



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 24-01685
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

09/15/2025

Decision

OLMOS, Bryan J., Administrative Judge:

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

Statement of the Case

On December 19, 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 submitted an undated answer to the SOR (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. On April 1, 2025, Department Counsel submitted the Government's File of Relevant Material (FORM) including Government's Exhibits (GX) 1 through 6. On about June 6, 2025, Applicant provided a response to the FORM.

The SOR and Answer (GX 1) are the pleadings in this case. GX 2 through GX 6 are admitted without objection.

Findings of Fact

The SOR alleged that Applicant used marijuana with varying frequency from about October 2019 through October 2023 and that her use of marijuana continued after she had been granted a security clearance in August 2022 and held a sensitive position. The SOR further alleged that she deliberately falsified material facts within her July 2022 security clearance application (SCA) by failing to disclose her history of marijuana use up to that point. In her Answer to the SOR, she admitted using marijuana as alleged but denied deliberately falsifying information in her July 2022 SCA. (GX 1)

Applicant is 25 years old. She earned bachelor's degree in August 2021. Shortly afterwards, she started working part-time as an unarmed security guard with her current, sponsoring employer. In January 2022, her position transitioned to full-time employment. (GX 2, GX 3, GX 5)

In July 2022, Applicant's employer requested that she obtain a secret-level security clearance, and she submitted her first-ever SCA. Under "Section 23: Illegal Use of Drugs or Drug Activity," which asked whether she had used any illegal drugs or controlled substances in the prior seven years, she answered "No" and did not disclose any drug use. She also answered "No" to the question of whether she had purchased illegal drugs in the prior seven years. Applicant signed a non-disclosure agreement in about July 2022 and her security clearance application was approved in August 2022. (GX 2, GX 5, GX 6)

In March 2024, Applicant's employer requested that she obtain a top-secret clearance, and she submitted another SCA. This time, under "Section 23: Illegal Use of Drugs or Drug Activity," she disclosed she had used marijuana from October 2019 through September 2023 and that her use of marijuana occurred while she possessed a security clearance. She described her marijuana use as "sparse" and mostly occurring in college and socially. She answered "No" to the question of whether she had purchased illegal drugs in the prior seven years. She denied any intent to continue using marijuana, stating "I find that it doesn't fit my lifestyle now." (GX 3, GX 5, GX 6)

In May 2024, Applicant was interviewed by a DOD investigator. She described her earliest use of marijuana occurring in October 2019 with friends in college. She did

not use marijuana again until the fall of 2020 when she started using it 3-4 times per week. She began regularly purchasing it from a student on campus. Her marijuana use decreased in 2021 as she socialized less with college friends. She last purchased marijuana in May 2021. After her August 2021 graduation, she moved in with her parents and stopped using marijuana. In mid-2022, she got her own place. In August 2022, she used marijuana again with a visiting friend. She recalled using marijuana sporadically through October 2023. (GX 4, GX 5)

Applicant told the investigator that, when she started working, she did not recall her employer informing her marijuana use was prohibited. It was only in November 2022 while job searching online, that she realized marijuana use was illegal under federal law. This was also the first time she realized she was not allowed to use marijuana while holding a security clearance. However, even knowing that marijuana was illegal and incompatible with holding a security clearance, she continued using marijuana as described above. (GX 4, GX 5)

During her May 2024 interview, Applicant restated that she had no intent to use marijuana in the future. She admitted she had been offered marijuana from her friends since October 2023 and was able to decline the offer. She stated she did not initially take the responsibilities of maintaining a security clearance seriously. She felt that she had since matured and was focused on her profession and improving her health. (GX 4, GX 5)

In her SOR Answer, Applicant admitted to using marijuana from October 2019 through October 2023 and that her marijuana use continued after she was granted a security clearance in August 2022 and worked in a sensitive position. She emphasized that her marijuana use “primarily occurred during a period when [she] was not fully aware of the long-term professional implications of such actions.” She expressed regret and “recognize[d] the seriousness” of her actions. She stated her intention to “abstain permanently” from marijuana use. She noted she had matured and was “committed to maintaining compliance” with all rules and regulations relating to the holding of a security clearance. (GX 1)

However, in her SOR Answer, Applicant denied that she deliberately falsified the information submitted in her July 2022 SCA. She stated:

At the time, I misunderstood the question and did not consider my infrequent past marijuana use significant enough to warrant disclosure. I now realize this was a mistake in judgment and acknowledge that I should have provided a full and honest answer. I deeply regret any confusion caused and assure you this was not an intentional act of deception.

