



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



In the matter of:)	
)	
)	ISCR Case No. 24-00994
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey De Angelis, Department Counsel
For Applicant: Dustin P. Cantwell, Attorney At Law, San Diego Law Groups

03/05/2025

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On March 13, 2022; and October 5, 2023, Applicant submitted security clearance applications (e-QIPS). (Government Exhibits 2 and 3.) On August 15, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guidelines H, Drug Involvement and Substance Misuse; and Guideline E, Personal Conduct. The action was taken under Executive Order 10865 (EO), *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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on September 15, 2024, and requested a hearing before an administrative judge. The case was assigned to me on November 13, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on January 23, 2025, and the hearing was convened as scheduled on February 13, 2025. The Government offered five exhibits, referred to as Government Exhibits 1 through 5, which

were admitted without objection. The Applicant offered seven exhibits, referred to as Applicant's Exhibits A through G, which were admitted without objection. Applicant called three witnesses and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on February 24, 2025.

Findings of Fact

Applicant is 31 years old. He is recently married with no children. He has a Bachelor's degree. He holds the position of Systems Engineer/Software Engineer. He is seeking to obtain a security clearance in connection with his employment.

Guideline H - Drug Involvement and Substance Misuse **Guideline E – Personal Conduct**

Applicant was employed with defense contractor A, from January 2022 to August 2023. He was initially hired to work as a Software Support Specialist 3. Applicant completed a security clearance questionnaire dated March 13, 2022. (Government Exhibit 1.) Section 23 of the application, concerning Illegal drug use, asked, "In the last seven years have you illegally used any drugs or controlled substances?" and, "while possessing a security clearance have you ever illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance other than previously listed?" Applicant answered "Yes," to both questions. By answering, "Yes," to the question, Applicant was prompted to provide additional information. Applicant stated that he has used marijuana from about January 2010 to January 2021, an unknown number of times. He stated that he has used marijuana, experimentally, on rare occasions, an unknown number of times. He also indicated that he does not react well to marijuana as it causes him extreme anxiety depending on the amount. He stated that he does not plan to use it in the future. Applicant was granted a security clearance in June 2022. (Tr. p. 72.)

In May 2023, while still employed with defense contractor A, Applicant was assigned to work in a different position at the company, as a Business System Analyst. Applicant still possessed a security clearance, but contends that he was not required to access classified information. At this time, Applicant traveled on a weekend to Las Vegas to propose to his then fiancé. He consumed a gummy that he understood to contain CBD, THC, or a combination of both. His wife purchased the gummies at a shop in Las Vegas. Applicant testified that although he did know for sure, he believed that the gummies contained THC because of the effects he experienced. (Tr. p. 61.) Applicant stated that he was not concerned about his use of the gummy because he was not working in a position that required access to classified information.

In September 2023, Applicant started a new job working for defense contractor B, as a Systems Engineer II, where he is currently employed. On October 5, 2023, Applicant was required to complete another security clearance questionnaire, for purposes of upgrading his security clearance. (Government Exhibit 2.) This time, in response to questions in Section 23, concerning the use of illegal drugs, which asked,

“In the last seven years have you illegally used any drugs or controlled substances”, the Applicant answered, “NO.” This was a false answer. Applicant failed to list his marijuana use.

On December 12, 2023, Applicant was interviewed by an authorized investigator for the Department of Defense about his illegal drug use. When Applicant was asked whether he had used any illegal drugs in the last seven years? Applicant said, “NO”. Applicant stated that the reason he denied his drug use was because he knew that he had to stay consistent with what he put on his second security clearance application. The investigator then confronted the Applicant with information from the last investigation which reflected that Applicant’s last use of marijuana had been in January 2021. Applicant responded by stating that he did not know why the last investigation reflected January 2021, as his last use of any illegal drug because his last use of marijuana was more than seven years ago. The next day Applicant met with the investigator and among other things he admitted that his last illegal drug use occurred in May 2023. (Government Exhibit 3.)

Applicant stated that he did not have malicious intent to deceive the Government when he denied his illegal drug use on the October 5, 2023, security clearance questionnaire; during his interview with the investigator on December 12, 2023; and when he removed the pre-populated information about his drug use from his prior security clearance application, that showed his marijuana usage from 2010 to 2021. Applicant also stated that he was overthinking and felt that his earlier reported usage could be interpreted in a way that does not accurately represent his usage. He stated that he should have brought the information to the investigator’s attention instead of removing the information altogether.

Concerning his use of the gummy in May 2023, Applicant stated that he was not sure if the gummy he ate contained marijuana. He realizes that, in any event, he should have been more transparent regarding his usage, instead of denying the usage altogether.

Applicant stated that he is not a pot smoker. He does not consider himself a pothead or a weed smoker, and he does not want to be affiliated with marijuana. (Tr. p. 58.) He testified that he first started using marijuana in high school, and then used it during his first year of college. He stated that he used it off and on and could not give a ballpark estimate of the number of times he used it. (Tr. p. 66.) He stated that after college he has used it one or two times with his college friend Brett, who was his best man in his wedding on September 13, 2024. His best friend still uses marijuana. Applicant stated that he has not seen his best friend for a few months, since he does not go to his house anymore due to Applicant’s security clearance. Applicant stated that they usually go on double dates. (Tr. pp. 55-57.) Applicant’s best friend was interviewed by the DoD investigator concerning Applicant’s drug use. His best friend told the investigator that Applicant had smoked marijuana twice in the last two years, between January 2022 and January 2024. Applicant denied this use stating that he did not smoke marijuana anytime while he possessed a security clearance. (Tr. pp. 56-57.)

Besides the social aspect of his marijuana use with his friend Brett, Applicant stated that there were also times he has used marijuana to help him sleep. On those occasions he was by himself and he used it before going to bed. (Tr. p. 67.)

Applicant described a particular method he uses to smoke marijuana, which is to vaporize it. To do this, he breaks a light bulb, and cleans it out. He then puts the marijuana in the light bulb and puts a flame under the light bulb. He heats up the marijuana in the light bulb to generate the vapor and breathes in the vapor from the light bulb. (Tr. pp. 54-55.) It seems unusual for someone who claims to use marijuana so infrequently to have such an intricate process of using it.

A letter of recommendation from Applicant's current program manager who manages Applicant's work performance attested to Applicant's strong work ethic, professionalism, diligence, accountability, and dedication to the job. Applicant is described as a top performer. He "exceeded expectations" in 2024, and he has good character. He recommends Applicant for a security clearance. (Applicant's Exhibit A.)

Applicant's previous supervisor at defense contractor A, testified and submitted a written declaration on Applicant's behalf. He stated that Applicant is a highly competent, good natured, trusted employee who was respected by all members of his team as well as others who worked with him. Applicant exceeded the expectations set for him and was a pleasure to work with. He believes that Applicant is a prime candidate for a security clearance. (Applicant's Exhibit E, and Tr. pp. 23-32.)

Applicant's father testified and submitted a written declaration on Applicant's behalf. He stated that his son is a loyal, trustworthy, and honest individual. He has never had any concerns about his son's honesty and integrity. He believes that Applicant is worthy of a security clearance. (Applicant's Exhibit C, Tr. pp. 79-89.)

Applicant's wife testified and submitted a written declaration on Applicant's behalf. She stated that in May 2023, she and her husband went to a music event in Las Vegas and were trying to relax. They were both experiencing pain and discomfort from being on their feet all day and their backs were hurting. She purchased what she thought to be CBD gummies from a shop in Las Vegas. She was confident that the gummy's did not contain THC. She stated that her husband was worried that the gummies may have contained THC, and despite her reassurances that they did not, he remained anxious about it. Applicant's wife testified that she has since looked into whether the gummy's contained THC, and she discovered that they do not. She also said that her husband knew that he had made a mistake by denying any marijuana use during his interview with the DoD investigator. (Applicant's Exhibit B, and Tr. pp. 90-101.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny 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. Likewise, I have avoided drawing 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 as to potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (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; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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 eligibility.

None of the mitigating factors are applicable. Applicant used marijuana from January 2010 to January 2021, and then in May 2023, at times, while possessing a security clearance and while in a sensitive position. He stated in his March 2022 e-QIP that he had no intentions of ever using marijuana again. Then in May 2023, Applicant used what he thought was a gummy containing marijuana. Any drug use after a prior promise to the contrary casts doubts on his current declaration of intent to abstain from future drug use. What this means is that Applicant's credibility is in question. Even more troubling is the fact that Applicant's best friend, who was his best man in his wedding in September 2024, and with whom he regularly goes on double dates, was interviewed by the DoD investigator concerning Applicant's illegal drug use. His best friend told the investigator that Applicant had used marijuana at least twice in the last two years. Applicant denied this use.

The evidence is mixed, conflicting, and raises questions about Applicant's credibility. It is not clear how often Applicant has actually used marijuana, when Applicant actually last used marijuana, or what his true intentions are concerning his future use of marijuana. Applicant has given a number of explanations for his falsifications, and although he claims that he had no intentions to be deceitful, he had been. It is apparent that Applicant has not been completely truthful with the Government about his marijuana use. It comes down to a very simple rule that he must follow, which he failed to do. Applicant received regular annual security briefings since he began working in the defense industry. He knew or should have known that marijuana use of any sort is clearly prohibited under Federal law, and applies to individuals, like himself, who possess a security clearance, who are in a sensitive position, and who work for the defense industry. Guideline H has not been mitigated.

Guideline E- Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

(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.

The guideline at AG ¶ 17 contains conditions that could mitigate security concerns.

(a) the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was cause or significantly contributed to by advice of legal counsel or a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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.

Applicant provided false information about his illegal drug use on his October 5, 2023, security clearance application. In fact, he removed the marijuana use that pre-populated into this application from this security clearance application. At the time he completed this application, he held a security clearance. There is no excuse for his misconduct. In addition, during his interview with the investigator, to be consistent with what he put on the questionnaire, he again denied any illegal drug use. Only when he was confronted with the information by the investigator did he finally admit his illegal

drug use. There was no prompt good-faith effort to correct the omission. This conduct demonstrates a lack of credibility on Applicant's part, and gives the Government no confidence that he will voluntarily comply with required rules and regulations imposed in order to properly protect classified information. To be eligible for access to classified information an individual must demonstrate sufficient maturity and responsibility, often requiring them to self-report their misconduct. Applicant's failure to disclose his marijuana use on his October 5, 2023, security clearance application, and initially to the investigator during his interview with DoD, falls short of meeting the eligibility requirements for access to classified information, and clearly demonstrates dishonesty, unreliability, and untrustworthiness that is not tolerated by the Defense Department.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations and policies that apply to them. Applicant has used marijuana while possessing a security clearance, and while working for a defense contractor, and has disregarded Federal law, knowing that the use of any illegal drug is against DoD policy. Applicant stated that he is extremely remorseful and that he should have done things differently. Under the particular facts of this case, Applicant does not show the requisite character or judgment of someone who has the maturity, integrity, and reliability necessary to access classified information. At this time, Applicant does not meet the eligibility qualifications for a security clearance.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant has not

demonstrated the level of maturity needed for access to classified information. He understands the requirements associated with holding a security clearance and knows that illegal drug use is not tolerated. At this time, Applicant is not an individual in whom the Government can be confident that he will always follow rules and regulations and do the right thing, even when no one is looking. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse, and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a and 1.b.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.c.	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge