



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



In the matter of:

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ISCR Case No.24-01467

Applicant for Security Clearance)

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

10/02/2025

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse) and E (Personal Conduct). The Guideline H concerns are mitigated, and the Guideline E allegations are refuted. Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 4, 2023. On December 23, 2024, the Defense Counterintelligence and Security Agency (DCSA) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H and E. The DCSA acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on March 6, 2025, and requested a decision on the written record in lieu of a hearing. Department Counsel submitted the Government's written case on April 25, 2025. A complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on May 12, 2025, but did not respond. The case was assigned to me on September 2, 2025.

Findings of Fact

SOR ¶ 1.a alleges that Applicant used marijuana with varying frequency from about January 2021 to about January 2023. SOR ¶ 1.b alleges that he purchased marijuana during the same time period. SOR ¶ 1.c alleges that he used and purchased marijuana with varying frequency from about June 2021 to August 2021, while employed in a sensitive position. In his answer to the SOR, he admitted SOR ¶¶ 1.a and 1.b. He admitted SOR ¶ 1.c in part, denying that he was employed in a sensitive position at the time. His admissions are incorporated in my findings of fact.

SOR ¶ 2.a alleges that Applicant falsified his SCA by failure to disclose that he received a "memorandum of expectations" for improperly charging time during June to August 2021. SOR ¶ 2.b alleges that he falsified his SCA by failing to disclose his drug involvement "other than previously listed," while possessing a security clearance. In his answer to the SOR, he denied both allegations.

Applicant is a 28-year-old electromagnetic effects engineer. He is not married. He has a two-year-old son. He attended college from August 2016 to January 2023. While in college, he was employed by a defense contractor as a part-time intern from January 2021 to June 2022. He submitted an SCA in January 2021, received a security clearance, and signed a nondisclosure agreement in April 2021. (GX 7) He earned a bachelor's degree in January 2023. After graduation, he moved to another state and was hired by his current employer in April 2023. He submitted another SCA in June 2023. (GX 2)

In response to interrogatories from DCSA (then known as the Department of Defense Consolidated Adjudication Service (DoD CAS)) in May 2024 and from DOHA in September 2024, Applicant admitted using marijuana less than 30 times between January 2021 and January 2023 in order to deal with a diagnosis of diabetes and the stress of college. He obtained it "through word of mouth" or at a tobacco shop. Marijuana use was decriminalized in his state of residence. At about the time of his graduation from college in January 2023, he realized that his use of marijuana violated federal law, and he stopped using it, because he did not want it to affect his job opportunities or his ability to hold a security clearance. (GX 4; GX 5)

A Defense Information System for Security (DISS) incident report dated August 29, 2022, reported that Applicant had been accused of mischarging about 25 hours of work time between June 2021 through August 2022, while he was working as a part-time intern, and that he was issued a "memorandum of expectations." When Applicant was interviewed by a security investigator in January 2024, he denied mischarging work time and told the investigator that he did not recall receiving a "memorandum of expectations."

(GX 6) The record contains no evidence reflecting the basis for the DISS report or the investigator's question about mischarging time, and no other evidence indicating that Applicant mischarged work time.

When Applicant submitted his SCA in June 2023, he answered "No" to the following question in Section 13A: "For this employment (January 2021 to June 2022), in last seven years, have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?" The SOR alleges that this answer was a deliberate falsification.

The absence of documentary evidence showing the basis for the DISS report and the investigator's question about mischarged work time, coupled with Applicant's statement that he had no knowledge of a "memorandum of expectations" satisfies me that, even if a mischarging of time occurred, Applicant was not aware that he had been given a written notice concerning it. Furthermore, a "memorandum of expectations" falls short of a reprimand or disciplinary action. Thus, I conclude that his negative response to the first question does not establish a deliberate falsification. SOR ¶ 2.a is not established.

In the SCA, the first part of Section 23 asks, "In the last seven (7) years, have you illegally used any drugs or controlled substances?" Applicant answered "Yes" and fully disclosed his drug involvement. However, in the second part of same section, he answered "No" to the following question: "Have you ever illegally used other otherwise been illegally involved with a drug or controlled substance while possessing a security clearance *other than previously listed*?" (italics added) The phrase "other than previously listed" is ambiguous, because it suggests that it is not necessary to repeat drug involvement already admitted in the earlier part of Section 23. Nevertheless, the SOR alleges that this answer was a deliberate falsification.

