



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



In the matter of:)
)
) ISCR Case No. 23-02820
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*

02/13/2025

Decision

MURPHY, Braden M., Administrative Judge:

Applicant has a history of drug involvement and criminal conduct, including illegal drug use, and drug-related and other criminal offenses. These security concerns are alleged under Guideline H (Drug Involvement) and alleged or cross-alleged under Guidelines E (Personal Conduct) and J (Criminal Conduct). Applicant did not provide sufficient evidence to mitigate any of the alleged security concerns. Applicant's eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on December 14, 2022, in connection with his employment in the defense industry. On February 20, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, E, and J. The DOD issued the SOR 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 Security Executive Agent Directive (SEAD) 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on March 18, 2024, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on July 23, 2024. On July 25, 2024, DOHA issued a notice scheduling the hearing for August 12, 2024, via video-teleconference through an online platform.

The hearing convened as scheduled. Department Counsel offered Government's Exhibits (GE) 1 through 4, and Applicant offered Applicant's Exhibits (AE) A through I. All exhibits were admitted without objection. Applicant and two witnesses also testified.

At the end of the hearing, I held the record open to provide Applicant the opportunity to submit additional documents. He timely submitted five documents, which are marked as AE J through N and admitted without objection. These include: an offer letter from Company N in 2020 (AE J); Applicant's W-2 tax statement for 2020 (AE K); a pay stub from November-December 2021 (AE L) a recommendation letter (AE M); and documentation of security trainings in 2022 and 2023 (AE N). The record closed on August 27, 2024. DOHA received the hearing transcript (Tr.) on September 12, 2024.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a-1.g under Guideline H. He admitted SOR ¶ 2.b and 2.c under Guideline E. He admitted the cross-allegation at SOR ¶ 3.a (under Guideline J) but denied the cross-allegation at SOR ¶ 2.a (under Guideline E). He also provided narrative statements addressing the allegations. His admissions are incorporated into the findings of fact. Additional findings follow.

Applicant is a 34-year-old employee of a defense contractor. He has never married. He has two children, now ages 8 and 5. He earned an undergraduate degree in 2015 and a master's degree in 2020. He has been employed as a consultant for a defense contractor since February 2022, after many years in the restaurant industry. He has never held a clearance before but remains sponsored for a clearance. He earns an annual salary of \$108,000 after starting at \$82,000. (GE 1; AE E, AE F; AE K; Tr. 13-14; 60-61, 91-93; HE IV)

During his testimony, Applicant disclosed another position, with company N, a healthcare facility specializing in traumatic brain injury (TBI). He was hired as a residential supervisor on a \$42,000 annual salary. He worked there from October 2020 to November 2021. He resigned because he was disgruntled over being overworked. He said he did not list the job on his SCA inadvertently. (Tr. 62-63, 65-72, 94-95; AE J, AE L)

Drug use and Drug-related offenses:

Applicant used marijuana daily in college with friends, from August 2009 to 2015. He would also contribute money towards weekly group purchases of the drug. His use declined from daily to on weekends from 2015 to 2019, then about once a month up to October 2021. (Answer; GE 2 at 8; Tr. 61-65) Applicant disclosed the full timeframe of his marijuana use on his interrogatory response, and said he used it weekly. (GE 2 at 2) (SOR ¶ 1.a) He clarified during his testimony that he did not use drugs while he was on probation, but he did relapse afterwards. (Tr. 63-65) He also clarified that he did not use marijuana while working for Company N (Oct. 2020-Nov. 2021) but resumed briefly after leaving the company, though he said he stopped using again when applying for his current job, since he was expecting to take a drug test. (Tr. 94-100) (This suggests he used until November 2021, not October 2021).

Applicant said he curbed his marijuana use after the birth of his children. He also stopped because of his job at Company N, since he had “people’s livelihoods in my hands [and] there was no room for me to be high at any point.” (Tr. 61-63)

Applicant also has several drug-related criminal offenses and arrests. He was arrested for marijuana possession twice in college (2011 and 2012) (SOR ¶¶ 1.b, 1.c) (Answer; GE 2 at 6-7; GE 4 at 19-22) He was arrested for possession of a controlled substance in December 2016, marijuana possession in July 2017, and possession of marijuana and marijuana paraphernalia in March 2018. (SOR ¶¶ 1.e, 1.f, 1.g) (Answer; GE 2 at 6-7, 11; GE 3; GE 4 at 11-12, 23, 25, 29-31)

