



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 24-00561

Applicant for Security Clearance

Appearances

For Government: Patricia Lynch-Epps, Esq., Department Counsel

For Applicant: *Pro se*

12/29/2025

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the security concerns arising under Guideline H (drug involvement and substance misuse), and Guideline J (criminal conduct). She refuted the security concerns under Guideline E (personal conduct). Eligibility for access to classified information is granted.

Statement of the Case

On July 29, 2023, Applicant completed an Electronic Questionnaires for Investigations Processing (eQIP), also known as a security clearance application. On May 29, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and Security Executive Agent Directive 4, establishing in Appendix A, the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant a security clearance for

Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines E, H, and J. Applicant responded to the SOR (Answer), and she requested a decision be made based on the administrative record.

On March 31, 2025, Department Counsel submitted a file of relevant material (FORM), which included Government Exhibits (GE) 1 through 5. The FORM was received by Applicant on May 5, 2025, and she had 30 days to respond to the FORM, file any objections or provide additional information. Applicant elected not to respond to the Government's FORM within the 30-day time limit. I admitted into evidence GE 1 through 5, without objection.

Findings of Fact

In Applicant's Answer, she admitted SOR allegation ¶ 1.a, but denied she intentionally falsified her security application, and she denied the remaining SOR allegations. (SOR ¶¶ 2.a, 2.b, and 3.a.) Her qualified admission is accepted as findings of fact. (GE 2)

Applicant has been employed by a federal contractor since July 2010. She is a 50-year-old executive vice president and general manager. She received a bachelor's degree in August 2000. She is married and does not have any children. This is Applicant's first application for a DOD security clearance. (GE 3)

Personal Conduct and Drug Involvement and Substance Misuse

SOR ¶ 1.a alleges Applicant falsified material facts on an Electronic Questionnaires for Investigations Processing (eQIP), executed by her on July 29, 2023, in response to **Section 23 – Illegal Use of Drugs or Drug Activity: Illegal Use of Drugs or Controlled Substances** In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance? Applicant answered the question with a "No" response, and she deliberately failed to disclose that she had used marijuana gummies from about July 2022 to about July 2023, as set forth in subparagraph 2.a. (SOR allegation – GE 1)

In Applicant's Answer, she stated that she responded with a "No" to this eQIP question because, at the time, she did not understand that recreational use of marijuana, which is legal in her state of residence, was prohibited by federal law. She answered all of the eQIP questions in a candid and forthright manner. She did not become aware of the full application of federal law until her October 2023 background interview with an authorized DOD investigator. Once she became aware of this legal discrepancy, she immediately disclosed to the investigator that she had consumed a marijuana gummy at a concert sometime between July 2023 (*not* July 2022) to August 2023. (Answer; GE 2)

SOR ¶ 2.a alleges Applicant used marijuana gummies from about July 2022 to August 2023, after completing an eQIP on July 29, 2023, to obtain a security clearance [or] while serving in a position of trust with the federal government. Applicant denied this allegation because she had consumed a single marijuana gummy on one occasion while attending a concert sometime in about mid-2023. (SOR allegation – GE 1, 2)

During Applicant's October 2023 background interview, she told the investigator that her spouse had purchased marijuana gummies in July 2022, and while they were attending a concert in about July or August 2023, she had ingested a gummy. She also stated that she and her spouse had used marijuana gummies beginning in early 2023, while attending social activities or concerts, until August 2023. This information was verified by Applicant in an interrogatory signed by her in April 2024. This reported information is concerning for two reasons: 1) the government has no evidence to support SOR allegations that Applicant has used and purchased marijuana gummies beginning in about July 2022, and 2) in Applicant's Answer, her statement that she used a marijuana gummy on one occasion at a concert in either July or August 2023 contradicts her statement of marijuana gummy use during her October 2023 background interview. She had also disclosed that she would use THC-infused gummies legally in the future. In any event, I conclude that Applicant's use and possession of marijuana gummies was infrequent and limited to early 2023 to August 2023. There is no evidence in the record of continued use after August 2023. (GE 2, 4)

SOR ¶ 2.b alleges Applicant intends to use marijuana in the future. Applicant denied this allegation in her Answer because she is now fully aware of the federal law's prohibition of illegal drug use, even if the state has legalized the recreational use of marijuana. (SOR allegation – GE 1, 2)

Criminal Conduct

SOR ¶ 3.a cross alleged the information set forth in subparagraph SOR ¶ 2.a (Guideline H) as also applicable to Guideline J's security concerns. (SOR allegation – GE 1)

Applicant denied SOR ¶ 3.a in her Answer since she did not fully understand that while recreational marijuana is legal in her state of residence, it is still considered illegal under federal law. Now that she is aware of this dichotomy, she does not intend to use any illegal drugs in the future or engage in any criminal conduct. (GE 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no 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 applicant's 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, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, 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 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 “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence 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*, 484 U.S. at 531. “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. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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.

AG ¶ 16 describes the following condition that could raise a security concern and may be disqualifying in this case:

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.

