



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



In the matter of:)
)
) ISCR Case No. 24-01022
)
 Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: Ronald C. Sykstus, Esq.

09/11/2025

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant mitigated the security concerns raised under Guideline E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

On August 13, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under 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 September 1, 2024 (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The hearing convened as scheduled on July 11, 2025.

Department Counsel offered into evidence Government Exhibits (GX) 1-3, and Applicant offered into evidence Applicant Exhibits (AX) A-D. All exhibits were admitted without objection. Applicant and seven character witnesses testified. The record was left open through August 8, 2025, for either party to submit additional information. Applicant timely submitted AX E, which was admitted without objection. DOHA received the hearing transcript (Tr.) on July 17, 2025.

Findings of Fact

The SOR alleged security concerns related to Applicant's failure to disclose his history of marijuana use in a March 2023 security clearance application (SCA) (SOR ¶¶ 1.b-1.c). He also received a written warning from his employer based on this intentional omission (SOR ¶ 1.a). He admitted all the allegations, with clarifications. His admissions are incorporated into my findings of fact. After a review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 27 years old. After graduating high school in 2016, he earned an associate degree in 2019 and a bachelor's degree in 2022. In about February 2023, he started working with his current employer as a software engineer. (GX 1-3; Tr. 15-22)

Applicant purchased and used marijuana from about March 2018 through April 2022. In March 2023, Applicant submitted his first-ever SCA and failed to disclose any history of drug use. Shortly afterwards, he was granted a security clearance. (GX 1-3; Tr. 24-26)

Applicant received security training when he started his job. However, he was unfamiliar with the expectations of holding a security clearance and felt troubled that he did not disclose his drug-use history in his March 2023 SCA. While he knew he was required to report security incidents to his supervisor, he was unaware of who he could discuss his concerns about his SCA with and was unaware that his office had a facility security officer (FSO). Through 2023, he did not amend his March 2023 SCA or seek any help regarding his omissions. (Tr. 32-40)

In January 2024, Applicant's employer sought to upgrade his security access to top secret, and Applicant submitted another SCA. In this application, he disclosed his drug-use history. He detailed that he initially used marijuana about twice per week while in college and that his use decreased to about once every few months before he stopped. He stated that, based on health and professional reasons, he no longer intended on using marijuana. (GX 1; Tr. 25-28, 38-40)

On review of his January 2024 SCA, Applicant's employer initiated disciplinary action against him for misrepresenting information in his March 2023 SCA. It was noted that any additional "unacceptable conduct" would result in further disciplinary action or his termination from employment. Applicant was not suspended, and no additional action was taken against him. (GX 3; Tr. 46-50)

In February 2024, Applicant was interviewed by a DOD investigator. He confirmed his drug-use history and admitted he intentionally failed to disclose that information in his March 2023 SCA. He also detailed that he was reprimanded by his employer for an ethics violation relating to his failure to provide accurate information in his March 2023 SCA. (GX 3)

In his July 2024 response to interrogatories, Applicant further admitted that he withheld his drug-use history from his March 2023 SCA because he feared it would impact his eligibility for a security clearance. He stated it was a significant lapse of judgment. Since then, he was attempting to provide a “truthful account of [his] history.” (GX 3)

At the hearing, Applicant recognized that marijuana use was illegal under both federal and state law where he lived at the time he used it. He is aware that marijuana remains illegal under federal law, and recreational use of marijuana remains illegal in the state where he resides. He described using marijuana in college with friends and has not used it since April 2022. He no longer associates with individuals who use marijuana and repeatedly stated his intent to not use marijuana in the future. (Tr. 26-35)

Regarding his failure to disclose marijuana use in his March 2023 SCA, Applicant stated that while in college, he applied online for an internship with the Federal Bureau of Investigation (FBI). On disclosure of his drug-use history, the application terminated, and he was notified that he was not eligible for the position. He admitted this “scared” him about his prospects for employment and influenced his decision to not disclose his history of marijuana use in his March 2023 SCA. (Tr. 24, 32-36)

Since working with his employer, Applicant learned the significance and responsibilities of maintaining a security clearance and that “honesty matters the most.” He admitted he struggled to disclose his past drug use to his employer after submitting his March 2023 SCA and did not make efforts to immediately correct his omissions. However, he knew that the January 2024 SCA allowed him an opportunity to present an honest account of his past conduct, which he did. He reiterated that he committed a significant lapse in judgment and took “full acknowledgment” of his actions. He detailed that he had since received further security training through his employer, and over time, had come to appreciate the responsibilities of maintaining a security clearance. He understood that he has an ongoing obligation to disclose information that may be unfavorable, but relevant to holding a security clearance. (Tr. 25-28, 34-38, 44-50)

Applicant’s scholastic achievements and performance evaluations reflect that he is an excellent employee and high achiever in his field. Even though he was reprimanded by his employer, he was still rated at above average or exceptional in all categories. He was credited with communicating with his managers and multiple sources to solve problems and maintaining a “heart of humility” when it came to self-improvement. (AX A-E)

Seven witnesses all positively described Applicant's character and work performance. Mr. B managed a carwash where Applicant worked in college. He described that Applicant was completely trusted to run the shop. One time, Applicant used the shop's computer systems to assist Mr. B in catching another employee stealing from the register. Mr. H was Applicant's previous supervisor at his current employer and noted Applicant had performed exceptionally at work. He highlighted Applicant's "character growth" and honesty in clarifying his past drug use. Mr. T is Applicant's current supervisor and stressed that Applicant exhibited integrity and is proactive in bringing problems forward for discussion. Mr. R, a civilian working for the United States Army and manager of the laboratory where Applicant works, described him as a high performer who is committed to maintaining the security and sensitivities of the laboratory. He is confident that Applicant would self-report any issues that arise. All the witnesses believe that Applicant possesses the judgment, reliability and trustworthiness necessary to hold a security clearance. (Tr. 55-120)

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 E, Personal Conduct

The security concern relating to personal conduct is set out in AG ¶ 15:

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 investigative or adjudicative processes...

I have considered the disqualifying conditions for personal conduct under AG ¶ 16 and 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

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

Applicant used marijuana from about March 2018 through April 2022. He intentionally failed to disclose that use on his March 2023 SCA. Falsification of an SCA

is not “minor,” but “strikes at the heart of the security clearance process.” ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011). Security concerns under AG ¶ 16(a) are established for SOR ¶¶ 1.b and 1.c. He also knew that his purchase and use of marijuana was illegal under federal and state law. Following his voluntary disclosure of his drug-use history, he was reprimanded by his employer for his conduct. Security concerns under AG ¶ 16(c) and the general security concern under AG ¶ 15 are established for SOR ¶ 1.a.

Conditions that could mitigate the personal conduct security concerns are provided under AG ¶ 17. 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; and
- (d) the individual has 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.

The security clearance process relies on those who are trusted with the nation’s secrets to be honest and forthcoming, regardless of the consequences. Applicant understood that he exhibited a significant lapse of judgment by failing to disclose his drug-use history in his March 2023 SCA. As he continued in his work, he quickly grew to understand the significance and responsibilities of maintaining a security clearance. In January 2024, when provided another opportunity to disclose his drug-use history, he did so in detail and with an understanding of the potential consequences of his actions. He was reprimanded by his employer and acknowledged, through his admissions and testimony, the security concerns raised in the SOR.

At hearing, Applicant candidly provided details of his marijuana use and established that this use was entirely in his past. He admitted that he was scared to disclose his drug-use history in his March 2023 SCA. However, by his subsequent actions, he has not repeated this lapse in judgment. He has come to understand the importance of providing accurate information in all aspects of his employment and that he has an ongoing obligation to disclose information that may be unfavorable, but relevant to holding a security clearance.

Outside of this event, Applicant has excelled in his employment and was repeatedly praised for his trustworthiness, judgment and reliability. He has established that this was a singular lapse in judgment that is unlikely to recur. Mitigation under AG ¶¶ 17(a) and 17(d) apply to all the SOR allegations.

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 E in my whole-person analysis.

Applicant committed a serious lapse of judgment by not disclosing his drug-use history in his first-ever SCA, submitted in March 2023. He recognized this error and, in January 2024, provided a detailed history of his marijuana use that primarily occurred in college. He understood that his intentional omission reflected poorly on his judgment, reliability and trustworthiness. He has acknowledged his mistake and articulated changes that he made over time to become a trustworthy and reliable young professional.

I had the opportunity to observe Applicant's demeanor during his testimony and found that he was credible and candid. I believe he has learned from his mistakes and will not repeat them. He now has a better understanding of the rules and regulations that govern the protection of classified and sensitive information, including the need for total candor in the security clearance process. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the 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 E:

FOR APPLICANT

Subparagraphs 1.a – 1.c:

For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Bryan J. Olmos
Administrative Judge