Applicant said the controlled substance at issue for the December 2016 arrest was “kratom,” an herbal, for which he paid a fine. (Tr. 79-80) Applicant recalled no specifics about the July 2017 or March 2018 marijuana-related charges, beyond perhaps paying a fine, but he acknowledged that, despite earning his degree by that point and trying to do better, he was still making bad decisions. (Tr. 80-83, 105-106)

In November 2015, Applicant was arrested and charged with felony possession of marijuana, felony possession of marijuana with intent to sell (PWIS), possession of marijuana, and having an open container of alcohol in a motor vehicle. (SOR ¶ 1.d) (GE 3 at 7-8; GE 4 at 13-18) He explained in his January 2023 background interview that he had been smoking marijuana at a party with friends. He left the party and drove to a fast-food restaurant and fell asleep in the drive-through lane. He was awakened by police, who searched his car and found bags of marijuana, a scale, a pipe, and an open plastic cup full of liquor. In his testimony, he at first told a different story, and said that he and a passenger were pulled over while driving and they were both charged, though he later affirmed the first version. (*Compare* Tr. 75-76 *with* GE 2 at 7; Tr. 106) He denied that he had been dealing drugs and said he had the scale to avoid being cheated. (Tr. 106-107) Either way, in July 2016, he was found guilty on the three misdemeanor counts (the felony marijuana possession charge was reduced to a misdemeanor). The felony PWIS charge was dismissed. He paid about \$300 in fees and fines and was sentenced to 45 days in jail and 12 months of probation, though he

said he did not serve any jail time. He said he completed probation early and said he was not on probation for these charges at the time of his next arrest (SOR ¶ 1.f), in December 2016. (GE 7 at 2; Tr. 75-79, 108-109)

Other offenses:

In 2011, while he was in college, Applicant was on campus with several friends, when they found an identification card belonging to a fellow student whom they knew. Rather than turn it in, they used it to purchase items on campus. Likely based on the amount charged on the card by the group as a whole, Applicant was charged with felony obtaining property under false pretenses and with financial card fraud. He was arrested and held in custody for several hours, but the charges were dropped in court. (SOR ¶ 2.b) (Answer; GE 2 at 6; GE 3; GE 4 at 32-43; Tr. 73-75, 102-104, 120-123)

In June 2021, Applicant was charged with misdemeanor fleeing and eluding arrest, failing to heed a siren red light, reckless driving to endanger, and speeding. (SOR ¶ 2.c) He explained that he had taken the overnight "red eye" flight from Las Vegas back to his home state after a vacation. His plane landed early in the morning, and he worked in another city in the state. He was late for work so he was speeding. A police car attempted to pull him over but he sped up and exited the freeway. He pulled his vehicle into the back parking lot of a hotel and waited 15 minutes before resuming his journey. He was then pulled over after leaving the parking lot by the police car who was waiting for him. He was sober and had no drugs or alcohol in the car, which was searched at his request. He was cited and released with a court date. He said he received over \$1,000 in court costs and fines and his license was suspended. (Answer; GE 2 at 11-12; GE 4 at 1-7; Tr. 83-86, 109-113)

Since his June 2021 incident, Applicant has not had anything more than a single speeding ticket. He said he has not used marijuana since about October (or perhaps November) 2021. He stopped using at that point because he was applying for his current position and he wanted to be clean in case he had to take a drug test. (Tr. 86, 93-100, 115) He has not used any drug beyond marijuana. (Tr. 115)

Applicant did not list any drug use or any drug offenses, felony offenses, or any offenses or illegal drug use in the previous seven years on his December 2022 SCA in answer to various questions about his police record and illegal use of drugs or drug activity on his SCA. (GE 1 at 26-27) When asked about these various omissions, he said he thought that if he disclosed them on his SCA he would be automatically denied a clearance. (Tr. 123-129) However, he voluntarily discussed his drug history and much of his criminal record in his January 2023 background interview, a month later. (GE 2 at 6-8; Tr. 130-132)

Applicant did not disclose his June 2021 misdemeanor charges on his December 2022 SCA or in his January 2023 background interview. GE 1, GE 2 at 6-8) He also did not disclose it during his second interview, in July 2023, until he was confronted about it,

and after discussing his other charges and offenses and saying that he had no additional adverse encounters with law enforcement to report. (GE 2 at 11)

There are no allegations of falsification in the SOR. Applicant also has a better understanding of the importance of full disclosure to the Government during the clearance application process and about security procedures. (Tr. 132-136) After the hearing, he documented certificates for numerous required security trainings he completed in 2022 and 2023. (AE N)

In addition to the offenses above, Applicant disclosed during his testimony that he was also arrested for a breaking and entering offense in July 2009, when he was 16 years old. He was charged as a juvenile and placed on probation. He was on probation when he started college, in 2011, at age 17. He also acknowledged that his initial high-school and college-era drug use (2009-2011) included marijuana use while he was on probation for this offense. It is not clear that he was still on probation when he was charged with marijuana possession in October 2011. (SOR ¶ 1.a) (Tr. 116-119) This juvenile offense is not alleged in the SOR and will not be considered as disqualifying conduct. Nor is it either alleged or established that he was required to disclose this juvenile charge on his SCA.

Applicant acknowledged that his actions showed a lack of judgment, poor decisions, recklessness, and a disregard for authority. He has matured and learned from his mistakes. He has advanced in his career and worked to earn an education. He has no interest in repeating his past actions and he is proud to have broken away from his old bad habits. He has also disassociated from his past drug-using associates. He provided a signed statement of intent not to use illegal drugs in the future. (Tr. 57-60, 87-91, 100-102, 137, 140-144; AE I)

Two character witnesses testified for Applicant. Ms. Fis a former Army officer with a clearance, who has worked for Applicant's employer since late 2022. She works closely with Applicant every day, though they interact remotely. She said he is a team player and hard worker who is also personally compassionate. She has "absolutely no reason to distrust" him. (Tr. 33-42)

Ms. H is the mother of Applicant's two children, who live with her. They have known each other for nine years but do not cohabit and are no longer together. She considers him to be trustworthy, hardworking, intelligent, dependable, and a good role model for their children. She credits his education and career advancement. She said he is more mature, dependable, and trustworthy since the children were born. She is aware of his criminal record and drug history. She said he knows his actions affect the children. He supports the family but is not under a court order to pay child support. (Tr. 44-55)

Applicant also provided recommendation letters from several references at work. He is highly regarded and a valued, hard-working team member. He has a positive and respectful attitude. He is credited with dependability, honesty, reliability, and

professionalism, and he has good communication and conflict resolution skills and is a good listener. (AE A – AE D; AE G, AE H; AE M)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court has held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988).

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 several 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible

extrapolation of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline H: Drug Involvement

AG ¶ 24 details the security concern for drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant has a history of drug-related arrests, citations, and offenses between 2011 and 2018, both during and for a period after college. He also used marijuana during this period (2009-2021) as much as daily in college, then weekly, then less often, then for a period not at all, before brief resumption in late 2021, before beginning his current job. The Guideline H allegations (SOR ¶¶ 1.a-1.g) are established and AG ¶¶ 25(a) and 25(c) both apply.

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 is grounds for revocation of national security eligibility.

Applicant used marijuana before and during college, as well as for some time afterwards. He stopped using marijuana while working for company N, a job for which he had direct responsibility over the lives, or at least the physical wellbeing, of patients at the facility. However, he used marijuana again for a brief period in fall 2021, before starting his current job as a consultant. He used marijuana after the birth of his children (now eight and five). Applicant also has a series of drug-related charges and citations. Most of them are possession charges though one college-era incident included a felony charge of possession with intent to sell.

Applicant has earned both undergraduate and graduate degrees and has begun a professional career as a consultant. He has disassociated himself from drug-using associates and contacts and said he does not intend to resume that life. He provided a signed statement of intent to abstain from future illegal drug use. While his several drug arrests and charges are now several years old, they are not infrequent and are of a similar nature. And his drug involvement (as with his most recent criminal conduct, discussed below) is as recent as late 2021. The drug offenses are now not particularly recent, but the same cannot be said of his overall drug involvement. The mitigating conditions at AG ¶¶ 26(a) and 26(b) do not fully apply.

Guideline J: Criminal Conduct

AG ¶ 30 details the security concern for criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

The sole Guideline J allegation in the SOR (§ 3.a) is a cross-allegation of all of Applicant's various offenses, whether alleged under Guideline H (SOR §§ 1.b-1.g) or Guideline E (SOR §§ 2.b, 2.c). AG §§ 31(a) and 31(b) both apply.