AG ¶ 16(a) is not applicable. Applicant established that she did not deliberately conceal or falsify her use of marijuana gummies when she completed the July 2023 eQIP. As soon as she discovered the security significance of the difference between state and federal laws during her October 2023 background interview, she voluntarily disclosed to the investigator her use of a THC-infused gummy she ingested at a concert in mid-2023 possibly after her completion of the eQIP, and her use of THC-infused gummies on occasion from early 2023 to August 2023. Since she was placed on notice of the legal distinction between state and federal law, she has abstained from using any illegal drugs. I found Applicant successfully refuted the allegation that she intentionally falsified her answer to the illegal drug use question on her July 2023 eQIP. No other disqualifying conditions under this guideline are established.

Assuming arguendo that she should have disclosed her consumption of a marijuana gummy on her eQIP, personal conduct security concerns are mitigated by AG ¶ 17(a) "(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." She disclosed her consumption of marijuana gummies during her investigative interview in October 2023, and after she became aware of the application of federal law, which is sufficiently prompt to apply AG ¶ 17(a).

The DOHA Appeal Board held that the Government alleged post security clearance application (SCA) illegal drug use is only security significant beyond pre-SCA use if the Applicant understood the security significance of further marijuana use. ISCR Case No. 23-00476 at 5 (App. Bd. May 1, 2024.) Also, "[T]he security significance of [the] answer in terms of falsification under Guideline E would be defined by the specific

circumstances.” In addition, the DOHA Appeal Board found when conflicts exist within the record, a judge must weigh the evidence and resolve such conflicts based upon a careful evaluation of factors such as the evidence’s “comparative reliability, plausibility and ultimate truthfulness.” ISCR Case No. 05-06723 at 4 (App. Bd. Nov. 14, 2007). In some cases, inconsistencies in record evidence can be credited to an applicant’s intentional omission or changing reports during a clearance investigation where motive to do so is apparent. That is not invariably the case, however, and resolution of the inconsistencies must be done in consideration of the reliability of the evidence as a whole. ISCR Case. No. 23-00093 at 3.

Guideline H, Drug Involvement and Substance Abuse

The security concern relating to the guideline for Drug Involvement 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.

AG ¶ 25 describe conditions that could raise a security concern and may be disqualifying. The following is potentially applicable in this case:

AG ¶ 25(a) any substance misuse; and

AG ¶ 25 (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant admitted that she consumed a marijuana gummy at a concert in mid-2023, she had used marijuana gummies with her spouse beginning in early 2023 until August 2023, and she stated that she intended to legally use marijuana gummies in the future, which triggered the disqualifying conditions of AG ¶¶ 25(a) and 25(g).

The mitigating conditions under AG ¶ 26 which may be applicable in this case are as follows:

AG ¶ 26(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and 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.

Applicant admitted she did not disclose the use of illegal drugs when she completed her eQIP in July 2023, since recreational use of marijuana is legal in her state of residence, and she did not consider her use of THC-infused gummies as illegal. Once she was provided information about the discrepancy and application between state and federal laws concerning illegal drug use, she immediately reported her use of marijuana gummies from early 2023 to at August 2023 to the investigator during her October 2023 background interview. She has also stated that she had no intention of using any illegal drugs in the future in her Answer.

Applicant's use of marijuana was limited, her last use of marijuana occurred over two years ago, and I find that future illegal drug use is unlikely to recur. She has clearly and convincingly expressed her intent to abstain from marijuana use. Applicant demonstrated an appropriate period of abstinence and has met her burden of mitigation of the security concerns raised under Guideline H. AG ¶¶ 26(a) and 26(b)(3) apply.

Guideline J, Criminal Conduct

AG ¶ 30 sets forth the security concerns pertaining to Criminal Conduct:

Criminal activity creates doubt about a person'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 the following condition that could raise a security concern and may be disqualifying in this case:

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

Applicant used an illegal drug in mid-2023. Her illegal drug use is prohibited by federal law and is criminal conduct. The evidence establishes the above disqualifying condition.

AG ¶ 32 provides two conditions that could mitigate the above security concerns raised in this case:

(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 no evidence of additional misconduct. Applicant's criminal conduct is related to her illegal drug possession in a state where the recreational possession and use of marijuana is legal. Once she understood the application of federal law, she has stopped all illegal drug use and has not used any illegal drug since August 2023. She has demonstrated successful rehabilitation, and I believe future drug-related misconduct is unlikely to recur. AG ¶¶ 32(a) and 32(d) apply.

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 the 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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall common-sense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guidelines E, H, and J are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines but some warrant additional comment.

After considering the record as a whole, to include the circumstances surrounding Applicant's limited use of marijuana, the timing of when she learned that federal law supersedes state law, and her immediate disclosure of her marijuana involvement thereafter, I conclude that Applicant has met her heavy burden of proof and persuasion. Overall, her conduct and abstention from marijuana upon learning of its security significance shows her reliability, trustworthiness, and good judgment. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guidelines H and J, and she successfully refuted the security concerns under Guideline E.

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:

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| Paragraph 1, Guideline E: | FOR APPLICANT (Refuted) |
| Subparagraph 1.a: | For Applicant (Refuted) |
| Paragraph 2, Guideline H: | FOR APPLICANT |
| Subparagraphs 2.a and 2.b: | For Applicant |
| Paragraph 3, Guideline J: | FOR APPLICANT |
| Subparagraph 3.a: | For Applicant |

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge