



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



In the matter of:)	
)	
)	ISCR Case No. 23-01301
)	
Applicant for Security Clearance)	

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

08/27/2024

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 January 16, 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 March 2, 2024, and elected to have his 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 April 16,

2024. He 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 5 (Item 1 is the SOR). Applicant did not provide a response to the FORM or object to the government's documents. The case was assigned to me on August 13, 2024. Items 2 through 5 are admitted in evidence.

Findings of Fact

Applicant is 28 years old. He is not married and has no children. He earned a bachelor's degree in 2019 and has worked for his current employer, a federal contractor, since June 2019. (Item 3)

In January 2018, Applicant completed a security clearance application (SCA). Section 23 required he report illegal drug use in the past seven years. He disclosed that he used marijuana one time in high school in September 2013. He stated, "it was a one time experiment." (Item 5)

In Applicant's January 2018 SCA, he disclosed that his background had been previously investigated for security clearance eligibility, but he did not know if the investigation was completed or if he had been granted a security clearance. In June 2022, Applicant completed another SCA, and he disclosed he received a secret security clearance in February 2017 from a different government agency. (Items 3, 5)

In Applicant's June 2022 SCA, under Section 22 – Police Record, it required he report if he had been arrested, charged, convicted, or sentenced to a crime in any court. He disclosed that in January 2021, he was stopped by the police for speeding. During the traffic stop he consented to have his car searched. He was arrested for unlawfully carrying a weapon and possession of marijuana (less than 2 ounces). He hired an attorney, who advised him to complete a defensive driving course and a gun safety course, and to provide multiple negative drug tests results before he went to court. He completed the recommendations by his attorney and the charges were dismissed. (Item 3)

In Applicant's June 2022 SCA, Section 23 – Illegal Use of Drugs or Drug Activity required reporting drug use, possession, and purchase of any illegal drugs within the past seven years. Applicant responded "no" to questions that inquired if he had illegally used drugs or a controlled substance in the past seven years. He responded "no" to the question that inquired if he had purchased any illegal drugs in the past seven years. He responded "no" to the question if he had ever illegally used or otherwise been illegally involved with a drug or controlled substance while possessing a security clearance. (Item 3)

Applicant completed government interrogatories in July 2023. In them, he adopted and affirmed his personal subject interview with a government investigator from April 2023. During that interview, his January 2021 arrest for unlawfully carrying a weapon and possession of marijuana were discussed. He explained that he had a license to carry the weapon but because he was stopped for speeding and marijuana was found in his

possession, he was also charged with the weapons offense. He reiterated that he hired an attorney, who recommended he complete certain courses before going to court, which he did, and the charges were subsequently dismissed. (Item 4)

Applicant discussed his illegal drug use with the government investigator in April 2023. He explained that the marijuana found in his car when he was arrested was left over from New Year's Eve when he was with his sister at her residence. It is unknown what year he was referring to. He admitted he used it on New Year's Eve, and she gave him what remained (approximately less than 2 ounces). He had intended to smoke the marijuana sometime in the future. After his arrest, he no longer intended to use marijuana in the future. (Item 4)

Applicant told the investigator that he used marijuana socially in a cigarette form. He used it in 2017 while in college and with his roommates. Since college, he has used it three to four times a year with his sister, brother-in-law, and college friends. His most recent use was on New Year's Eve 2022 at his sister's house, where someone brought and shared two marijuana cigarettes with him, his sister, brother-in-law, and other friends. Presumably, this is a later New Year's Eve than noted above. He told the investigator he had purchased marijuana in the past approximately twice a year and under five grams for each purchase. He used the marijuana with others and does not use it alone. He and those with whom he used marijuana, including his sister and brother-in-law, do not use other illegal drugs. He said he sees his sister about two to three times a month, but only once or twice a year do they partake in marijuana use. He told the investigator that he has spoken with his sister and told her that he does not intend to use marijuana in the future because he could lose his job. She is supportive and will ensure she does not have marijuana around him. His college friends with whom he is close and used marijuana together have both moved out of state and he does not see them often. After college they only used marijuana together once or twice a year if they were out together and someone offered it to them. (Item 4)