AG § 32 sets forth the potentially applicable mitigating conditions:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's 2011 offense is mitigated by the passage of time. It is the only charge of its nature and appears to be an instance of poor decision-making by Applicant (and some college friends) who seem to have thought it would be a good idea to use another student's ID or student charge card to buy some items at a convenience store. It was not a good idea and they got caught, but it is also the sort of college-era incident that was quickly resolved and not repeated. SOR § 2.b (as part of SOR § 3.a here) is found for Applicant.

The remaining offenses are more difficult to mitigate. While Applicant's drug-related offenses have a timeframe from 2011 to 2018, his drug use is more recent, as it is up to fall 2021 (as discussed above in Guideline H). So, too, are his most recent charges and citations, during the early morning incident in June 2021 when he tried to outrun and hide from the police. This was an instance of poor judgment, poor impulse control, disregard for rules and regulations and disrespect for authority. And it is relatively recent. As such, it is difficult to conclude that Applicant has changed his ways and learned his lesson. For largely the same reasons as set forth in Guideline H above, I am unable to conclude that either AG §§ 32(a) or AG 32(d) fully apply to mitigate the criminal conduct security concerns shown.

Guideline E: Personal Conduct

AG § 15 details the security concerns for personal conduct:

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.

I considered the following disqualifying condition under AG § 16:

(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.

In 2011, Applicant was charged with fraudulent use of a fellow student's university ID or charge card and obtaining property under false pretenses. (SOR ¶ 2.b) His drug-related charges and offenses, discussed above under Guideline H, are cross-alleged as a personal conduct security concern. (SOR ¶ 2.a) Finally, there are the charges Applicant incurred for fleeing and eluding the police officer, reckless driving to endanger, and related traffic offenses in June 2021. (SOR ¶ 2.c) All of these allegations and cross-allegations satisfy AG ¶ 16(c), as well as the general security concern under AG ¶ 15, given the questionable judgment and unwillingness to comply with rules and regulations that are shown by his conduct.

AG ¶ 17 sets forth the following potentially applicable mitigating conditions under Guideline E:

(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.

SOR ¶ 2.b, the 2011 obtaining property and financial card fraud offense, is mitigated due to the passage of time, as detailed under Guideline J, above. The remaining offenses, however, are not mitigated, also for the same reasons as set forth in the mitigation analysis under Guidelines H and J, above.

There is also the matter of Applicant's lack of candor during the security clearance process about his drug use and various offenses. Applicant disclosed none of his drug use and none of his charges or citations (drug-related or otherwise) on his December 2022 SCA. He discussed many of these issues during his first background interview, in January 2023. However, it was not until his second interview, in July 2023, that he disclosed his most recent offenses and citations, incurred when he tried to outrun and hide from the police in June 2021. And he did not disclose that incident until

he was confronted about it, and after discussing his other charges and offenses and saying that he had no additional adverse encounters with law enforcement to report.

These instances of lack of candor are not alleged in the SOR, so I cannot consider them as disqualifying conduct. But I can and do consider them in weighing mitigation, rehabilitation, and reform, and under the whole-person concept. In that regard, Applicant's underlying conduct (the 2021 incident itself) and his failure to disclose it on multiple occasions during the security clearance application process, are both very troubling. When combined with his other conduct, they both show that Applicant has not fully put his old life behind him and has not established that he has mitigated the security concerns about his conduct. Neither AG ¶¶ 17(a) nor 17(c) applies to mitigate the cross-alleged security concerns at SOR ¶ 3.a, not only for the same reasons as set forth under Guidelines H and J above, but also for the other reasons set forth here.

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 relevant 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. I have incorporated my comments under Guidelines H, J, and E in my whole-person analysis. credit Applicant with improving his life and earning an education, including an advanced degree. He is also well regarded at work. But the security concerns arising from his conduct are too long-term and too recent to be considered mitigated on this record. He has not met his burden of showing that he warrants access to classified information. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance.

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.g: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: Against Applicant

Subparagraph 2.b: For Applicant

Subparagraph 2.c: Against Applicant

Paragraph 3: Guideline J: AGAINST APPLICANT

Subparagraph 3.a: Against Applicant
(except as to SOR ¶ 2.b)

Conclusion

Considering all the circumstances, it is not clearly consistent with the interests of national security to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Braden M. Murphy
Administrative Judge