



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



In the matter of:	)	
	)	
	)	ISCR Case No. 24-00454
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

12/20/2024

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On September May 3, 2024, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. The DOD acted 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) implemented by the DOD on June 8, 2017.

On May 13, 2024, Applicant answered the SOR and elected to have his case decided by an administrative judge from the Defense Office of Hearings and Appeals

(DOHA) on the written record in lieu of a hearing. Department Counsel submitted the Government's File of Relevant Material (FORM) on July 8, 2024. The evidence included in the FORM is identified as Items 3-5. (Items 1 and 2 include pleadings and transmittal information.) The FORM was mailed to Applicant, who received it on August 6, 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 object to the Government's evidence. Items 3-5 are admitted in evidence. The case was assigned to me on December 5, 2024.

### **Findings of Fact**

Applicant admitted all the SOR allegations. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact. (Items 1-2)

Applicant is 25 years old. He has worked for a defense contractor since August 2022. He has taken some college courses. He served in the Army from 2017 to 2021, when he was honorably discharged. He is single and has a two-year-old child. He has held a security clearance since 2017. (Items 3-5)

Under Guideline H, the SOR alleged Applicant used marijuana from about February to 2022 to about December 2022 (SOR ¶ 1.a); and that in February 2022, he failed a urinalysis test when he tested positive for marijuana (SOR ¶ 1.b)

Under Guideline E, the SOR alleged that Applicant deliberately gave false information on his February 2023 security clearance application (SCA) when he failed to disclose his illegal marijuana use as stated in SOR ¶ 1.a. (SOR ¶ 2.a) It also alleged that when he completed interrogatories on March 9, 2024, in furtherance of his security clearance investigation, he deliberately provided false information when he answered "No" to a question asking him if he had ever tested positive for illegal drugs on a drug test, thereby failing to disclose his positive drug test for marijuana as set forth in SOR ¶1.b. (SOR ¶¶ 2.a and 2.b)

In this SOR answer, Applicant admitted, without explanation, all of his illegal drug use, his deliberate false answers on his 2023 SCA, and in answering the interrogatory question about whether he had ever had a positive urinalysis test result for illegal drugs. He began using marijuana in April 2022. He used it daily for a medical condition. He had medical authorization from the state of his residence to use marijuana. He purchased from legal dispensaries. He claims to have stopped using marijuana in December 2022. He has known marijuana use is illegal under federal law since 2017, when he was instructed on the subject while undergoing his entrance physical to join the Army. He claims that he has no intention to use marijuana in the future. His current employer has a drug policy that prohibits any illegal drug use by security clearance employees, even in states where the use of marijuana is legal. (Items 2, 4)

In February 2022, as part of a preemployment condition, Applicant took a urinalysis test that produced a positive result for the presence of marijuana. In his March 19, 2024 answer to interrogatories, he denied testing positive for illegal drugs. During his April 13, 2023 background interview, when asked, he denied using any illegal drugs in the past seven years. After being confronted with the positive drug test result from 2022, he replied that use was not illegal because that use was authorized by his state for medical purposes. He claimed he failed to list his marijuana use on his SCA for the same reason. (Items 3-5)

## **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 careful weighing 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 H, Drug Involvement and Substance Abuse**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable in this case include:

- (a) any substance misuse; and
- (b) testing positive for an illegal drug;

Applicant's use of marijuana, between April 2022 and December 2022, is supported by his admissions and other evidence. Additionally, he tested positive for marijuana on a urinalysis test in February 2022. I find both the above disqualifying conditions apply.

AG ¶ 26 provides conditions that could mitigate security concerns. One potentially applies in this case:

- (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;

Applicant used marijuana on a daily basis from about April 2022 through December 2022. He admitted knowing, since 2017, that marijuana use was illegal under federal law, yet he used marijuana anyway. He also continued to use marijuana after he was hired by his current employer in August 2022, despite its written policy prohibiting such use. Given his pattern of use and willingness to disregard the law and company rules, his claimed abstinence after December 2022 is not sufficient to overcome his marijuana use. His

claimed recent abstinence is insufficient to convince me that recurrence is unlikely. The frequency and recency of his past use and his use while in violation of his company's drug use policy information casts doubt upon his current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) does not apply.

### **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.

16. Conditions that could raise a security concern and may be disqualifying 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; and

(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.

Applicant admitted that he deliberately provided false information on his 2023 SCA and when he answered interrogatories denying that he had a positive urinalysis test. He admitted that he knew using marijuana was unlawful under federal law as far back as 2017. AG ¶¶ 16(a) and 16(b) apply.

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

(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

Applicant did not make a prompt, good-faith effort to correct his previous falsifications. Deliberately providing false information on an SCA is not a minor offense. It strikes at the heart of the security clearance investigation process. These actions raise questions about Applicant's reliability, trustworthiness, and judgment. Although Applicant claims he will not use illegal drugs in the future, his credibility is suspect. AG ¶¶ 17(a) and 17(c) do not 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. Since Applicant chose a determination based upon the written record, I had no chance to witness his demeanor, or assess his credibility. I considered Applicant's history of marijuana use and his continued use despite his employer's prohibition. He also deliberately falsified his 2023 SCA and submitted a false answer to interrogatories used to further the security clearance evaluation process. He failed to provide sufficient evidence to mitigate the drug involvement and personal conduct security concerns.

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 under Guidelines H and E.

### **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.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge