



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



In the matter of:)	
)	
)	ISCR Case No. 24-02364
)	
Applicant for Security Clearance)	

Appearances

For Government: Cynthia Ruckno, Esq., Department Counsel
For Applicant: *Pro se*

12/15/2025

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement) and E (Personal Conduct). Clearance is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on June 19, 2024. On March 18, 2025, 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 21, 2025, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on May 7, 2025. The case was assigned to me on August 19, 2025. On September 2, 2025, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on September 29, 2025. I convened the hearing as scheduled. Government Exhibits 1 through 5 were admitted in evidence without objection.

Applicant testified but did not present the testimony of any other witnesses or submit any documentary evidence. I kept the record open until October 9, 2025, to enable him to submit documentary evidence. He timely submitted Applicant Exhibits (AX) A and B, which were admitted without objection. DOHA received the transcript on October 14, 2025. My decision was delayed when all administrative judges were furloughed from October 1 to November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations in the SOR under Guideline H. He admitted the omissions from his SCA, alleged under Guideline E, but he denied intentional falsification, stating that the omissions were honest mistakes. His admissions are incorporated in my findings of fact.

Applicant is a 36-year-old employee of a federal contractor. He was initially hired as shipping and receiving clerk in June 2024. Shortly thereafter, he was promoted to being a material coordinator, a position that requires a security clearance. He has never held a security clearance. He has a high-school education. He has lived with a cohabitant since March 2015. (GX 1 at 20) He testified that he and his cohabitant have "been together" since December 2012. (Tr. 22) He has three children, ages ten, four, and two.

Court records reflect that in September 2008, Applicant was charged with possession of marijuana. He pleaded guilty and received unsupervised probation before judgment. (GX 3) In March 2011, he was charged with possession of marijuana, and his case was placed on the "stet" docket. (GX 4) He testified that this arrest occurred when he was in a hotel room during a party where marijuana was being used. In May 2014, he was charged with possession of marijuana. This arrest occurred when police observed four individuals, including Applicant, passing around a marijuana cigarette in a parking lot. (GX 5) The record does not reflect the disposition of this charge.

When Applicant submitted his SCA in June 2024, he answered "no" to the questions asking if, in the last seven years he had illegally used any drugs or controlled substances, and asking if, in the last seven years, he had been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling, or sale of any drug or controlled substance. He also answered "no" to the question whether he had ever been charged with an offense involving alcohol or drugs. (GX 1 at 28-29)

When Applicant was interviewed by a security investigator in September 2024, he admitted being arrested for possession of marijuana in September 2008, March 2011, and May 2014. He also admitted to the investigator that, in addition to his recreational

use of marijuana between 2008 and 2014, he used marijuana once in May or June 2024 to deal with back pain. (GX 2 at 9) He repeated his admissions in response to DOHA interrogatories on February 19, 2025. (GX 2 at 4)

At the hearing, Applicant testified that he had never previously submitted an SCA. He declared that he had no reason to lie. He testified, "I don't know how I messed the questionnaire up, I really don't, I mean because I know that the government is going to find all this stuff out, I know you all are going to find it out." (Tr. 37)

Applicant testified the investigator did not ask him about his answers in the SCA, but she asked him if he had ever been arrested, and he revealed his drug-related arrests in response to that question. (Tr. 38-39) He also admitted that he used marijuana for back pain one time in May 2024. At the hearing, he testified that he purchased the marijuana from a dispensary, not a dealer. (Tr. 30, 41) At the time he purchased it, medical use of marijuana was legal in the jurisdiction where he lived.

Applicant testified that his goals changed when he became involved with his fiancée. He testified that he and his fiancée have "been together" since December 2012. His SCA reflects that they have lived together since March 2015. Their first child was born in April 2015. They have had three boys together. (GX 2 at 8) Applicant testified that his "main goal" in life is to own land, own a house, and to raise his boys to be good men. He enjoys fishing, hunting, and growing his family's own produce and flowers. (Tr. 22, 32, 33)

Applicant's assistant facility security officer, who is also his supervisor, testified that Applicant has earned a reputation for exemplary work and was appointed to supervisory positions before an issue arose regarding his application for a security clearance. (Tr. 14-18) He was not aware of Applicant's prior marijuana use, but he testified that Applicant's strong work ethic gives him "less of a pause" about it. (Tr. 19-20)

After the hearing, on September 30, 2025, Applicant submitted a written statement of intent to refrain from using any illegal drugs in the future, and he agreed to automatic revocation of his national security eligibility for any illegal drug usage in the future. (AX A)

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.

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. . . .

Analysis

Guideline H (Drug Involvement)

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 submitted at the hearing establish the following disqualifying conditions under this guideline:

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

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

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; and

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

AG ¶ 26(a) is established. Applicant's recreational use of marijuana ended more than ten years ago. His single medical use of marijuana in May 2024 was legal under state law, has not recurred, and is not likely to recur.

AG ¶ 26(b) is established. Applicant no longer associates with illegal drug users. He is totally involved with his job and his family. His supervisor, who is also the assistant facility security officer, vouches for his exemplary work and supports his application for a clearance. After the hearing, Applicant provided the signed statement of intent provided for in AG ¶ 26(b)(3).

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 following disqualifying condition is relevant to established by Applicant's admissions and the evidence submitted at the hearing:

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.

At the hearing, Applicant denied intentionally falsifying his SCA, stating that he knew that any falsification would be discovered by security investigators. However, he admitted the omission in his answer to the SOR, and his admission is sufficient to establish AG ¶ 16(a). However, he corrected his omission shortly thereafter during an interview with a security investigator. Thus, I conclude that his omission was mitigated under AG ¶ 17(a): "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." See ISCR Case No 22-02601 (App. Bd. Feb. 22, 2024) ("Prompt" means a reasonable time, and "good faith" means acting in a way that reflects reasonableness, prudence, honesty, and adherence to duty or obligation.)

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). Applicant was candid, sincere, remorseful, and credible at the hearing. After weighing the disqualifying and mitigating conditions under those guidelines and evaluating all the evidence in the context of the whole person, I conclude that Applicant has mitigated the security concerns raised by his drug involvement and personal conduct.

Formal Findings

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

Paragraph 1, Guideline H (Drug Involvement): FOR APPLICANT

 Subparagraphs 1.a-1.d: For Applicant

Paragraph 2, 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