



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



In the matter of: )  
)  
) ISCR Case No. 22-02530  
)  
Applicant for Security Clearance )

**Appearances**

For Government:  
Jeffrey T. Kent, Esq. & Lauren L. Shure, Esq., Department Counsel

For Applicant:  
Carl Marrone, Esq.

11/20/2024

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**Decision**

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HALE, Charles C., Administrative Judge:

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

**Statement of the Case**

On May 15, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and E. Applicant responded to the SOR on August 24, 2023, and requested a hearing before an administrative judge. The case was assigned to me on April 2, 2024.

The hearing was initially scheduled for July 16, 2024. After resolving an issue with Applicant's security clearance sponsorship, the hearing was convened on August 7, 2024. Government Exhibits (GE) 1 through 5 and Applicant's Exhibits (AE) A through AA were admitted in evidence without objection. The Government's disclosure

letter, dated June 28, 2023, was marked as Hearing Exhibit (HE) I, and the parties' exhibit lists were marked as HE II and HE III . Applicant testified and offered the testimony of seven character witnesses. The record was held open until August 21, 2024, for Applicant to submit additional information. He submitted AE BB and AE CC, which I admitted without objection. DOHA received the transcript (Tr.) on August 20, 2024.

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted using marijuana and failing a urinalysis drug test. (SOR ¶ 1.a) He admitted falsifying his answers during two interviews with an authorized DoD investigator. (SOR ¶¶ 2.a-2.b) His admissions are incorporated in my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 28 years old. He attended college from 2015-2019 and obtained a bachelor's degree in athletic training. He elected to find employment outside his field of study and was hired for jobs in security and cybersecurity. He held a variety of security positions from December 2019 through 2022, some simultaneously. He received a security clearance in early 2019 and signed a nondisclosure agreement in September 2020. In 2021, he worked for a company for three months but resigned in lieu of termination over timecard issues. He worked for company Y as a security officer starting in October 2020, until he resigned from his position on April 20, 2022. He is single and has no children. (GE 1; GE 4; Tr. at 19-22, 58-61.)

**SOR ¶ 1.a: You failed a urinalysis test administrated by his employer, [company Y], on or about March 29, 2022, testing positive for tetrahydrocannabinol (THC).** Applicant admits failing the urinalysis but denies intentionally ingesting marijuana. He states in his Answer he only learned he had ingested marijuana when he was alerted by his positive urinalysis test.

Company Y informed Applicant at 11:25 am on a Monday he was subject to a random urinalysis, and he had 24 hours to comply. The initial urine sample was found outside acceptable temperature range, which resulted in a retest. The second test was positive for marijuana. (GE 3 at 124; GE 4; GE 5 at 153, 155; Tr. at 70-71.)

Applicant states he believes he ingested the marijuana while smoking a hookah pipe, which he believed at the time to only contain tobacco. (Answer; Tr. at 41-44.) He provided a flyer from the event where he believed he may have smoked marijuana from an infused hookah pipe. (AE X; Tr. at 94-99.) Applicant initially thought he may have tested positive because of a detox drink or a supplement he consumed as part of a training diet and was not supported by documentary evidence. (GE 4; Tr. at 23, 36-45, 78-81, 74,100.)

**SOR ¶ 2.a: Falsified material facts about his employment with company Y during a May 6, 2022 interview with an authorized DoD investigator. He falsely stated that he was currently working approximately 14 hours per week for company**

**Y when he had actually resigned from company Y on or about April 20, 2022.** Applicant admits this allegation. In a personal statement incorporated in his Answer he states:

My comments regarding my employment with [company Y] were connected to my resignation in lieu of termination, to which I was afraid to admit. I was offered the opportunity to resign and avoid termination because of a positive random drug test while employed by [company Y]. I did not provide accurate information because I was embarrassed about my prior marijuana concerns and was foolishly afraid that it would create a stigma that would hurt my chances for employment. Since my resignation from [company Y], I have done many things to try and rectify my mistakes. I have sought counseling acquired positive mentors and most important I am 100% drug-free and am willing to be drug tested at any time. (Answer; AE D; AE G.)

Applicant admitted during his testimony it was during the May 6 interview that he said “yes” when he was asked during his interview about currently working 14 hours a week at company Y, despite having resigned from company Y about two weeks before, on April 21, 2022. (GE 3 at 123-124; Tr. at 73.)

