant's written statement, that she has overcome her drug problem. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question her about his illegal drug use or evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). Based on her 40 plus years of almost daily use of marijuana against her approximately one year of abstinence, I do not find a sufficient period of abstinence has been established. I also cannot find that her use was so long ago and happened under such unique circumstances that it is unlikely to recur. Her conduct casts doubt on her reliability, trustworthiness, and good judgment. None of the above mitigating conditions apply.

### **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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

I have considered Applicant's explanation for why she failed to disclose her 1994 drug arrest. I believe it is reasonable to conclude that because she believed she was only detained and not arrested that she did not have to disclose the incident. I find she did not deliberately fail to disclose her arrest and conclude in her favor for SOR ¶ 2.a.

I did not find Applicant's statement credible that she believed she did not have to disclose her illegal use and purchase of marijuana on her SCA because it was protected by HIPAA. No documentary evidence was produced to conclude Applicant had a medical marijuana card. Even if she did, she did not obtain it until February 2023. Applicant was purchasing marijuana on the street. She was purchasing it in states where it was legal and bringing it back to use it at home. The police came to her house and arrested her husband and her for marijuana possession. She was not required to disclose her cocaine use on her SCA because it did not fall within the seven-year period. I find Applicant deliberately failed to disclose her use and purchase of marijuana on her SCA. 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;

(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's failure to disclose her illegal drug abuse on her SCA is not minor. She does not seem to grasp the seriousness of her conduct of repeatedly breaking the law by using and purchasing illegal drugs, and then her attempt to justify her failure to be honest on her SCA merely expounds the concerns raised by her conduct. She did not make a prompt good-faith effort to correct her omission and concealment. The security clearance process relies on those who are trusted with our nation's secrets to be honest and forthcoming regardless of the consequences. She failed to be honest on her SCA and exacerbated it with her explanation that illegally purchasing and using illegal drugs were somehow protected under HIPAA. She has not taken responsibility for her conduct. None of the mitigating conditions 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 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 Guideline H and E in my whole-person analysis.

I have considered the performance documents and evaluations Applicant submitted. I have also considered Applicant's repeated statements that she follows rules and regulations. She failed to understand and acknowledge that her repeated purchase and use of marijuana and use of cocaine are inconsistent with someone who is law abiding. Applicant failed to meet her burden of persuasion. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate the security

concerns arising under Guideline H, drug involvement and substance misuse and Guideline E, personal conduct.

### **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.d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant (except subparagraph 1.c)

### **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