Applicant affirmed she had responded “transparently to the SOR” and was taking “full responsibility” for her past actions. (GX 1)

In her response to the FORM, Applicant detailed that her use of marijuana, particularly from November 2022 through October 2023, was sparse. Regarding her use of marijuana while employed in a sensitive position, Applicant stated that no one had “clearly explained the prohibition of marijuana use in relation to clearance responsibilities” and noted she did not “initially grasp the full implications” of her marijuana use. She reaffirmed that she “made a permanent commitment to abstain going forward.” (FORM Response)

Applicant further denied “any intentional falsification” of her July 2022 SCA and stated:

I did not believe at the time my prior marijuana use was significant enough to warrant disclosure. I realize now that this was a mistake and take accountability for my past poor choices.

She further expressed her commitment to maintaining the “highest standards of conduct and professionalism” while holding a security clearance and working in a sensitive position. (FORM Response)

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 her March 2024 SCA, Applicant disclosed that she used marijuana with varying frequency from about October 2019 through October 2023. 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>. Applicant's history of marijuana use is sufficient to establish the security concerns under AG ¶¶ 25(a) and 25(c) for SOR ¶ 1.a.

Applicant also admitted that her marijuana use continued after she was granted a security clearance in August 2022 and worked in a sensitive position. She stated that, until November 2022, she had been unaware that marijuana use was illegal under federal law and not permissible for someone who held a security clearance. However, she continued using marijuana after this realization until October 2023. 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 from August 2022 through October 2023 occurred while she held a security clearance and worked in a sensitive position. The security concern under AG ¶ 25(f) is 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 require 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 in October 2019 while in college. In 2020-2021, her marijuana increased to 3-4 times per week before tapering off prior to her college graduation in August 2021. She then stopped using marijuana for nearly a year before using it again socially in August 2022 and sporadically through October 2023. Given her inability to terminate her marijuana use in college and the recency of her last use, it cannot be said that her use of marijuana happened so long ago or was infrequent. Mitigation under AG ¶ 26(a) is not applicable.

Applicant is credited with disclosure of her marijuana use in her March 2024 SCA and subsequent interview with a DOD investigator. She repeatedly stated her intent to "abstain permanently" from marijuana use and that she has since matured. She continues to associate with friends who use marijuana and has been offered marijuana since October 2023. While she is committed to changing her environment and is more cognizant of the obligations of holding a security clearance, less than two years have passed since her most recent involvement with marijuana.

In consideration of Applicant's prior history of marijuana use as well as her most recent marijuana use occurring while she worked in a sensitive position, this recent period of abstinence is insufficient to conclude that Applicant's marijuana use is entirely in her past and no longer casts doubt on her reliability, trustworthiness or judgment. Applicant has not met her burden to mitigate the security concerns. Mitigation under AG ¶ 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 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 alleged that Applicant falsified aspects of her July 2022 SCA by intentionally failing to disclose her marijuana use. Applicant denied the allegation. 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, although Applicant denied the allegation in her SOR Answer, she claimed she "misunderstood" the question and did not consider her marijuana use "significant enough to warrant disclosure." She made a similar statement in her response to the FORM. Beginning with an applicant's responses in the application and continuing through the investigative phase, "the security clearance investigation is not a forum for an applicant to split hairs or parse the truth narrowly. The Federal Government has a compelling interest in protecting and safeguarding classified information." ISCR Case No. 01-03132 (App. Bd. Aug. 8, 2002)

There is no indication that Applicant was confused by the questions presented in the July 2022 SCA. Given her education level and statements made in the record, I find that she deliberately failed to disclose her drug-use history as set forth in SOR ¶ 1.a. The security concern under AG ¶ 16(a) is established for SOR ¶ 2.a.

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

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

As Applicant matured and advanced in her work, she grew to understand the significance and responsibilities of maintaining a security clearance. She volunteered details of her past marijuana use in her March 2024 SCA and provided extensive details of that use in her May 2024 interview with a DOD investigator as well as in her SOR Answer and FORM response. She acknowledged that she should have initially provided a "full and honest answer" and detailed that she was committed to "maintaining compliance" with the rules and regulations of holding a security clearance going forward. Given her efforts to voluntarily provide an accurate account of her past drug use, mitigation under AG ¶ 17(a) is applicable to SOR ¶ 2.a.

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 her further about her past conduct or to assess her credibility by observing her demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). However, the record reflects that she used marijuana from October 2019 through October 2023. While she voluntarily disclosed her marijuana use in her March 2024 SCA and stated her awareness of the responsibilities of holding a security clearance, she has not established a sufficient pattern of abstinence from marijuana to mitigate the security concerns at this time. This decision should not be construed as a determination that Applicant cannot obtain a security clearance in the future. With a more established period of abstinence, she may mitigate the drug involvement security concerns, but she has not on the current record. Eligibility for access to classified information is denied.

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 – 1.b:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

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.

Bryan J. Olmos
Administrative Judge