Applicant was questioned about his negative responses on his 2022 SCA regarding his illegal drug activity. When asked why he responded "no" to the questions he stated he was not sure. He considered that he either did not read the questions in full or maybe skipped them after providing the information previously on the form. He said he was not attempting to hide the fact he used and purchased marijuana. He further speculated that perhaps he mistakenly assumed that because he disclosed his arrest and charges for possession of marijuana and the gun charge, that it was clear he used marijuana. This was the third SCA he had completed, and he disclosed a one-time use on his 2018 SCA. I do not find his vague and speculative explanations believable. (Item 4)

Applicant was further questioned about whether he self-reported his January 2021 arrest to his security officer as required. He said he had not because he thought he only had to disclose felony charges. He said when he was required to complete a new SCA, he then realized he needed to report the offenses. He again stated he was not attempting

to hide the information. He acknowledged he had received training on his responsibilities, and he should have known better.

Applicant told the investigator that he has no intention of using marijuana again. He said he has not used or possessed it since being arrested. This contradicts what he previously told the investigator during the same interview, which is that he used it on New Year's Eve 2022, almost two years after his arrest. He told the investigator that he has never felt the need to use marijuana and only used it socially if others were using it. He said it was readily available in college. He wishes he had never gotten himself in trouble, and he is committed to abstaining from marijuana use. He said it is not worth losing his career over. His girlfriend does not use it. ¹(Item 4)

In response to questions in the interrogatories about Applicant's past illegal drug use, he disclosed that his first use of marijuana was some time in 2016 and his last use was December 2022. He reported in the interrogatories that he used marijuana socially three to four times a year. He reported he does not intend to use illegal drugs in the future. (Item 4)

In Applicant's answer to the SOR, he admitted that from about 2016 to December 2022, he used marijuana with varying frequency and after being granted access to classified information. He admitted he purchased marijuana from 2016 to December 2022 on various occasions. He admitted he was charged in about January 2021 with possession of marijuana. (SOR ¶¶ 1.a, 1.b, 1.c)

Applicant stated in his SOR answer that he is on a journey dedicated to rehabilitation and recovery, and he has taken proactive steps to address his substance misuse. He said he has disassociated with friends who are involved with illegal drugs. He was willing to sign a statement affirming his commitment to complete abstinence of all illegal drug involvement. He did not provide a signed statement. He said he has abstained from illegal drug use for over a year and his work performance has not been affected by his marijuana use. He believes this is evidence that he has taken significant strides toward rehabilitation and demonstrated a sincere commitment to overcoming his past transgressions.

Regarding his failure to disclose on his 2022 SCA his past illegal drug activity and his failure to disclose his drug use on his 2018 SCA, Applicant stated in his SOR answer that he acknowledges the seriousness of his misrepresentations made during the security review process, and he fell short of the standards expected in terms of honesty and integrity, and he takes full responsibility. He further stated, "I took immediate and proactive steps to rectify the situation once I became aware of the need for correction." Applicant admitted in his SOR answer the falsification allegations in SOR ¶¶ 2.a through 2.d. (Item 2) He further stated:

¹ 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.

Following my arrest and charge of marijuana possession in January 2021, I recognized the gravity of the situation and understood the importance of full disclosure in matters pertaining to my security clearance. Despite the charges being dismissed by the [X] County District Attorney Office, I promptly reported the arrest and charges to the relevant authorities, including updating my Personnel Security Questionnaire (PSQ) and informing my security officer of the events. (Item 2)

I understand that it is not only essential to report convictions but also arrests and charges related to illegal activities, as they may have implications for security clearance eligibility. Therefore, I took proactive measures to ensure that all relevant information was accurately disclosed, regardless of the outcome of the legal proceedings.

My actions in promptly reporting the arrest and charges, as well as updating the necessary documentation, demonstrate my commitment to rectifying the omissions and addressing the inaccuracies in my security clearance records. I acted in good faith, recognizing the importance of honesty and transparency in matters concerning national security clearance. (Item 2)

The above statement is inconsistent with the information Applicant told the government investigator during his April 2023 interview. Applicant did not promptly report his arrest because he said he believed he was only required to report a felony charge. Instead, he reported his arrest on his June 2022 SCA. He did not report his illegal drug use and purchases on his June 2022 SCA until he was interviewed in April 2023. He did not update his documents to rectify his omissions and address inaccuracies, rather this information was discussed when he was interviewed in April 2023. Regarding Applicant's failure to report his past use of marijuana on his SCA, he stated in his SOR answer:

By failing to report the infrequent instances of marijuana over multiple years, I created a regrettable pattern of falsified documents, undermining the integrity of the clearance process and casting doubt on my reliability and trustworthiness. (Item 2)

Applicant further stated that his conduct was infrequent and occurred under unique circumstances. He said that although it occurred over multiple years, he believed it was an isolated incident in an otherwise unblemished record of service. He deeply regretted his actions and was ashamed of his "negligent behavior." He emphasized that his actions were not indicative of a pattern of behavior or a lack of commitment to upholding the standards of national security. He is remorseful for his conduct. (Item 2)

I find Applicant was aware that he had used marijuana more than once when he completed his January 2018 SCA and deliberately failed to disclose his additional illegal drug involvement. He acknowledged he had received training on his responsibilities, and he should have known better. I find he was aware he was required to report his past drug use, and he deliberately failed to disclose in his June 2022 SCA his illegal use of marijuana

from 2016 to December 2022 and that his use was while he held a security clearance. There is no evidence he had access to classified information. I find he deliberately failed to disclose he purchased marijuana from about 2016 to December 2022.

In Applicant's SOR answer he provided comments from supervisors or coworkers about his job performance. They noted he has excelled in every role he has taken on. He is a great mentor and team member. He accepts accountability for his decisions and is a respected responsible leader. (Item 2)

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;

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

- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana from about 2016 to at least December 2022. Applicant held a security clearance at the time but there is insufficient evidence that he had access to classified information. AG ¶ 25(f) does not apply. He purchased marijuana on various occasions from about 2016 to at least December 2022. In January 2021 he was charged with possession of marijuana. AG ¶¶ 25(a) and 25(c) 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.

Based on Applicant's SOR answer, he said he last used marijuana in December 2022, specifically New Year's Eve. Although he stated he is committed to abstaining from future use of marijuana, he was not deterred after he was arrested for possession of marijuana in January 2021. He continued to use it even after he completed another SCA in June 2022, which was a reminder that illegal drug use is inconsistent with federal employment. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about his illegal drug use or evaluate his credibility and sincerity about discontinuing his drug use based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). At this time, there is insufficient evidence to conclude that there is an established pattern of abstinence and sufficient time has passed to conclude future use is unlikely. AG ¶ 26(a) does not apply. Although there is some mitigation under AG ¶ 26(b), that is he no longer associates with his friends with whom he used marijuana, and he has asked his sister to not use it in his presence, it is insufficient to fully mitigate Applicant's illegal drug involvement.

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.

Applicant deliberately falsified the full extent of his illegal drug use on his January 2018 SCA by stating he used marijuana one time in 2013. He deliberately falsified relevant facts on his June 2022 SCA when he answered “no” to the questions which asked if in the past seven years he had used illegal drugs and purchased illegal drugs. He again answered “no” to the question if he had ever used illegal drugs while possessing a security clearance, which was also false. I find all his falsifications were deliberate. 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 deliberately failed to disclose the extent of his illegal drug use on his January 2018 SCA. He had an opportunity to correct his omissions on his June 2022 SCA but exacerbated his situation by omitting additional relevant information when he denied any illegal drug use and purchase of illegal drugs in the past seven years. This was compounded by failing to disclose that his illegal drug use occurred while holding a security clearance. He did disclose he was charged in January 2021 for possession of marijuana. His explanations for failing to disclose his past involvement with illegal drugs were not believable. His repeated falsifications are not minor offenses.

Applicant did not make a prompt good-faith effort to correct his falsification but rather continued his conduct when he falsified his responses on his June 2022 SCA. Although Applicant is remorseful for his conduct and seems to accept the gravity of his actions, the security clearance process relies on those who are trusted with our nation’s secrets to be honest and forthcoming regardless of the consequences. He failed to be honest on his January 2018 SCA and exacerbated it by continuing to falsify relevant facts on his June 2022 SCA. 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 Guidelines H and E in my whole-person analysis.

Applicant failed to meet his burden of persuasion. The record evidence leaves me with 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.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant (excepting the words "to include after being granted access to classified information.")
Subparagraphs 2.b-2.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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge