



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



In the matter of:)	
)	
)	ISCR Case No. 23-01259
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro Se*

12/11/2024

Decision

GOLDSTEIN, Jennifer I., Administrative Judge

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 25, 2019. On December 11, 2023, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, I, and E. The DoD acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016).

Applicant submitted his undated Answer to the SOR (Answer) and requested a hearing before an administrative judge. The case was assigned to me on October 23, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice on October 28, 2024, scheduling the hearing for November 13, 2024. The hearing was convened as scheduled. The Government offered: one Hearing Exhibit, marked HE I; and Exhibits (GE) 1 through 7, which were admitted without objection. Applicant testified on his own behalf

but did not submit any exhibits. The record was left open until December 2, 2024, for receipt of additional documentation. Nothing further was received. DOHA received the transcript of the hearing (Tr.) on November 22, 2024.

Findings of Fact

In Applicant's Answer to the SOR, he admitted SOR ¶¶ 1.a in part, 2.a-2.d, 3.a in part, and 3.b. He denied SOR ¶¶ 1.a in part, 1.b and 3.a in part. 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 36 years old. He had a difficult childhood and experienced abuse. When he was 15, his stepfather kicked him out of his home. Applicant supported himself by working at a fast-food chain and moved in with a friend. He did not graduate from high school but obtained a General Education Development (GED) certificate. He served in the Army from May 2007 to November 2011. During that period, he was deployed to combat zones in Iraq twice. He earned the rank of E-4. He received an honorable discharge. He has been diagnosed with post-traumatic stress disorder (PTSD) as a result of his service in Iraq. He is considered 70% disabled by the Department of Veterans Affairs (VA). He is unmarried. He currently works for a government contractor in information technology. Documentation establishes that he was granted an interim secret clearance in February 2019, and he signed a nondisclosure agreement (NOA) on February 21, 2023. (GE 1, GE 3, GE 7; Tr. 25-34)

Drug Involvement and Substance Misuse

Applicant used marijuana, also referred to as cannabis, from March 2013 to December 2022. This included a period from March 2019 to December 2022 when he used marijuana while granted access to classified information. In his Answer, he admitted to using marijuana from March 2012 to February 2017. He denied using marijuana while possessing a security clearance. However, during his testimony he admitted to using marijuana through summer 2024, while holding an interim clearance. (GE 7; Tr. 53-55)

Applicant first used marijuana in 2006 to 2007 when he was in high school. It was supplied by classmates. He did not use it again until March 2013, when he moved back in with his mother. He used approximately a gram a day to self-medicate his PTSD symptoms. He tested positive for marijuana in March, April, and May 2013 on drug tests administered by the VA. He found that marijuana was more effective than the new medications he tried for PTSD. He felt those medications made him into a "zombie." (GE 3; Tr. 35-37, 59-60)

In Applicant's psychological evaluation dated December 2022, he disclosed that he was using about one gram of marijuana a day through July 2024. (GE 3; Tr. 53-55) He testified at hearing that "I have used it on and off while trying to get put on medication," but that he was required to have a clean urinalysis for four months to get a prescription for Adderall. He stopped marijuana use in July 2024 so that he could try Adderall. (Tr. 54.)

Psychological Conditions

After completing his service in Iraq, Applicant began to experience psychological problems. He has a family history of mental illness. (GE 3, GE 4, GE 5, GE 6)

VA treatment records reflect that as of February 2018, Applicant had wrestled with daily thoughts about ending his life since 2014. In January 2014, Applicant's mother informed him she planned to kick him out of her house after he recuperated from a cyst. He attempted to kill himself by overdosing on sleeping medication after he learned her plan. He was hospitalized for 24 hours after this incident and then went to an inpatient mental health treatment center for a week. He was diagnosed with mood disorder, anxiety, and depression. His mental health issues resulted in aggressive actions and physical agitation. He was treated at a VA domiciliary from July 2014 to February 2015. He lived in a few homeless shelters until entering the VA homeless program. In 2017, Applicant's mother died by suicide. In February 2018, he reported that if he ever tries to kill himself again, "it will be suicide by cop." In May 2018, he moved to another state and received housing and therapy through the VA. (GE 2, GE 3, GE 4, GE 5, GE 6 at 138; Tr. 45-57)

In 2020, Applicant stopped using his medication to treat his PTSD and depression. He had a herniated disk in his back that required surgery. He could not walk for seven months. He relied on marijuana to manage his PTSD, depression, and back pain. He stopped treatment with a psychologist in January of 2020. He resumed psychological treatment in early 2021. (GE 3; Tr. 64-70)

In December 2022, Appellant was evaluated by a licensed psychologist at the request of DoD in connection with his clearance application. He was diagnosed with chronic PTSD, cannabis use disorder, and alcohol use disorder (moderate in remission). At that time, he was not taking medication, having ceased use of his prescriptions in 2020. The psychologist found that Applicant "present[s] a condition at this time that could pose a significant risk to his judgment, reliability, trustworthiness, and ability to protect classified information." Further, Applicant reported having suicidal ideations, without intent, in response to the stress of the evaluation. The psychologist gave him a "guarded prognosis." (GE 3)

Applicant continues to struggle with PTSD and depression. He also has been diagnosed with attention deficit hyperactivity disorder (ADHD). He is currently receiving psychological and medical treatment and is prescribed Adderall and Wellbutrin. He sees a counselor on a weekly basis. However, he has a history of non-compliance with his medications and had only been taking Adderall for about a week at the time of the hearing. (Answer; Tr. 60-70)

Personal Conduct

Applicant falsified material facts on an SCA dated January 25, 2019, pertaining to "Section 23-Illegal Use of Drugs or Drug Activity" when he stated "No" to a question asking whether he had illegally used drugs or controlled substances in the last seven years. He deliberately failed to disclose the information set forth above regarding his marijuana use. Additionally, he admits he deliberately falsified his November 27, 2023 answers to DOHA interrogatories when he indicated his marijuana use ended in February 2017. He falsified

his answers because he feared he would not get the job if he disclosed his marijuana use. (GE 1, GE 2, Tr. 71)

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 testimony, psychiatric treatment records, and Answer are sufficient to raise the following disqualifying conditions under AG ¶ 25:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder; [and]
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Under this guideline, the SOR alleged that Applicant used marijuana through at least December 2022. The evidence established that he continued to self-medicate with marijuana into summer 2024. AG ¶¶ 25(a) and 25(c) apply.

The SOR also alleged that Applicant used marijuana with varying frequency from March 2019 to at least December 2022, while granted access to classified information. Applicant admitted using marijuana but denied that he had access to classified

information. While Applicant was granted an interim clearance in 2019, there is little evidence to establish he was granted access to classified information during the timeframe alleged. The DISS report reflects that he signed an NDA in February 2023, after his interim secret eligibility was withdrawn. See ISCR Case No. 20-03111 at 3 (App. Bd. August 10, 2022).

However, AG ¶ 25(f) also is disqualifying if the person was "holding a sensitive position." DOD Manual 5200.02, Procedures for the DoD Personnel Security Program notes: "to hold a sensitive position" is "referred to in this manual as 'national security eligibility'." The record evidence supports that he used marijuana after interim eligibility was granted. While the language in SOR ¶ 1.b was imprecise as far as it stated "access to classified information" instead of "holding a sensitive position," Applicant was on notice of the Government's concern. AG ¶ 25(f) applies.

Despite Applicant's diagnosis of cannabis use disorder in December 2022, AG ¶ 25(d) is not applied here because that diagnosis was not alleged as a security concern under this guideline.

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; [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.

None of the mitigating conditions are fully established. Applicant used marijuana over a ten-year period from 2013 through summer 2024, including while holding an interim clearance. He used it to self-medicate because he did not like the way his prescription medications made him feel. It is too soon to tell whether his new prescription medication will be different from the others he has taken or whether he will resume using marijuana

to treat his psychological conditions. Additionally, he has not provided a signed statement of intent to abstain from all drug involvement and substance misuse nor has he satisfactorily completed a drug treatment program or obtained a favorable prognosis, which is evidence in mitigation that I can consider, given the record evidence of his diagnosis of cannabis use disorder, even though it was not alleged in the SOR. In addition, his deliberate falsifications about his history of drug involvement, as established under Guideline E and discussed below, further undercut any showing of mitigation.

Guideline I, Psychological Conditions

The security concerns about Psychological Conditions are set out in AG ¶¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

AG ¶ 28 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;

(c) voluntary or involuntary inpatient hospitalization; [and]

(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

Applicant was diagnosed with chronic PTSD, cannabis use disorder, and alcohol use disorder (moderate in remission). In the opinion of the psychologist that examined Applicant in 2022, he possesses a condition that may impair his judgment, stability, reliability, or trustworthiness. His long history of mental health treatment includes inpatient hospitalizations for attempted suicide and suicidal ideation. His mental health journey has been a difficult one and he has a history of non-compliance with his prescribed treatments. AG ¶¶ 28(b), 28(c), and 28(d) apply.

AG ¶ 29 describes conditions that could mitigate the security concerns. The following mitigating condition is potentially applicable:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

Since 2014 Applicant has experienced mental-health problems relating to his chronic PTSD, and cannabis use disorder. Even though he has received treatment, he has been unable to consistently comply with his treatment plan and take his medications as prescribed, preferring marijuana to his prescription drugs. The most recent prognosis was in 2022 and indicated a guarded prognosis at that time. While Applicant stopped using marijuana about four months ago, is currently receiving treatment and is on a new medication, it is too soon to tell if he will continue to comply with his treatment given his history. None of the above mitigating conditions apply.

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are 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; 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's intentional failure to disclose his marijuana use in his SCA and his answers to DOHA interrogatories raise the above disqualifying conditions. He admitted he intentionally falsified his answers with respect to marijuana use because he was afraid he would not get the job if they knew of his usage.

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;

None of the mitigating factors in AG ¶ 17 provide full mitigation. Applicant admitted he deliberately and repeatedly lied about his marijuana use because he feared losing his position. His false statements concerning his drug use 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). While Applicant voluntarily disclosed his drug use during the hearing, his false statements are recent and were calculated to give him the most favorable profile for his security clearance application. The government discovered the extent of his marijuana use only through examining his treatment records and cross examination.

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, I, and E in my whole-person analysis and have applied the adjudicative factors in AG ¶ 2(d). I have also considered Applicant's challenging youth, his honorable military service in difficult conditions, and his efforts to get treatment for his chronic PTSD. He is commended for overcoming many obstacles. However, he needs to continue to focus on his mental health treatment and develop a record of compliance. He also needs to be honest with the government

After weighing the disqualifying and mitigating conditions under Guidelines H, I, 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, I, or E.

Formal Findings

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

Paragraph 1: Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2: Guideline I:	AGAINST APPLICANT
Subparagraphs 2.a - 2.e:	Against Applicant
Paragraph 3: Guideline E:	AGAINST APPLICANT
Subparagraphs 3.a - 3.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. Eligibility for access to classified information is denied.

Jennifer I. Goldstein
Administrative Judge