



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



In the matter of: )  
)  
) ISCR Case No. 24-00831  
)  
Applicant for Security Clearance )

**Appearances**

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

08/01/2025

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**Decision**

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OLMOS, Bryan J., Administrative Judge:

Applicant failed to mitigate the security concerns raised under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

On September 27, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H and Guideline E. The DOD issued the SOR under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on November 4, 2024 (Answer) and requested a decision based on the written record by an administrative judge from the Defense Office of Hearings and Appeals (DOHA), in lieu of a hearing. He clarified and supplemented his Answer on January 13, 2025. On March 14, 2025, Department Counsel submitted the Government's File of Relevant Material (FORM) including Government's Exhibits (GX) 1 through 9. Applicant did not respond to the FORM.

The case was assigned to me on June 10, 2025. The SOR (GX 1) and Answer (GX 2) are the pleadings in this case. GX 3 through GX 9 are admitted without objection.

### **Amendment to the SOR**

Within the FORM submission, Department Counsel amended the SOR to withdraw SOR allegation ¶ 3.e. However, the SOR does not contain an allegation under ¶ 3.e. Instead, the SOR contains an allegation under subparagraph ¶ 2.e. In review of the record, I find that it was Department Counsel's intent to withdraw the allegation under ¶ 2.e and SOR ¶ 2.e is withdrawn.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all the SOR allegations with qualifications. His admissions are incorporated into my findings of fact. After a thorough review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 44 years old. He is married and has two children. He completed an electrical apprenticeship in 2016. He currently holds a security clearance, which was first granted in May 2013, and he signed a non-disclosure agreement in September 2013. He was employed with Company A from May 2011 through November 2022 and, after obtaining a security clearance, accessed two federal installations to perform his work. He has been with his current employer, Company B, since November 2022 and is a foreman. (GX 3-7, 9)

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

SOR ¶ 1.a alleged that Applicant used marijuana from July 1996 through November 2022. He admitted the allegation but claimed that he only used marijuana from July 1996 through November 2004 and then again in November 2022, following the passing of his mother. (GX 1-2)

In his September 2023 responses to a Questionnaire for National Security Positions (SF86), under "**Section 23: Illegal Use of Drugs or Drug Activity:**" which asked whether he had used any illegal drugs or controlled substances in the prior seven years, Applicant answered affirmatively. He then disclosed he first used marijuana in

July 1996, and that his most recent use of marijuana occurred in November 2022. He stated he used marijuana “socially” and “occasionally,” but did not recall the number of times he used it. He answered negatively the question that asked if he had been involved in the illegal purchase of drugs in the prior seven years. He also denied any intent to use drugs or controlled substances in the future and stated he did not “have a need or want to do it anymore.” (GX 5)

Later in September 2023, Applicant submitted his responses to a Questionnaire for Non-Sensitive Positions (SF85). Under “**Section 17: Illegal Use of Drugs or Drug Activity:**” which asked whether he had used any drugs or controlled substances in the prior year, Applicant answered affirmatively. He disclosed that he first used marijuana in July 1995 and last used marijuana in November 2022. He stated that he “experimented with it in high school and socially used it every now and then.” He answered negatively the question that asked if he had purchased marijuana in the last year. (GX 6)

Applicant underwent a background interview with an Office of Personnel Management (OPM) investigator in December 2023. The summary of that interview states:

DRUG USE: All information regarding the listed marijuana use was consistent with the investigative questionnaire [SF86], unless otherwise noted. Subject has used marijuana from 07/1996 to 11/2022. Subject used socially with friends/brother, as well as to help him sleep. Subject's marijuana use made him feel tired. Subject used marijuana on the weekends. Subject obtained the marijuana from friends of his friends: no further pertinent information could be provided. Subject would spend approximately \$50 once a month on marijuana. Subject has not used since 11/2022. Subject has used marijuana while possessing a federal security clearance in the past, while working at the [Government Installation 1] and possibly [Government Installation 2]. Subject cannot be blackmailed or coerced. Subject's marijuana use has not had a negative impact on his life. Subject's friends know of his past marijuana use. Subject has not informed any of his employers of his marijuana use. Subject does not intend on using marijuana in the future. Subject has not used any other illegal drugs. Subject has not sought or been ordered to attend drug counseling. (GX 7)

The record is absent further details regarding the circumstances of Applicant's marijuana use. While marijuana is legal in his current state of residence, the record is absent details of how he obtained the marijuana or where he used it. The record is also absent information as to whether his marijuana use in November 2022 was in a single instance or over multiple occasions. There is no information regarding his company's drug policies or whether he was ever drug tested. (GX 2, 5, 7)

SOR ¶ 1.b alleged that Applicant used marijuana from May 2013 through November 2022 “while granted access to classified information.” He admitted the allegation but claimed his only relevant use of marijuana occurred in November 2022. (GX 1-2)

SOR ¶ 1.c alleged that Applicant was charged with DWI by alcohol and possession of marijuana in October 2004. He admitted the allegation and disclosed details of the arrest and charges in his March 2013 and September 2023 SF86s. During his December 2023 interview, Applicant provided further details of the events that led up to the DWI arrest. He stated he accepted probation before judgment whereby he served one year of probation, had reporting requirements with the state and that his license was temporarily restricted. He admitted he had been charged with possession of marijuana at the time of the DWI and that the charge was dismissed a part of the disposition of the DWI. (GX 1-3, 5, 7-8)

## **Personal Conduct**

SOR ¶ 2.a cross-alleged the above Drug Involvement and Substance Misuse security concerns under Personal Conduct. Applicant admitted the conduct and further stated that his marijuana use occurred from July 1996 through November 2004 and again in November 2022. (GX 1-2)

SOR ¶ 2.c alleged that Applicant falsified his answer in his March 2013 SF86 in response to the question in “**Section 23: Illegal Use of Drugs or Drug Activity:**” “In the last seven years, have you illegally used any drugs or controlled substances?” SOR ¶ 2.d alleged that Applicant falsified his answer in his March 2013 SF86 in response to the question in “**Section 23: Illegal Use of Drugs or Drug Activity:**” “In the last seven years, have you been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance?” SOR ¶ 2.b alleged that Applicant falsified his answer in his August 2020 SF85 in response to the question in “**Section 14: Illegal Drugs:**” “In the last year, have you used, possessed, supplied, or manufactured illegal drugs?” Applicant answered “No” to all of these questions. In his SOR Answer, he stated his responses to the questions were accurate as his last use of marijuana, prior to November 2022, was in November 2004, which fell outside of the date ranges referenced in the questions. (GX 1-4)

Applicant did not respond to the FORM and did not provide any additional clarifying information. In review of the evidence, there have been no other reported arrests or criminal charges against him since 2004. Beyond the current security concerns reflected in the SOR, there are no other reported incidents relating to his holding of a security clearance. (GX 2, 5-7, 9)

## Policies

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

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used in evaluating an applicant’s eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of 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 not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

## Analysis

### Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 provides the security concern arising from drug involvement and substance misuse stating:

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 adjudicative guidelines note several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable:

- (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.

In his September 2023 SF86 and subsequent SF85, Applicant disclosed that he first used marijuana in either 1995 or 1996 and last used marijuana in November 2022. During his December 2023 interview with a background investigator, it was noted that he used marijuana from July 1996 through November 2022. No break in marijuana use was reflected in that summary. Instead, Applicant described using marijuana socially, as well as to help him sleep, and that he would use it on the weekends. He also detailed that he spent about \$50 per month on marijuana and that he used it while possessing a security clearance.

In his Answer to the SOR, Applicant distinguished that he regularly used marijuana from July 1996 through November 2004, which would include marijuana use at the time of his October 2004 arrest on charges of DWI and possession of marijuana. He then claimed he did not use marijuana again until November 2022. This reflects a large break in marijuana use that is not otherwise reflected in the evidence.

While there is variation in evidence regarding the frequency of Applicant's marijuana use, he consistently stated he began possessing and using marijuana in the mid-1990s, was using marijuana into 2004, and used as recently as November 2022. Marijuana is listed on Schedule I of the Controlled Substances Act. See 21 U.S.C. § 812(c); Drug Enforcement Administration listing at <https://www.dea.gov/drug-information/drug-scheduling>. Even this restricted period of marijuana use, as reflected in Applicant's Answer, is sufficient to establish the security concerns under AG ¶¶ 25(a) and 25(c) for SOR ¶¶ 1.a and 1.c.

Applicant also admitted to using marijuana while granted access to classified information and disclosed that he accessed two federal installations to perform his work. In ISCR Case No. 22-02623 at 4 (App. Bd. Jan. 24, 2024), the DOHA Appeal Board discussed the term of "holding a sensitive position" as follows:

For purposes of national security eligibility determinations, the Directive defines "sensitive position" as:

Any position within or in support of an agency in which the occupant could bring about, by virtue of the nature of the position, a material adverse effect on the national security regardless of whether the occupant has access to classified information, and regardless of whether the occupant is an employee, military service member, or contractor.

SEAD 4, ¶ D.8. We have previously held that this broad language is "designed to be inclusive and encompass a wide range of positions, including those that require eligibility for access to classified information (i.e., a security clearance)." ISCR Case No. 22-01661 at 4 (App. Bd. Sep. 21, 2023). The term "sensitive position" is not so broad, however, to encompass any and all employment with a defense contractor.

Applicant's marijuana use in November 2022 occurred while he held a security clearance and while he held a sensitive position. However, the SOR only alleged that his use occurred "while granted access to classified information," and did not allege his marijuana use occurred while he held a sensitive position. The evidence does not establish 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. In order to gain access to specific classified materials, an individual must not only have 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). The security concern under AG ¶ 25(f) has not been established for SOR ¶ 1.b.

AG ¶ 26 lists conditions that could mitigate drug involvement and substance misuse 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.

The Security Executive Agent (SecEA) promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications as follows:

[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 few 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.

*Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (Dec. 21, 2021) at 2 (quoted in ISCR Case No. 20-02974 at 3-4 (App. Bd. Feb. 1, 2022)).

The DOHA Appeal Board cited the importance of considering "the changing landscape of marijuana law and . . . of the Director of National Intelligence's *Clarifying*



*Guidance Concerning Marijuana.*” ISCR Case No. 23-02402 at 4 (App. Bd. Feb. 19, 2025). See also ISCR Case No. 24-00914 at 3 (App. Bd. Apr. 9, 2025).

Applicant began using marijuana as early as 1995 and as recently as November 2022. It cannot be said that his use of marijuana happened so long ago or was infrequent. However, in his SOR Answer, Applicant stated that his use of marijuana in November 2022 followed the passing of his mother. While he did not provide further detail, it can be inferred that this was likely an emotional event for him and his marijuana use may have occurred under unique circumstances. Mitigation under AG ¶ 26(a) must be considered.

Applicant is also credited with disclosure of his marijuana use during the security clearance process. In his September 2023 SF86, he stated his intent to not use marijuana in the future as he no longer “[has] a need or want to do it anymore.” Mitigation under AG ¶ 26(b) must also be considered.

However, the time between his most recent involvement with marijuana and his Answer to the SOR was less than two years. In consideration of his prior history of marijuana use as well as his most recent marijuana use occurring after he filled out his March 2013 SF86 and while in a sensitive position, this recent period of abstinence is insufficient to conclude that Applicant’s marijuana use is entirely in his past and no longer casts doubt on his reliability, trustworthiness or judgment. Applicant has not met his burden to mitigate the security concerns. Mitigation under AG ¶¶ 26(a) and 26(b) is not applicable.

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

AG ¶ 15 provides the security concern arising from personal conduct stating:

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.

The adjudicative guidelines note conditions that could raise security concerns under AG ¶ 16. The following are 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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing; (2) while in another country, engaging in any activity that is illegal in that country; (3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

The SOR allegations under Guideline H were cross-alleged under Guideline E. Applicant's conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. This conduct is sufficient for an adverse determination under Guideline H, previously discussed. However, the general security concern under AG ¶ 15 is established. Additionally, during his December 2023 background interview, he admitted that his employer was unaware of his marijuana use. His conduct created a vulnerability to exploitation, manipulation, and duress. The security concern under AG ¶ 16(e) is established for SOR ¶ 2.a.

SOR ¶¶ 2.b through 2.d allege that Applicant falsified aspects of his March 2013 SF86 and August 2020 SF85 by intentionally failing to disclose his marijuana use. Although Applicant admitted the SOR allegations, he did not admit that he falsified his applications. When a falsification allegation is controverted, as in this case, the Government has the burden of proving it. An omission, standing alone, does not prove falsification. An administrative judge must consider the record evidence as a whole to determine an applicant's state of mind at the time of the omission. See ISCR Case No. 03-09483 at 4 (App. Bd. Nov. 17, 2004) An applicant's experience and level of education are relevant to determining whether a failure to disclose relevant information on a security clearance application was deliberate. See ISCR Case No. 08-05637 (App. Bd. Sep. 9, 2010)

In review of the evidence, Applicant disclosed in his September 2023 SF86 and subsequent SF85 that he first used marijuana in either 1995 or 1996 and as recently as November 2022. The summary of his December 2023 background interview reflects that he "used marijuana from 07/1996 to 11/2022." In that interview, he also provided details of the circumstances of his marijuana use. Although he did not further comment on the accuracy of the interview summary, in his Answer to the SOR, he clarified that he used marijuana from 1996 through November 2004 and again in November 2022.

Given that Applicant voluntarily disclosed his marijuana use during the security clearance process, including his marijuana use while in a sensitive position, I do not find that Applicant intentionally falsified his March 2013 SF86 and August 2020 SF85. The security concern under AG ¶ 16(a) has not been established for SOR ¶¶ 2.b through 2.d.

I have considered the mitigating conditions for personal conduct under AG ¶ 17 and the following are potentially applicable:

(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

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's use of marijuana in November 2022 while working in a sensitive position was recent and not minor. While he disclosed his marijuana use in his September 2023 SF86 and subsequent SF85, his employer remains unaware. Although he cites his mother's passing as a unique circumstance relating to that use, given his previous history of using marijuana, insufficient time has passed for Applicant to have established that the behavior is unlikely to recur and that he has sufficiently reduced the vulnerability to exploitation, manipulation or duress. Mitigation under AG ¶¶ 17(c) and 17(e) is not applicable.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and Guideline E in my whole-person analysis.

Applicant did not request a hearing, and I did not have the opportunity to question him further about his past conduct or to assess his credibility by observing his demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). However, the record reflects that he used marijuana from the mid-1990s through 2004 and again as recently as November 2022. While he voluntarily disclosed his marijuana use in his September 2023 SF86 and subsequent SF85, he has not provided sufficient mitigation of the security concerns or established the reliability, trustworthiness and judgment necessary to maintain a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude that Applicant did not mitigate the drug involvement and substance misuse or the personal conduct security concerns.

### **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 |
| Subparagraph 1.b:         | For Applicant     |
| Subparagraph 1.c:         | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraph 2.a:         | Against Applicant |
| Subparagraphs 2.b – 2.d:  | For Applicant     |
| Subparagraph 2.e:         | Withdrawn         |

### **Conclusion**

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

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Bryan J. Olmos  
Administrative Judge