



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01940
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nichole A. Smith, Esq., Department Counsel  
For Applicant: *Pro se*

09/27/2024

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On January 2, 2024, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on February 26, 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) on April 9, 2024. The evidence included in the FORM is identified as Items 3-6. (Items 1 and 2 include pleadings and

transmittal information.) The FORM was mailed to Applicant, who received it on April 23, 2024. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional evidence or file objections to the Government's evidence. The case was assigned to me on August 6, 2024.

### **Procedural Issue**

Within the FORM submitted by Department Counsel was an amendment to the SOR to correct an erroneous reference in SOR ¶¶ 1.g and 1.h. The reference was to SOR ¶ 1.a and the amendment changed the reference to SOR ¶ 1.b. Applicant did not object to the amendment.

### **Findings of Fact**

In Applicant's answer, he admitted some of the SOR allegations with explanations (¶¶ 1.a, 1.c-1.e, 1.h), and denied others (¶¶ 1.b, 1.f-1.g). I adopt his admissions as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact. (Item 2)

Applicant is 31 years old. He never married and has one child, age eight. He has worked as a technician for his current employer, a federal contractor, since September 2022. Applicant is a high school graduate. This is his first time seeking a security clearance. He completed his first security clearance application (SCA) in November 2022. (Item 3)

The SOR alleged, under Guideline E, that Applicant:

- used cocaine, at various times, from about 2014 to about 2019 (SOR ¶ 1.a);
- used marijuana, at various times, from about 2011 to about January 2019 (SOR ¶ 1.b);
- tested positive for marijuana on two urinalyses tests given in October 2018 and January 2019, while attending drug and alcohol treatment (SOR ¶ 1.c);
- was charged with driving under the influence (DUI) in January 2013 (SOR ¶ 1.d);
- was charged with public intoxication and possession of narcotics in July 2018 (SOR ¶ 1.e);
- deliberately gave false information on his November 2022 SCA when he failed to disclose his marijuana use from about 2011 to January 2019 (SOR ¶ 1.f);

-deliberately gave false information during his personal subject interview (PSI) in February 2023, when he failed to disclose his marijuana use from about 2011 to January 2019 (SOR ¶ 1.g); and

-deliberately gave false information in his responses to Government interrogatories in October 2023, when he listed his dates of marijuana use as December 2019, failing to list his marijuana use from about 2011 to January 2019 (SOR ¶1.h).

Applicant admitted using cocaine in June 2019 by sniffing it while he was also consuming alcohol. He further admitted using cocaine once a year between 2014 and 2019. He claimed not to have used cocaine since these instances and stated his intention not to use it in the future. (Items 2, 3)

In Applicant's SOR answer, he denied using marijuana other than from October 2018 to January 2019. Paperwork from his mandatory attendance at a drug and alcohol treatment facility from October 2018 to February 2019, indicated that he admitted using marijuana on a daily basis from the age of 18 (2011 or 2012) to age 25 (2018 or 2019). (Items 2, 6)

Paperwork from Applicant's mandatory attendance at a drug and alcohol treatment facility from October 2018 to February 2019, indicated that he tested positive for the presence of THC on October 19, 2018, and January 15, 2019. He admitted those test results in his SOR answer. (Items 2, 6)

In Applicant's SOR answer, he admitted his 2013 arrest for DUI. This incident likely happened in December 2012, as corroborated by information about the arrest contained in his PSI and police records. (Items 2, 4-5)

In Applicant's SOR answer, he admitted his 2018 arrest for public intoxication and possession of narcotics. His admissions are corroborated by information about the arrest contained in his PSI and police records. (Items 2, 4-5)

In November 2022, Applicant completed an SCA. In Section 23 of the SCA covering past drug use or activity, Applicant answered "Yes" to the question asking if in the past seven years, he had illegally used any drugs or controlled substances. By way of explanation, he stated that from 06/2014 (estimated) to 06/2019 (estimated), he "would use narcotics when going out with friends." "[He] only used it a few times, approximately 5 times." He provided no further explanations, nor did he state what "narcotics" he used. (GE 3)

