



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



In the matter of:)
)
) ISCR Case No. 23-01698
)
Applicant for Security Clearance)

Appearances

For Government: George A. Hawkins, Esq., Department Counsel
For Applicant: *Pro se*

03/31/2025

Decision

HALE, Charles C., Administrative Judge:

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

Statement of the Case

Applicant submitted a security clearance application (SCA) on October 21, 2022. On November 6, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and E. Applicant responded to the SOR on November 21, 2023, and requested a hearing before an administrative judge. The case was assigned to me on September 9, 2024.

The hearing convened as scheduled on November 14, 2024. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. Applicant testified and while the record was held open timely submitted Applicant Exhibits (AE) A and B, which I admitted without objection. DOHA received the transcript (Tr.) on November 25, 2024. The transcript does not identify GE 1-5 or cite the page in the transcript they were admitted. Applicant did not offer any exhibits during the hearing, but the transcript lists

AE A-C without any naming the exhibits or listing page numbers in the transcript. No AEs were admitted during the hearing.

The Government requested that administrative notice be taken of state Z's legalization of marijuana in 2023, and the provided statute/bill regarding marijuana and the relevant frequently asked questions from the state regarding how the law was passed and when it became effective. The administrative notice was marked as Hearing Exhibit (HE) III.

Amendment to the SOR

At the hearing the Government moved to amend the SOR by adding an allegation, SOR ¶ 2.c, which stated:

c. You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on October 21, 2022, in response to the following questions: "Section 23 - Illegal Use of Drugs or Controlled Substances. 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? You answered "No" and thereby deliberately failed to disclose that information as set forth in subparagraph 1. a. through 1. c. above.

Applicant did not object to the amendment and did not request additional time to prepare for the amendment. The request to amend the SOR was granted. (Tr. 97.)

Findings of Fact

In Applicant's Answer to the SOR, he admitted: using marijuana with varying frequency, from about September 2014 to the present (SOR ¶ 1.a), using and purchasing marijuana from about January 2017 to the present while granted access to classified information (SOR ¶ 1.b), and failing a urinalysis drug test on February 27, 2021 (SOR ¶ 1.c). These allegations are cross alleged under SOR ¶ 2.a. Applicant admitted, with an explanation, to falsifying his answers on 2016 Electronic Questionnaires for Investigations Processing (e-QIP) (SOR ¶ 2.b). 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 28 years old. He graduated high school in 2014 and briefly attended college for a semester and another semester at a community college in 2015. He has been working as a facility technician for his sponsor for the past two years. He is single and has no children. (GE 1; GE 4; Tr. 21-26.)

SOR ¶ 1.a: a. You used marijuana with varying frequency, from about September 2014 to present. In his Answer Applicant admitted he used marijuana a

couple of times in college and when he was going through depression in 2019. During his testimony he confirmed his use in 2014 and stated the majority of the use at that time was from smoking. He reiterated his statement to the investigator in April 2023 that he did not smoke marijuana in 2016, 2017, or 2018. He did not know why he stopped but it was around the time he left school and went home to help his ailing grandmother. He is still in touch with his friends from college but the last time he talked one of them they also wanted to stop using marijuana because "it was causing problems in [their] life." Applicant is confident he could tell his friends if "you care about me, then you shouldn't want me to do something that could negatively affect me" should they ask him to smoke marijuana with them. (GE 4; Tr. 29-34, 58.)

From January 2015 to May 2015, he smoked marijuana a couple of times as "he was stressed out and felt sad because his grandmother had recently died. In May 2019, he resumed smoking marijuana because he "was in depression." In his April 2023 interview he listed a number of life events which caused him to "kind of feel deep in depression" and caused him to smoke marijuana. (GE 4; Tr. 38-40.)

He confirmed in his testimony during his April 2023 interview that he resumed smoking marijuana in October 2022. He had stopped in May 2022 so he would get the job with his sponsor. He used marijuana on April 20th a few days before his interview in April of 2023. He testified April 20th is something of marijuana holiday. The date is tied to the [state] penal code that made it illegal to use marijuana. He consumed a marijuana gummy on this occasion. (GE 4; Tr. 38-42.)

He testified:

So that's why I was saying I didn't know it was still an issue because like I said, marijuana was legal in state [Z]. So I thought it was okay because I had went to dispensaries to purchase the marijuana. But I've also did it for my mother because she needs it. So a lot of the times, if I did use it, it would be like an occasion with her because special occasion with her. Like she's feeling real, real bad to where she needs it. And that's where you can see that I would go to a dispensary to purchase it. Or if something like a close friend of mine or childhood friend of mine had passed away, I may have used it. Or if I needed to like fall asleep because like I said, I had that issue of going to sleep and I'll be up till 3 o'clock in the morning, I've used it then. (Tr. 49.)

State [Z] had not legalized adult use sales of marijuana in 2022. His mother does not have a marijuana card, so he makes the purchases. In his testimony he confirmed he had used marijuana in the past "couple of months or something" prior to the hearing to help him sleep. He has now started to use wine to help himself sleep because he could never swallow pills. (HE III; Tr. 60, 62.)

SOR ¶ 1.b. You used and purchased marijuana from about January 2017 to about present, while granted access to classified information. In addition to SOR ¶

1.a facts discussed above he testified about the positions he held that required he be granted a security clearance. He explained the last time he had to handle classified information was when he worked as a scanning engineer from November 2018 to May 2019. (GE 2; Tr. 28-29, 79-80.)

SOR ¶ 1.c. You failed a urinalysis test in about February 27, 2021. Applicant admits failing the urinalysis. (GE 5.) He states in his Answer he used marijuana to help with his depression, but he had stopped smoking marijuana. He stated he had started going to the gym to clean his system as well as drink fluids that help clean his body's system out. In his testimony he did not think he was ever made aware he had failed the test. (Tr. 72.)

SOR ¶ 2. a. Information as set forth in subparagraphs 1.a. through 1.c. above. Applicant in his Answer admits the allegation. See the findings of facts above.

SOR ¶¶ 2.b & 2.c: You falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed by you on September 07, 2016, & October 21, 2022, in response to the following questions: "Section 23 - Illegal Use of Drugs or Controlled Substances. 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? You answered "No" and thereby deliberately failed to disclose that information as set forth in subparagraph 1. a. through 1. c. above. Applicant admits to the falsifications on his two SCAs. (GE 1, GE 2; Tr. 45, 68, 80.)

Regarding the 2016 SCA, Applicant testified he did discuss his drug use during his 2017 security clearance interview. The 2017 interview summary does not have a section of the interview dealing with drugs. (GE 3; Tr. 67.) He testified he told the investigator in 2017 he used marijuana while in college. He stated, "And I'm not in no way saying that justifies why I put no, because like I said, I still acknowledge that I was wrong for that, and I don't know why I did it. Like I said, I just always wanted to be clear." (GE 1; Tr. 68, 70-71, 80.) He explained further why he answered "No" on his 2016 SCA stating:

It's no real answer I can tell you, because I honestly just don't know. Because it's honestly, like now that I can go back and see, it doesn't make sense of why I answered no. But then I told the background investigator otherwise. So that's why I say, I don't know. I had to be scared of the outcome or something. I just had to be scared. That's why I say I was just young and dumb and just being scared instead of telling the truth and then going from there. (Tr. 45.)

Regarding why he answered "No" on his 2022 SCA he stated:

That's why I also feel like I don't know. I had to be young and scared of just what the results may have been, or I would have put yes. And I still, like I said, I don't know why I put it because that's why I was stating earlier that I

told the investigator that I did. So that's why I don't understand why I would put no just to tell the investigator, yes, I had. So that's why I say I don't know. I can't really give you a full reason and all I can think of was I had to be young and just -- well, I'm still young. So, I had to be just scared... (Tr. 70-71; GE 2.)

In explaining why, he Answered “No” on his 2022 SCA he testified he was never informed of his positive 2021 urinalysis. He stated:

That may have been because I don't think it never came to awareness that I had failed that test, besides the company that told me I couldn't get the job. Like, it never was -- like the [Government Department] never contacted me about that. Like I was never contacted until I started working here. (Tr. 72.)

Applicant explained he made sure to let the investigator know “when they asked” that “yes” he did use marijuana. His 2023 interview reflects that when the investigator asked him about drug use, he promptly answered yes to his past drug use. He acknowledged he was still just trying to cover up his drug use when he answered “No” on the 2022 SCA. (GE 4; Tr. 72, 80.)

Whole Person

Applicant offered two character letters. His supervisor of two years described him as honest and trustworthy and that he was “always willing to go above and beyond what was expected of him.” She described him as “respectful of his superiors” and that he got along well with his co-workers. (AE A.) A former teammate, classmate, and friend of over 10 years wrote that off the court Applicant exemplified integrity and character and that on the court Applicant demonstrated leadership. He stated Applicant had a natural ability to lead, which coupled with Applicant’s deep sense of responsibility and care for others, made him an asset in any endeavor. (AE B.)

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 Answer raise disqualifying conditions under AG ¶ 25. The following are applicable:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (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 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.

AG ¶ 26(a) is not established. Applicant has continued to use marijuana until just recently. Applicant's positive urinalysis and continued use thereafter casts doubt on his current reliability and trustworthiness.

AG ¶ 26(b) is not established. Applicant purchases marijuana for his mother and uses it with her. He is still in contact with drug-using associates from college. While both he and his associates want to overcome their drug use, he has not provided evidence of actions taken to overcome this problem and has not established a pattern of abstinence.

Guideline E, Personal Conduct

SOR ¶ 2.a cross-alleges the Applicant's previous drug involvement alleged in SOR ¶¶ 1.a-1.c and SOR ¶¶ 2.b-2.c allege his SCA falsifications. 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 admitted drug use and deliberate falsifications on his 2016 and 2022 SCAs raise the following disqualifying condition, under AG ¶ 16:

(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.

SOR ¶ 2.a. cross-alleges Applicant's drug use as detailed in SOR ¶¶ 1.a - 1.c as a personal conduct security concern. His drug use while holding security clearance raises disqualifying conditions under both Guidelines E and H. See AG ¶ 16(e). However, I will find "For Applicant" with respect to SOR ¶ 2.a because his illegal drug use is more appropriately and fully addressed under Guideline H. Duplicative coverage of his illegal drug possession and use in my findings under Guideline E is not warranted in this case.

The following mitigating conditions, under AG ¶ 17, are potentially relevant to SOR ¶¶ 2.b and 2.c:

(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 ¶¶ 2.b and 2.c. Applicant

admitted he deliberately lied on his 2016 and 2022 SCAs. He acknowledged that his drug use from 2017 until recently would make him ineligible for hiring and his false statements on two SCAs were intended to give him a favorable hiring profile. These lies 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 to the investigator in 2023, his false statements on two SCAs are recent and calculated to give him the most favorable profile for his security clearance application. There is no evidence he voluntarily disclosed his drug use during his 2017 interview.

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 and E in my whole-person analysis and have applied the adjudicative factors in AG ¶ 2(d). I have carefully considered Applicant’s character evidence and the recency 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 Guidelines H 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 and E.

Formal Findings

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

Paragraph 1: Guideline H:	AGAINST APPLICANT
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Subparagraphs 1.a -1.c:	Against Applicant
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Paragraph 2: Guideline E:	AGAINST APPLICANT
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Subparagraph 2.a:	For Applicant
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Subparagraphs 2.b-2.c:	Against Applicant
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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