



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



In the matter of: )  
)  
) ISCR Case No. 23-02896  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Cassie Ford, Esq., Department Counsel  
For Applicant: *Pro se*

06/12/2025

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**Decision**

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BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the Guideline H (drug involvement and substance misuse), Guideline E (personal conduct), and Guideline J (criminal conduct) security concerns. National security eligibility for access to classified information is denied.

**Statement of the Case**

On June 6, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, E, and J. The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

On June 11, 2024, Applicant provided a response to the SOR (Answer). He admitted all the SOR allegations (SOR ¶¶ 1.a through 1.c, 2.a through 2.e, and 3.a through 3.d.) He requested a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. I was assigned this case on January 3, 2025. DOHA issued a notice on March 12, 2025, scheduling the hearing for April 22, 2025. The hearing proceeded as scheduled via online video conferencing.

Department Counsel submitted Government Exhibits (GE) 1 through 8. Applicant testified but did not offer any documents. GE 1 through 8 were admitted into evidence without objection. Applicant requested I hold the record open so he could supplement the record with additional documentation. Without objection, I held the record open until May 22, 2025. DOHA received the hearing transcript (Tr.) on April 29, 2025. Applicant timely submitted Applicant Exhibits (AE) A and B, which were admitted into evidence without objection, and the record closed.

### **SOR Amendment**

During the hearing, Department Counsel requested that SOR ¶ 3.c be deleted and additional criminal charges be merged with SOR ¶ 1.c, the original arrest, to avoid unnecessary confusion. Applicant did not object to this request. The amended SOR ¶ 1.c now alleges: In about January 2019, you were arrested in [city, state] and charged with possession of marijuana less than ½ ounce, breach of peace, and interfering with an officer. The court ordered you to serve a jail sentence, suspended for one year, pay a fine, and you were placed on two years of probation. (GE 7, 8; Tr. 55-60, 68-69)

### **Findings of Fact**

Applicant is 27 years old. He has earned some college credits, but not enough for a college degree. He is not married, but he has a daughter, age five. Since about late 2022, he has been employed full time as an outside machinist for a DOD contractor. After a year of probation, he was placed into an apprentice program at work and earned approximately \$27 an hour. Applicant has not been able to work for the DOD contractor since his interim security clearance was withdrawn in June 2024. His employer is sponsoring him for a DOD security clearance. Applicant currently works for his mother's fiancé as a handyman. (GE 1; Tr. 20-22, 63-64)

### **Drug Involvement and Substance Misuse**

Applicant used marijuana from about 2014 (high school) to August 2023. (SOR ¶ 1.a) He was interviewed by an authorized DOD investigator in March 2023. Applicant stated that he used marijuana from 2014 to January 2023 on an approximately twice daily basis. He would obtain his marijuana from his sister who had a medical marijuana card. Applicant verified in the interrogatory that the information he reported during his background interview was accurate and correct. A question posed in an Interrogatory he completed in August 2023 asked him to provide the approximate date(s), amount(s), and

type(s) of drug or controlled substance he had used and circumstance(s) of his last use. He listed, "Marijuana (weed) approx. July/Aug to present day (August 21, 2023) approx. 3.5 grams of weed." (GE 2, 3; Tr. 22-26, 28)

During the hearing, Applicant admitted that he did not pass a drug hair follicle test that he took in about early October 2022. (SOR ¶ 1.b) He said he stopped using marijuana from about August 2022 to October 2022. He was requested to take a drug urinalysis test three weeks after the hair follicle test, and he successfully passed it. (GE. 3; Tr. 25-30)

Applicant was arrested in about January 2019 and charged with possession of marijuana less than one-half ounce, breach of peace, and interfering with an officer. (SOR ¶ 1.c) He testified during the hearing that he was on tribal land at a casino and a fight broke out on New Year's Day. He had about a gram of marijuana in his pocket, and he had been drinking liquor. The court ordered him to pay a fine, his jail sentence was suspended for one year, and he was placed on two years of probation. (Tr. 30-33; GE 3, 7, 8)

During the hearing, Applicant said that he no longer uses marijuana. He now goes on hikes, enjoys cooking, stays active with gaming to keep himself occupied and not using marijuana. He could not specifically recall if he had drug counseling as a minor, or whether the counseling he received was for anger management. (Tr. 33-34)

### **Personal and Criminal Conduct**

In December 2021, Applicant was working for another employer (Employer A), when he got into a physical altercation with another employee in the breakroom. He was fired and is not eligible for rehire. He testified that the other employee was mouthing off in the breakroom about his relative. Applicant told the other employee he did not want to get into a fight during work, but that they could settle it after work. The other employee got in his face and took a swing at him, so he felt he had to defend himself. After the fight, he told his employer he quit and handed over a key. He later received a telephone call where he was specifically informed that he had been fired. He admitted this was not his first fighting incident, but claimed he is now a changed person and does not worry about getting into this kind of situation again. (SOR ¶ 2.a) (Tr. 34-38)

Applicant filled out a security clearance application (SCA) on October 1, 2022. He intentionally failed to disclose relevant and material information when he was asked to respond to the following questions:

(SOR ¶ 2.b) "Section 13 A – Employment Activities – Entry (Employer A) Reason for Leaving. For this employment have any of the following happened to you in the last seven (7) years? \* Fired \* Quit after being told you would be fired \* Left a job by mutual agreement following charges or allegations of misconduct \* Left a job by mutual agreement following notice of unsatisfactory performance;" Applicant answered this

question with a negative response and listed that he left Employer A for a better job opportunity. He deliberately failed to disclose that he was fired by Employer A. (GE 1)

In his Answer, Applicant stated that he did not intentionally lie or fail to disclose the requested information to hide information from the government. He was just filling out questions like he would fill out a “normal application.” During the hearing, Applicant stated he did not disclose that he had been fired by Employer A because he was not arrested or charged with an offense. He also stated that he did not think the DOD contractor would check his previous employment history, and he did not think the fighting incident was that serious. He also testified, “I just really wasn’t thinking clear[ly] about what needed to be jotted down and what was important and what wasn’t important...” (Answer; Tr. 38-39, 42)

(SOR ¶ 2.c) “Section 23 – Illegal Use of Drugs or Drug Activity – Illegal Use of Drugs or Controlled Substances – In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance?” Applicant answered this question with a negative response. He deliberately failed to disclose that he used marijuana illegally, as set forth in subparagraph 1.a, above. (GE 1)

In his Answer, Applicant stated, “I did not intentionally lie or not disclose info to hide anything. I was just filing out questions how I’d fill out on a normal application. Marijuana didn’t cross my mind when reading list of drugs – passed urine [drug test.]” During the hearing, Department Counsel asked Applicant why he did not disclose his use of marijuana on his SCA, and he stated,

**Applicant:** ...because I had high hopes and thoughts that I would just pass through the hair follicle test and the urine. I didn’t think it was going to be like brought so far back and still pick up traces of -- you know what I’m saying?...

**Department Counsel:** When you say you didn’t think the drug test would pick up that far back, at the time you realized that at some point in the last seven years you had used marijuana illegally, correct?

**Applicant:** Yeah, yes, ma’am.

**Department Counsel:** And you answered NO with the intention that you wouldn’t have to explain your use. Is that correct?

**Applicant:** In a sense or like logically speaking, I guess that the way to put it, you know what I’m saying? It kind of sounds crazy but yeah.

**Department Counsel:** When you were confronted about your drug use [during your background interview], it was after your hair follicle test [came back positive]. Is that correct?

**Applicant:** Yes, ma'am. (Answer; Tr. 42-43)

(SOR ¶ 2.d) "Section 22 – Police Record (EVER) – other than those offenses already listed, have you EVER had the following happen to you ...Have you EVER been charged with an offense involving alcohol or drugs?" Applicant responded to this question with a "No," and he deliberately failed to disclose his January 2019 arrest, in part, for possession of marijuana, as set forth in subparagraph 1.c, above. (GE 1)

During Applicant's March 2023 background interview, and after being confronted by the investigator about his unlisted January 2019 arrest, in part, for possession of marijuana, he told the investigator that he did not think he was required to disclose arrests that occurred while he was a minor. Applicant was 19 years old at the time of his arrest. During the hearing, however, Applicant provided a different reason, stating that he did not list his 2019 drug-related arrest on his October 2022 SCA because it happened a long time ago and he did not even think of it at the time he filled out the SCA. (GE 3; Tr. 46-53)

(SOR ¶ 2.e) "Section 22 – Police Record (EVER) – other than those offenses already listed, have you EVER had the following happen to you ...Have you EVER been charged with any felony offense? ...Have you EVER been charged with an offense involving firearms...?" Applicant provided a negative response to the question, and he deliberately failed to disclose that information, as set forth below:

(SOR ¶ 3.d) In about 2016, Applicant was arrested and charged with a felony firearms offense. (GE 3; Tr. 60-62)

During Applicant's March 2023 background interview, he told the investigator that he did not list his 2016 felony firearms offense on his SCA because he was a minor at the time of the arrest. He was 18 years old at the time. During the hearing, Applicant was asked why he did not disclose his 2016 firearms arrest, and he stated, "...I don't think I was old enough for it to really matter or I don't think that was within a certain time frame.... I didn't really focus on what I [was] putting down, I was just filling out [the SCA] just to get it over with. Like I said, if I would have known [the omitted information] would've [come] back up about in this manner, I would have just put it all on there, honestly. There's no actual reason as to why I didn't put it on. It just skipped my mind because that was so long ago." (GE 3; Tr. 60-62)

(SOR ¶ 3.b) In April 2018, an arrest warrant was issued for Applicant for a public disturbance that occurred in March 2018. He was charged with breach of peace. He was eventually arrested on the warrant for this offense in July 2020. (GE 5)

## Policies

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(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 access to classified information will be resolved in favor of 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.

Directive ¶ E3.1.14 requires the Government to 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.

Section 7 of Executive Order 10865 provides that 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

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

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

- (a) any substance misuse;
- (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.

Applicant admitted he used marijuana, with varying frequency, from about 2014 to August 21, 2023. He purchased marijuana from his sister, who possessed a medical marijuana card. He tested positive for marijuana during a drug hair follicle test in about October 2022. He was granted an interim security clearance and resumed his use of marijuana until August 2023, while holding a sensitive position. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. 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 a statement of intent to abstain from all drug involvement or substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant's last use of marijuana occurred in August 2023, and after he failed the hair follicle drug test but passed the urine drug test to obtain employment with the DOD contractor. He temporarily stopped using marijuana because he was aware that marijuana use was considered unacceptable by this potential employer. After he was hired, he resumed his use of marijuana for another year while possessing an interim security clearance. He denied using any other illegal drugs.

I find that Applicant was not a credible witness after he provided numerous inconsistent statements in the documents, his Answer, and during the hearing. When he filled out an interrogatory in August 2023, he was asked to provide dates and amounts of drugs he last used, and he listed that he used marijuana to the present day, August 21, 2023. The only reason he disclosed his use of marijuana during his security clearance investigation was due to the positive results of his hair follicle drug test, that was discussed during his March 2023 background interview, and after he was confronted about his illegal drug use by the investigator. Overall, Applicant's actions demonstrate he does not possess the candor, good judgment and reliability required by individuals entrusted with protecting classified and sensitive information. None of the mitigating conditions apply. The drug involvement and substance misuse security concerns are not mitigated.

#### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern 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. Of special interest is any failure to provide truthful and candid answers during national security investigative or adjudicative processes. ...

AG ¶ 16 describes conditions that could raise a security concern and be disqualifying. The following is potentially applicable under the established facts 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.

The record evidence establishes that Applicant deliberately failed to disclose on his October 2022 SCA that he had been fired by Employer A, that he had used marijuana within the last seven years, that he had been charged with a drug-related offense, and a felony offense involving firearms. The disqualifying condition listed above applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. The following mitigating conditions under AG ¶ 17 are potentially applicable:

(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 caused or significantly contributed to by advice of legal counsel or of 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 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 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 several inconsistent reasons as to why he failed to disclose adverse information on his SCA, as required. He said he did not remember; he filled it out like he would a normal employment application; he did not think his previous employer would be contacted by the government; and, if he had known the nondisclosed information was going to be so important to maintain his security clearance, he would have disclosed it. He has minimized his behavior. His explanations are self-serving and demonstrate that Applicant continues to struggle to be honest and forthright with the government regarding his conduct. His explanations for concealing, minimizing, and providing inconsistent details about his behavior cast doubt on his reliability, trustworthiness, and good judgment.

I did not find Applicant's testimony credible. He did not make prompt, good-faith efforts to correct omissions, misconceptions, or falsifications until confronted. He made deliberate choices to keep the government in the dark regarding his behavior, raising the concern that he is untrustworthy and calling into question his willingness to comply with security rules and regulations. None of the mitigating conditions apply. Personal conduct security concerns are not mitigated.

### **Guideline J: Criminal Conduct**

The security concern related to the criminal conduct guideline is set out in AG ¶ 30:

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 lists conditions that could raise a security concern and may be disqualifying. Three potentially apply:

- (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 record evidence establishes AG ¶¶ 31(a) and 31(b). Applicant was involved in a 2019 drug-related arrest, a 2018 breach of peace arrest, and a 2016 felony firearms offense.

AG ¶ 32 lists two conditions that could mitigate the security concerns:

- (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 and personal conduct, applies equally here. I do not find evidence of successful rehabilitation. Applicant has not established that the conduct is unlikely to recur; and it continues to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 32(a) and 32(d) are not applicable. Criminal conduct security concerns are not mitigated.

### **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 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, E, and J and the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant made poor choices to intentionally omit relevant and material information during the course of his security clearance investigation. He resumed his use of marijuana after he was offered employment with a DOD contractor, and he continued his use of marijuana while possessing an interim security clearance. Accordingly, Applicant has not

carried his burden of showing that it is clearly consistent with the interests of national security of the United States to grant him eligibility for access to classified information.

### **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 through 1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.e:	Against Applicant
Paragraph 3, Guideline J:	Against APPLICANT
Subparagraphs 3.a, 3.b, and 3.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's national security eligibility. Eligibility for access to classified information is denied.

Pamela C. Benson  
Administrative Judge