Marijuana is a Schedule 1 drug as defined by the U.S. Drug Enforcement Agency (DEA). Substances listed on this schedule have no currently accepted medical use in the United States and include such other drugs as heroin, LSD, and methamphetamine. (See 21 CFR §§1308.11 through 1308.15)

During Applicant's background investigation in February 2023, he told the investigator that cocaine and methamphetamine (which, at the time, he thought was cocaine, but later was tested and turned out to be methamphetamine) were the only controlled substances he ever used. He failed to disclose to the investigator his use of marijuana from age 18 to 25, as he reported during his drug and alcohol treatment in 2018-2019. (Items 2, 4, 6)

Applicant was sent a set of interrogatories by the Government, which he completed in October 2023 and affirmed that all his answers were true and correct based on his knowledge and belief. One specific question asked him if he had used marijuana in the past, to which he answered "yes." He was then asked to explain his answer. He stated that he used marijuana in December 2019 twice a month in the amount of one gram. The use took place at a party located at a residence he did not remember. In answering the interrogatories, he failed to disclose his use of marijuana from age 18 to 25, as he reported during his drug and alcohol treatment in 2018-2019. (Item 4, 6)

In Applicant's SOR answer, he stated that he did not know that marijuana was a controlled substance. Upon his admission to the drug and alcohol treatment program in October 2018, he was given a pretest and was asked to name three types of drugs that are abused. He listed "weed" as one of the drugs. Weed is often used as a slang term for marijuana. I find Applicant's denial that knowing marijuana was a controlled substance not credible. (Items 2, 6)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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(a), 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 to obtain a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an 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.

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 E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. They include:

(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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer,

investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

The evidence supports that Applicant used cocaine from about 2014 to about 2019; used marijuana from about 2011 to about January 2019; tested positive on two urinalyses while attending a drug and alcohol program in 2018-2019; was charged with DUI in January 2013; was charged with public intoxication and possession of narcotics in July 2018; and made deliberate false statements to an investigator and in answering interrogatories about his previous marijuana use. All these acts reflect questionable judgment and an unwillingness to comply with rules and regulations. AG ¶¶ 15, 16(b) and 16(c) all apply.

Concerning Applicant's answers to the drug questions on the SCA, he answered the question by describing his "narcotics" use. I find that marijuana falls under the general definition of narcotics, and narcotics and marijuana are classified as Schedule 1 drugs by the DEA. The conduct alleged under SOR ¶ 1.f, deliberately falsifying his marijuana use by failing to list it on the form, was not established by the evidence.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17, and find the following relevant:

(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.

All of Applicant's drug and alcohol misconduct occurred in 2019 or before. There is no evidence of more recent conduct. Enough time has passed without reoccurring conduct to convince me that it will not happen in the future. Applicant is committed to not using illegal drugs in the future. AG ¶¶ 17(c) and 17(d) apply to SOR ¶¶ 1.a-1.e.

What is not mitigated is Applicant's recent deliberate false statements he made in 2023 during his PSI and in answering interrogatories where he either denied or highly minimized his prior marijuana use. He admitted extensive marijuana use from age 18 to 25 when he was in drug and alcohol treatment, but he denied this conduct, or highly minimized it when asked by an investigator and when he answered the interrogatories. Truthfulness by an applicant is essential during the security clearance evaluation process and demonstrating a lack of truthfulness is not a minor offense and casts doubt on the individual's reliability, trustworthiness, and good judgment. AG ¶¶ 17(c) and 17(d) do not apply to SOR ¶¶ 1.g-1.h.

### **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 guideline and the whole-person concept. I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under 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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.f:	For Applicant
Subparagraphs 1.g-1.h:	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 interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge