



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-00363

Appearances

For Government: John Renehan, Esq., Department Counsel
For Applicant: *Pro se*

06/09/2025

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant refuted the security concerns under Guideline E (personal conduct), but he did not mitigate the the security concerns under Guidelines H (drug involvement and substance misuse) and J (criminal conduct). Eligibility for access to classified information is denied.

Statement of the Case

On June 6, 2024, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, H, and J. Applicant responded to the SOR on June 21, 2024, and requested a hearing before an administrative judge.

The case was assigned to another administrative judge on January 23, 2025, and reassigned to me on April 2, 2025. The hearing convened as scheduled on April 22, 2025. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

Findings of Fact

Applicant is 53 years old. He has been employed by a defense contractor since 2010. He served in the U.S. military from 1990 until he was honorably discharged in 1993. He has held a security clearance, with some interruptions, for decades, most recently since about 2011. He earned a bachelor's degree in 1997 and a master's degree in 1999. He is married for the second time after his first marriage ended in divorce. He has two children. (Transcript (Tr.) at 16-20; GE 1)

Applicant lives and works in a state where recreational marijuana possession and use do not violate state law. His wife, father-in-law, and brother-in-law use marijuana and tetrahydrocannabinol (THC) (the psychoactive ingredient in marijuana) products socially. Between 2015 and December 2022, Applicant used marijuana and THC products, such as THC gummies, socially with his wife and in-laws. (Tr. at 17-19, 22-26, 36-42; Applicant's response to SOR; GE 1, 3)

Applicant submitted a Questionnaire for Public Trust Positions (SF 85P) in November 2019. He answered "No" to the question that asked, "In the last year, have you illegally used any controlled substance, for example, marijuana . . . ?" He also filled out Additional Questions for Public Trust Positions – Branching at about the same time. He answered "No" to the additional question that asked, "In the last seven (7) years, have you illegally used any drugs or controlled substances?" (GE 2)

Applicant credibly denied intentionally providing false information on the documents. He thought that since marijuana was legal in his state, he did not have to report it. (Tr. at 13-14, 33, 48-49; Applicant's response to SOR)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in February 2023. He reported marijuana use between December 2015 and December 2022. For the question that asked the nature, frequency, and number of times used, he answered: "Have several family members that utilize drugs. Occasionally I may partake once or twice a year especially with marijuana or [THC] products that are legal to utilize in [his state]." He added that he intended to use marijuana or THC products in the future, with the comment, "I don't directly purchase these products but occasionally I'm around family and friends that do. Normally when offered I do not partake or intend to. However, on special occasions (Holidays and such) I may." (GE 1)

Applicant was interviewed for his background investigation in November 2023. He confirmed the data on the SF 86, and he fully discussed his marijuana use. He estimated that he smoked marijuana or ate THC gummies about once or twice a year with his family. He stated that his family uses marijuana, and he would use marijuana again if offered to him in a social setting. He felt that it was acceptable to continue using marijuana and THC products despite being considered for a security clearance because he deems his use as "not excessive" in that he only uses one to two times per year. He felt that it was acceptable because marijuana use was not impacting his life, job, or his role as a parent and husband. (GE 3)

Applicant responded to interrogatories in May 2024. He confirmed the accuracy of the report of investigation summarizing his November 2023 background interview. He wrote that he first used marijuana (THC) in December 2015, and he last used it in December 2022. He wrote that he used it "once or twice a year." He wrote that he first purchased marijuana (THC) in December 2015, and he last purchased it in March 2021. He wrote that he purchased it "once every 2-3 years." He stated that his family still uses marijuana socially every couple of months, but he had not used marijuana since December 2022, and he did not intend to use it in the future. He stated that he had known since he was a child that marijuana was and remained federally illegal. (GE 3)

When Applicant responded to the SOR in June 2024, he admitted the allegation that he "used marijuana with varying frequency from about December 2015 to December 2022." He stated that he did not intend to use marijuana in the future. He added:

Although I have partaken in utilization of Marijuana in the past, the term varying frequency seems to imply I consistently seek out and use it, which is just not the case. Since I couldn't recall any other specific time frames (other than what I noted), I went ahead and documented on my [SF 86] paperwork, in both 2022 and 2023, a start date of 7 years prior to the actual question date. Given my little to no use in the past, there is a possibility that I missed a particular incident and wanted to be honest, so I just covered the whole time period.

Applicant held a sensitive position and a security clearance when he was using marijuana and THC gummies. He testified that "from 2017 until 2022, even though [he] held the clearance, [he] was not actively using the clearance." He later testified that he did not have access to classified information between 2013 and 2022, but he also admitted that he had to go into a SCIF (sensitive compartmented information facility) for training between 2013 and 2022. He testified that he did not think he used marijuana from 2015 to 2020, and he only used it around Christmas 2021 and in 2022. (Tr. at 17-19, 22-26, 36-42; GE 1)

Applicant has not used marijuana or any other illegal drug since December 2022. There have been occasions in the last few years where his family used marijuana, but he chose not to. His wife continues to use marijuana about once a month. She sometimes keeps marijuana or THC products in their house, but not in the three months before the hearing. (Tr. at 47-48, 51-52; Applicants response to SOR; GE 3)

Applicant does not intend to use marijuana in the future, but he did not completely eliminate the possibility, "It could be two years from now that I'm in a social gathering, I'll drink too much alcohol or something, it might in that situation occur." (Tr. at 23, 26-30, 50-51, 59; Applicant's response to SOR; GE 3) He added:

I think in summary, I don't intend to seek it out. In the future if offered, I would say no. And I think that is a lifestyle choice a little bit in the couple

years ahead of me what I'm doing that there is a small percentage possibility that I might say yes. That's really what it – that's literally what it comes down to. (Tr. at 28)

Policies

This case is adjudicated under Executive Order (EO) 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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."

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 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.

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 for drug involvement and substance misuse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (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;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, “*Adherence to Federal Laws Prohibiting Marijuana Use*,” which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines An individual’s disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in

national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that requires them to use a "whole-person concept." This requires adjudicators to carefully weigh a number of variables in an individual's life to determine whether that individual's behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

Applicant possessed and used marijuana between 2015 and 2022. I find his SF 86, background interview, and response to interrogatories to be more accurate than his testimony about when he used it. He reported on his SF 86 in February 2023 and during his background interview in November 2023 that he would likely use marijuana again. AG ¶¶ 25(a), 25(c), and 25(g) are applicable.

I am satisfied that Applicant's marijuana use was while he held a security clearance and while he held a sensitive position. However, the SOR did not allege his marijuana use was while he held a sensitive position; it only alleged that his use was "while granted access to classified information." I am not convinced that his marijuana use occurred while he was granted access to classified information. Eligibility for access to classified information and the granting of access to classified information are not synonymous concepts. They are separate determinations. The issuance of a security clearance is a determination that an individual is eligible for access to classified national security information up to a certain level. Security clearance eligibility alone does not

grant an individual access to classified materials. In order to gain access to specific classified materials, an individual must have not only eligibility (i.e., a security clearance), but also must have signed a nondisclosure agreement and have a “need to know.” See ISCR Case No. 20-03111 at 3 (App. Bd. Aug. 10, 2022). AG ¶ 25(f) is not applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following 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 eligibility.

Applicant's marijuana and THC use while holding a sensitive position gives me pause. The Appeal Board has consistently held that after being adequately placed on notice that such conduct was inconsistent with holding a security clearance, an applicant who continues to use marijuana demonstrates a disregard for security clearance eligibility standards, and such behavior raises substantial questions about the applicant's judgment, reliability, and willingness to comply with laws, rules, and regulations. See, e.g., ISCR Case No. 21-02534 at 4 (App. Bd. Feb. 13, 2023).

Applicant is a long-time security clearance holder. He stated that he has known since he was a child that marijuana is illegal under federal law. I do not believe that he was ever a frequent marijuana user, but he knew or should have known better. His wife still uses marijuana and THC products. I appreciate his honesty when he testified that he does not intend to use marijuana in the future, but he could not completely eliminate the possibility. That falls far short of a signed statement of intent to abstain from all drug involvement and substance misuse. It represents a failure to clearly and convincingly commit to discontinue such misuse.

Applicant's drug involvement continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are sufficiently applicable to overcome concerns about Applicant's drug use, reliability, trustworthiness, and judgment.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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 is potentially applicable:

(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.

Applicant possessed and used marijuana in violation of federal law. The above disqualifying condition is applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(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.

The discussion above under drug involvement and substance misuse applies equally here. Because Applicant did not eliminate the possibility of additional marijuana use, I cannot find successful rehabilitation or that criminal conduct is unlikely to recur. His criminal conduct continues to cast doubt on his current reliability, trustworthiness, and good judgment. The above mitigating conditions are not applicable.

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security clearance investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

SOR ¶ 2.a alleges that Applicant intentionally falsified the 2019 Additional Questions for Public Trust Positions when he failed to report his illegal marijuana use. His marijuana use was not illegal under state law. While he admitted that he knew it was federally illegal, he still seemed somewhat confused by the distinction. I am not convinced by substantial evidence that Applicant intentionally falsified his answer to this question. AG ¶ 16(a) is not applicable. SOR ¶ 2.a is concluded for Applicant.

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 have incorporated my comments under Guidelines E, H, and J in my whole-person analysis. I also considered Applicant's honorable military service.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the security concerns under Guideline E, but he did not mitigate the security concerns under Guidelines H and J.

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
Subparagraph 1.a:	Against Applicant (Except for the language "while granted access to classified information," which is found For Applicant)
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline J:	Against Applicant
Subparagraph 3.a:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge