



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



In the matter of:)
)
) ISCR Case No. 24-01612
)
Applicant for Security Clearance)

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

02/05/2025

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 4, 2022, and another October 19, 2023. On October 8, 2024, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline 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 Answer to the SOR on October 16, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written file of relevant material (FORM) on October 13, 2024. On October 13, 2024, a complete copy of the file of relevant material (FORM) was sent to Applicant,

who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He acknowledged receipt of the FORM on December 31, 2024, and did not provide a response. The case was assigned to me on January 30, 2025.

The SOR and the Answer are the pleadings in the case. FORM Items 2 through 4 are admitted into evidence without objection.

Findings of Fact

In Applicant's Answer to the SOR, he admitted using marijuana. SOR ¶ 1.a. He admitted falsifying his answers on his SCA, stating "I had previously used marijuana in the past to deal with anxiety, stress, and digestion issues. I quit after moving away from [State Z] and looking for work and thought admitting would hurt my chances of finding work." SOR ¶¶ 1.b-1.e. 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 37 years old. He earned his bachelor's degree in 2009. He has worked for his employer since August 2022. He is not married and has no children. (Item 2; Item 3; Item 4.)

SOR ¶ 1.a: From about January 2016 until about December 2021, you used and purchased marijuana with varying frequency. Applicant admitted in his security clearance interview that he bought marijuana from his roommate. His motivation for purchasing and using marijuana was to help with his anxiety, stomach issues, and allow him to relax on the weekend. He estimated he bought marijuana about once a month. His roommate passed away in the last 13 months. While Applicant was using marijuana, he did not hold a security clearance. He informed the investigator he did not intend to "purchase marijuana again in the future." He was drug tested for employment in the late summer of 2022 and passed successfully. (Item 4.)

SOR ¶¶ 1.b-1.c: Falsified material facts on an SCA dated August 4, 2022, in response to the following question: "Section 23 – Illegal Use of Drugs or Drug Activity when you stated "No" to both whether you had illegally used drugs or controlled substances in the last seven years and been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any controlled substance and deliberately failed to disclose the information set forth in subparagraph 1.a. above. Applicant was given opportunity to disclose his marijuana use from 2016 to 2021 during his June 2024 security clearance interview. He did not disclose his marijuana use. After being confronted by the investigator he "agreed to using marijuana from 2016 to 2021" as set forth in SOR ¶ 1.a. He told the investigator he "did not think it was relevant and occurred a long time ago." He also said he did not list his marijuana use because he "did not want to look bad for his job." (Item 4.)

SOR ¶¶ 1.d-1.e: Falsified material facts on an SCA dated October 19, 2023, , in response to the following question: “Section 23 – Illegal Use of Drugs or Drug Activity when you stated “No” to both whether you had illegally used drugs or controlled substances in the last seven years and been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any controlled substance and deliberately failed to disclose the information set forth in subparagraph 1.a. above. Applicant was given opportunity to disclose his marijuana use from 2016 to 2021 during his June 2024 security clearance interview. He did not disclose his marijuana use. After being confronted by the investigator he “agreed to using marijuana from 2016 to 2021” as set forth in SOR ¶ 1.a. He told the investigator he “did not think it was relevant and occurred a long time ago.” He also said he did not list his marijuana use because he “did not want to look bad for his job.” (Item 4.)

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 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 intentional failure to disclose his marijuana use in his SCA while holding a security clearance raises the following disqualifying condition, under AG ¶ 16:

(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.

The following mitigating conditions, under AG ¶ 17, are potentially relevant for SOR ¶¶ 1.b - 1.e:

(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 ¶¶ 1.b - 1.e. Applicant did not voluntarily disclose his drug use to the investigator. He admitted he deliberately lied on the two SCAs because he feared not getting his position. Applicant's false statements on two SCAs concerning his drug use and purchasing drugs 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 are recent and calculated to give him the most favorable profile for his security clearance application.

The following mitigating conditions, under AG ¶ 17, are potentially relevant for SOR ¶ 1.a:

(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.

(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;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

AG ¶¶ 17(c)-17(e) and 17(g) are established for SOR ¶ 1.a. Applicant admitted using marijuana. He stopped using prior to starting his position. He tested negative for marijuana in 2022. The person whom he purchased marijuana from is no longer his roommate and has recently passed away. Applicant's drug use is mitigated by time and sufficient evidence he is no longer involved in circumstances which cast doubt upon his

reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. These mitigating conditions do not apply to SOR ¶¶ 1.b-1.e.

Whole-Person Concept

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. 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 Guideline E in my whole-person analysis and have applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. Insufficient time has passed since he lied on his SCAs to overcome the extent and seriousness of his conduct. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guideline 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 Guideline E.

Formal Findings

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

Paragraph 1: Guideline E:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraphs 1.b - 1.e:	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