In Applicant's answer to the SOR, he denied intentional falsification. He stated:

I deny that I knowingly falsified material facts on e-QIP. Falsified is a harsh word because even though I did use marijuana at that time in that position, I disclosed several times between that time period working at [previous employer] that I did. Maybe I was confused by the way the e-QIP asks questions.

I deny that I used marijuana while knowingly holding a position of trust. To be fair, a position of trust was not granted to me. Falsification is a harsh word because when I worked at [the employer] as an intern, I was given special program access, not a security clearance because there were still thinks I had no access to. I did not have a secret clearance or anything less than that. I only had whatever program access that allowed me to access the high bay while being supervised at all times, so the reason I chose No to this question is because I did not believe I had a security clearance. I again misunderstood this question because of how it is being asked as well as going off of my own honest understand. As mentioned early, the proof is there that I smoked marijuana and have already claimed that through the

period aforementioned several times through the SF 86-eQIP questionnaire.

The SOR alleges that Applicant's negative answer to the second question about drug involvement while holding a sensitive position was a deliberate falsification. The evidence establishes that Applicant held a security clearance while employed from June 2021 to August 2021. The evidence also establishes that he held a position for which a security clearance was required, and as such, was a sensitive position. However, Applicant apparently has understandably misunderstood the difference between eligibility for access to classified information and actual access to classified information. His assertion in his answer to the SOR, if true, indicates that he probably did not have actual access to classified information. His answer to the SOR also indicates his confusion about being accused of falsification of the second question about drug involvement after fully disclosing his drug involvement in his answer to the previous question.

I conclude that Applicant's negative answer to the second question about marijuana was understandable, because his drug involvement was "previously listed" in his answer to the first question about drug involvement. It was not a deliberate falsification, because he did not think that he was required to repeat the disclosures that he made in his answer to a previous question. Thus, I conclude that SOR ¶ 2.b is not established.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019). It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531.

Analysis

Guideline H (Drug Involvement and Substance Misuse)

The concern under this guideline 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.

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition);

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position.

The following mitigating conditions are potentially applicable:

AG ¶ 26(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;

AG ¶ 26(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; and

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. 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.

AG ¶ 26(a) is established. Applicant purchased and used marijuana from January 2021 to January 2023 in a state where its use was legal, but in violation of federal law. He stopped using marijuana in January 2023, more than two years ago, because he knew that marijuana use violated federal law and was an impediment to obtaining a security clearance. He has undergone significant positive changes in circumstances that make recurrence unlikely, i.e., graduation from college, moving from the college environment to another geographical area, seeking for employment that requires a security clearance, and learning that marijuana use is an impediment to obtaining a clearance.

AG ¶ 26(b) is established. Applicant has acknowledged his drug involvement. He moved to another state in April 2023, thereby leaving the college environment and disassociating from drug-using associates and contacts. He has declared his intent to abstain from all drug involvement in writing, and he has acknowledged that future drug involvement is inconsistent with holding a clearance. Even though he has not formalized his statement of intent in the format described in AG ¶ 26(b)(3), he has provided the equivalent of a statement in that format.

Guideline E, Personal Conduct

The security concern under this guideline 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 relevant disqualifying condition is AG ¶ 16(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.” This disqualifying condition is not established. Applicant has refuted the allegations that he falsified his SCA. No other disqualifying conditions under this guideline are established.

Whole-Person Analysis

Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. An administrative judge must evaluate an applicant’s security eligibility by considering the totality of the applicant’s conduct and all the relevant circumstances. An 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.

I have incorporated my comments under Guidelines H and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). After weighing the disqualifying and mitigating conditions under Guidelines H and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his drug involvement and refuted the allegations of falsifying his SCA.

Formal Findings

I make the following formal findings on the allegations in the SOR:

Guideline H (Drug Involvement and Substance Misuse):

FOR APPLICANT

Subparagraphs 1.a-1.c:

For Applicant

Guideline E (Personal Conduct):

FOR APPLICANT

Subparagraphs 2.a and 2.b:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge