



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 24-02450

Applicant for Security Clearance )

### Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel

For Applicant: *Pro se*

09/30/2025

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### Decision

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Dorsey, Benjamin R., Administrative Judge:

Applicant did not mitigate the personal conduct, drug involvement and substance misuse, or criminal conduct security concerns. Eligibility for access to classified information is denied.

### Statement of the Case

On February 13, 2025, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E (personal conduct), Guideline H (drug involvement and substance misuse), and Guideline J (criminal conduct). On March 2, 2025, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing (Answer).

The Government's written case was submitted on May 8, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was given 30 days to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 28, 2025, and provided an undated one-page narrative (FORM Response) that I admitted in evidence, without objection. The case was assigned to me on August 28, 2025. The Government exhibits included in the FORM (Items 1-7) are admitted in evidence, without objection.

## **Findings of Fact**

Applicant is a 22-year-old who is being sponsored for a security clearance by a government contractor. She earned a high school diploma in May 2020 and an associate degree in August 2023. She has never married and has a six-year-old child. (Items 3, 4)

From about July 2014 until June 2023, Applicant used marijuana with varying frequency (SOR ¶ 2.a). She used it daily. Possession of marijuana (and therefore its use) was and continues to be illegal pursuant to federal law. There is no evidence that marijuana use or possession has ever been legal pursuant to state law in State A, where she possessed and used it. In August 2021, May 2020, and November 2016, she was charged with possession of marijuana in State A (SOR ¶¶ 2.b through 2.d). Police reports and the FBI Rap Sheet provide substantial evidence of these charges. On an unknown date, she also failed a urinalysis test by testing positive for marijuana (SOR ¶ 2.e). In her Answer, she admitted the marijuana-related allegations, with additional comments, except for the failed urinalysis, which she claimed she did not recall. Evidence of this failed urinalysis is contained in the authenticated February 29, 2024, March 4, 2024, and July 26, 2024 reports of her subject interviews (collectively, "SI"). There is no evidence that she has attended or completed a drug treatment program. (FORM Response; Items 2, 4, 5)

Including Applicant's three marijuana possession charges, police have charged her or counseled her for criminal conduct at least 18 times between 2016 and October 2023. These charges range from the aforementioned marijuana possession to assault (multiple times), disorderly conduct (multiple times), shoplifting, and driving with a suspended license (multiple times). She was convicted of some of these charges. Police reports, court records, and the FBI Rap Sheet provide substantial evidence of these charges. Of note, there are no such records as to the charges the Government alleged in SOR ¶¶ 3.b and 3.m. Police filed many of these charges against her while she was a juvenile, but the charges listed in SOR ¶¶ 3.a, 3.c., and 3.d through 3.e were filed against her after she reached the age of 18. In the Answer, Applicant admitted most of these charges and counseling, but denied those alleged in SOR ¶¶ 3.i, 3.j, 3.l, and 3.m. She claimed that she did not recall those incidents, that the alleged date of the criminal charges was wrong, or without providing an additional comment. Applicant provided no documentary evidence with her Answer or her FORM Response. (FORM Response; Items 2, 4-7)

In January 2024, Applicant completed and certified a security clearance application (2024 SCA). Despite being required to do so, she did not report her marijuana use or possession in the 2024 SCA. Despite being required to do so, she did not report any criminal charges that had been filed against her. In the SI, the DOD investigator noted that he confronted Applicant with respect to her criminal charges during the first of the three interviews he conducted with her on February 29, 2024. During this first interview, Applicant claimed that she did not list the criminal charges in the 2024 SCA because they had all been dropped, so she did not need to list them. The DOD investigator noted that Applicant did volunteer some information about her criminal charges during the July 26,

2024 interview (third of three). The SI is unclear whether Applicant volunteered her marijuana use before being confronted. In the Answer, she claimed that she did not understand the scope of the questions in the 2024 SCA and failed to recognize that her criminal charges should be reported. She claimed that she now understands that she should have reported her criminal charges, acknowledged the seriousness of the omissions, and took full responsibility. She also claimed that she did not understand she needed to report her marijuana involvement in the 2024 SCA because she considered it to be minor, no longer relevant, or did not impact her current standing. (FORM Response; Items 3-7)

In her FORM Response, Applicant takes some responsibility for her past, while also blaming her upbringing and environment. She noted that she gave birth to her daughter at the age of 16, with little to no guidance. She claimed that she is now in a more stable environment as she lives with her uncle in the suburbs. She claimed she has matured, turned her life around, and does not want to behave the way she did in the past. She claimed that she has not used marijuana in four years and does not associate with anyone involved with illegal drugs. (FORM Response)

While it is not alleged in the SOR, and I will therefore not use it for purposes of disqualification, Applicant failed to report on the 2024 SCA that she had been fired from a job in October 2022 for gross misconduct. I will use this evidence for appropriate purposes such as with respect to mitigation, determining credibility, and in my whole-person analysis. She did not report being fired to the DOD investigator during the SI until the investigator confronted her with that information during the July 26, 2024 interview (the third of three). In the 2024 SCA, she listed that she left the position from which she was fired for a better opportunity/different location. She claimed that she did not list this firing because "it wasn't enough experience to put on application."

## **Policies**

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the

“whole-person concept.” The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

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

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

Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline E, Personal Conduct**

The security concern for 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following is potentially applicable 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant omitted her lengthy and prolonged history of criminal charges from the 2024 SCA. She also omitted all information regarding her marijuana involvement from the 2024 SCA. I find her excuses for doing so to be illogical and to strain credulity. For example, her claim that she did not report her criminal charges because they had all been dropped was simply not true. Her claim that she did not understand that she needed to report her marijuana involvement is contrary to the plain meaning of the questions in the 2024 SCA. Moreover, because she considered the information regarding her marijuana involvement to be minor, no longer relevant, or did not impact her current standing, it shows that she realized she should include the information but deliberately decided not to do so. Finally, she had motivation to omit this information, as she likely realized that her marijuana involvement and criminal charges, if known, might inhibit her ability to gain security clearance eligibility. For these reasons, I find that her omission of her criminal charges and marijuana involvement from the 2024 SCA was deliberate. AG ¶ 16(a) is established.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

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

Applicant did not provide sufficient evidence that she corrected her omission of her marijuana involvement and criminal history before being confronted with the facts. The DOD investigator specifically noted that he confronted Applicant with her criminal charges. The information in the SI is equivocal as to the timing of Applicant's discussion of her marijuana involvement. AG ¶ 17(a) does not apply.

Deliberately omitting or falsifying required information during the security clearance process is not minor. Instead, this action strikes at the heart of the process, which relies on candid and honest reporting. As noted in the SOR, Applicant omitted relevant information in multiple locations of the 2024 SCA. She also falsified derogatory information about being fired from a job in October 2022, instead claiming that she simply left for a better opportunity. The DOD investigator had to confront her with this information

during the SI. She has not shown that her dishonest behavior was infrequent, happened under unique circumstances, or is unlikely to recur. AG ¶ 17(c) does not apply. She did not provide evidence of any counseling or other steps she took to change the behavior or alleviate the factors that led to her untrustworthy behavior. AG ¶ 17(d) does not apply.

## **Guideline H, Drug Involvement and Substance Misuse**

The security concern for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

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

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines . . . . An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

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

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies

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

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

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana with varying frequency from July 2014 until June 2023. Police charged her with marijuana possession in August 2021, May 2020, and November 2016. She tested positive for marijuana after taking a urinalysis test on an unknown date. AG ¶¶ 25(a), 25(b), and 25(c) are established.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment;
- (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.

It has been about two years since there is evidence that Applicant last used marijuana (not four years, as she claimed in her FORM Response). This relatively short period of time pales in comparison to the nine years of her daily marijuana use. There is no brightline rule for how long one must abstain from an illegal drug to show that continued use is unlikely to recur or to establish a sufficient period of abstinence. However, I find that, after nine years of daily use, it is too early to conclude that she has met that threshold. AG ¶ 26(a) does not apply.

Applicant has acknowledged her marijuana use. She claimed that she no longer associates with others who are involved with illegal substances and has changed her environment by living with her uncle. However, for the reasons that I provided in my analysis under AG ¶ 26(a), she has not established a sufficient period of abstinence. AG ¶ 26(b) does not fully apply.

#### **Guideline J, Criminal Conduct**

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

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Between 2016 and October 2023, Applicant engaged in a consistent and prolonged pattern of criminal behavior. Some of these criminal acts involved violence. The above disqualifying condition is established. However, given the lack of police and court records, I find there is no substantial evidence of the criminal conduct alleged in SOR ¶¶ 3.b and 3.m, and I find for Applicant with respect to those allegations.

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

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and

does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

There is some evidence that Applicant has changed her behavior. It has been about two years since she engaged in any criminal activity. She claimed that she has changed her mindset and her environment. However, given the breadth of time and frequency over which she consistently engaged in criminal conduct, juxtaposed against these two years, there is insufficient evidence that her criminal behavior is unlikely to recur, or of her successful rehabilitation. None of the Guideline J mitigating factors are 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 Guidelines E, H, and J in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude she did not mitigate the personal conduct, drug involvement and substance misuse, or criminal 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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a-2.e:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	For Applicant
Subparagraphs 3.c-3.l:	Against Applicant
Subparagraph 3.m:	For Applicant
Subparagraphs 3.n-3.r:	Against Applicant

### **Conclusion**

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

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Benjamin R. Dorsey  
Administrative Judge