**SOR ¶ 2.b: Falsified material facts about his employment with company Y during a May 18, 2022 interview with an authorized DoD investigator when he falsely stated that he would be eligible for rehire at company Y.** Applicant in his Answer admits this allegation. In his Answer he restated the same reason quoted above in the finds of fact for SOR ¶ 2.a. He testified that he told the investigator that he had resigned to focus on his IT career and that he was eligible for rehire. He only admitted he was not eligible for rehire because of his positive urinalysis after he was confronted by the investigator. He described the matter as “kind of a cut and dry type of thing.” (GE 3 at 123-124; Tr. at 63-64, 73-74; AE J.)

## **Whole Person**

Applicant earned a bachelor’s degree in 2019. He continued to obtain training and professional certifications outside his academic degree. He also joined a professional business organization, which provided mentorship and other professional development. (AE I; AE K; AE J.) His resumé lists him holding a bachelor’s in cybersecurity. His degree is in athletic training. (AE H; AE J; Tr. at 63-64.) He offered a number of character letters from people familiar with him in all facets of his personal history. (AE L through AE U) Applicant obtained some of the character references prior to the SOR being issued. He states those persons whose letters precede the SOR were aware he had lied to the DoD investigator. (AE L; AE N; AE P; AE Q; AE R; Tr. at 83.) Several of these individuals testified on his behalf. (AE L; AE M; AE S.) At least two witnesses were not aware that he had lied to an investigator during his security clearance interview. One witness, who was a senior law enforcement officer in Applicant’s hometown, who was unaware of Applicant’s lies to the DoD investigator, believed that with time Applicant could mitigate the fact he had lied to an investigator. This witness noted Applicant was not known to

hang around the crowds in high school that were known to cause trouble, and he noted Applicant's parents provided strong family support. (AE M; Tr. at 139-140, 151.)

As evidence of his commitment to drug-free living, Applicant pledged to abstain from all drug involvement and substance abuse. He states:

[I] wish to proudly and confidently state that I pledge to continue to remain free from all illegal drugs, including marijuana, and refrain from any and all substance abuse. Furthermore, I fully acknowledge, understand, and embrace that any future involvement with drugs or misuse of the same will be grounds for revocation of my security clearance and any national security eligibility. (Answer; AE F.)

Applicant stated he would disassociate from those who would use drugs and offered laboratory reports from 2023 showing he had tested negative for marijuana. These included a negative hair follicle test conducted on June 19, 2023; and two negative urine tests, conducted on March 23, 2023, and April 15, 2023. To further demonstrate his seriousness for the situation, he met with a board certified doctor in addiction medicine to be assessed for his risk for further drug use. (AE E; AE H; Tr. at 55, 91-92.)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## Analysis

### Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual’s reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any “controlled substance” as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

Applicant’s admissions in his SCA and Answer are sufficient to raise the following disqualifying conditions under AG ¶ 25:

- (a) any substance misuse (see above definition);
- (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.

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 taken to overcome this problem, and has established a pattern of abstinence including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security.

AG ¶ 26(a) is not established. Applicant denies knowingly using marijuana. Applicant's lack of credibility explaining the basis for the positive urinalysis casts doubt on his current reliability and trustworthiness despite not having history of drug use or an incident since the positive urinalysis.

AG ¶ 26(b) is not established. While Applicant has taken action to 1) disassociate himself from drug-using associates and contacts; 2) avoids environments where drugs might be used; and 3) provided a signed statement of intent abstaining from all drug involvement and substance misuse and acknowledging that any future involvement or misuse is grounds for revocation of national security he does not acknowledge his drug involvement.

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

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

Applicant's deliberate falsifications to an investigator about his work status with company Y raises the following disqualifying condition, under AG ¶ 16:

(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.

The following mitigating conditions, under AG ¶ 17, are potentially relevant:

(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.

AG ¶¶ 17(a) and 17(c) are not established for SOR ¶¶ 2.a and 2.b. Applicant admitted he deliberately and repeatedly lied to the DoD investigator during the course of two interviews. The evidence reflects that he admitted his falsification to an investigator after being confronted during the second security clearance interview. Applicant's false statements concerning his employment status and eligibility for rehire with company Y are not "minor," because such statements strike at the heart of the security clearance process. See ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011). An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. See ISCR Case No. 01-03132 at 3 (App. Bd. Aug. 8, 2002). Applicant's false statements were recent and calculated to give him the most favorable hiring profile for his application for a position requiring a security clearance.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense judgment based upon careful consideration of the guidelines and the whole-person concept. In applying the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

I have incorporated my comments under Guidelines H and E in my whole-person analysis and have applied the adjudicative factors in AG ¶ 2(d). I have carefully considered Applicant's attempts at self-improvement, the character evidence, the recency of his conduct, as well as the discrepancy in his resumé. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guidelines H and E and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his conduct under Guidelines H and E.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2: Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant

### **Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale  
Administrative Judge