



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



Appearances

For Government: Erin P. Thompson, Esq., Department Counsel
For Applicant: *Pro se*

12/22/2025

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines E (Personal Conduct) and H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on February 26, 2024, and had previously submitted an SCA on February 21, 2019. On February 3, 2025, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines E and H. The DoD acted 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, National Security Adjudicative Guidelines (AG) (December 10, 2016).

Applicant submitted his Answer to the SOR on March 26, 2025, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written file of relevant material (FORM) on June 5, 2025. Applicant

received a complete copy of the FORM on June 25, 2025, and was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He provided a Response digitally signed on June 26, 2025, which was a statement of intent to abstain future involvement or misuse of drugs. The case was assigned to me on December 4, 2025.

The SOR and Applicant's Answer and Response are the pleadings in the case. Government Exhibits (GE) 3 through 6 are admitted into evidence without objection.

Findings of Fact

In Applicant's Answer to the SOR, he admitted both allegations that he used marijuana on various occasions between at least approximately April 2004 and January 2024, including on multiple occasions between 2019 and 2024, when he was employed in a sensitive position, i.e., a Public Trust Position. His admissions are incorporated in my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 37 years old. He attended college between 2006 and 2011 but did not complete a degree. He shares a preschool age child with his partner. They have lived together since 2013. Since 2019, he has worked as a scientist for a Federal contractor providing environmental and construction services. (GE 3; GE 4; GE 5.)

On the February 2019 SCA Applicant did not disclose any illegal drug use. Applicant's February 2019 SCA resulted in him receiving a favorable adjudication for a position of public trust. The favorable review was completed on May 5, 2019. (GE 3 at 10; GE 6.) On his February 2024 SCA, Applicant admitted he used marijuana on various occasions between April 2004 and January 2024, including on multiple occasions between 2019 and 2024, when he was employed in a sensitive position. (Answer; GE 4; GE 5.)

Applicant stated on the February 2024 SCA that he used marijuana recreationally through 2021 and then took a break of almost two years. After November 2023 he resumed occasional marijuana use at gatherings. (GE 4 at 26.) In a January 2025 response to Government interrogatories, he specified his marijuana use was from 2004-2015 was two to three times a week; from 2015-2021 was once a year; and from November 2023 to January 2024 was three or four times. (GE 5 at 9.)

In the February 2024 SCA Applicant explained he did not intend to use marijuana because he was not drawn to it. He noted his extended period of abstinence. He also cited receiving a position with a government agency for ceasing consumption of marijuana. He affirmed he "will not be consuming it in the future." (GE 4 at 26.) He provided a statement that he would abstain from all drug involvement and substance misuse and acknowledged that any future involvement or misuse is grounds for revocation of national security eligibility. (Answer; Response.)

During his security clearance interviews in April and May of 2024, Applicant discussed his drug involvement with the DoD investigator. In his April interview he told the DoD investigator he used marijuana recreationally between April 2004 and 2015 and stopped using marijuana between 2015 and 2021. He stopped using marijuana between 2015 and 2021 because he lost interest and did not find any benefit in continuing to use marijuana. In May 2024, he clarified the timeframe he used marijuana, telling the DoD investigator he stopped using marijuana on a regular basis in 2015 and that he used marijuana on three or four occasions, less than once a year, between 2015 and 2021. He explained the reason for the change in his statement was the passage of time and because he did not purchase marijuana during this time and only used it at social gatherings where it was offered to him. (GE 5 at 4, 5.)

Applicant explained that he purchased marijuana in small amounts from friends. He estimated he spent \$60 per month for the purchase of marijuana to use in social settings with friends. He used marijuana by smoking a rolled joint. (GE 5 at 4.)

Applicant acknowledged receiving a citation for possession of marijuana from his campus police department after a dormitory sweep in 2006. He had to pay a fine. He stated the record was expunged. (GE 5 at 4, 6.) Applicant cited becoming a father, and that he no longer feels it is appropriate to use illegal drugs. He affirmed he has no intention to use illegal drugs in the future. (GE 5 at 4.)

Applicant's 2024 SCA and security clearance interviews reflect a 20-year history of marijuana use. (GE 4; GE 5.) In his Answer he states:

I acknowledge my drug involvement and misuse and have abstained from any further use. The behavior was infrequent and happened under such circumstances that it is unlikely to recur. I no longer socially associate with persons that use drugs or controlled substances and no longer engaged in activities or enter environments where drug or controlled substance use is present. I have provided 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. The signed statement has been sent with this response letter. In addition, I will complete any drug screening requested as proof of nonuse of any drugs or controlled substances. (Answer.)

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*, 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. 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*, 484 U.S. at 531.

Analysis

Guideline H, Drug Involvement and Substance Misuse

SOR ¶ 2.a cross-alleges the Applicant's previous drug involvement alleged in SOR ¶ 1.a. 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 record establish the following disqualifying conditions under this guideline, as detailed in AG ¶ 25:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant admitted using marijuana between April 2004 and January 2024 including on multiple occasions between 2019 and 2024, when he was employed in a sensitive position, i.e. a Public Trust Position (SOR ¶ 2.a). AG ¶¶ 25(a), 25(c), and 25(f) apply.

The following mitigating conditions are potentially applicable as detailed in 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
- (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 not established. Applicant's drug misuse was frequent, longstanding, and recent, and it did not occur under circumstances unlikely to recur. He admittedly used marijuana from April 2004 and January 2024, including on multiple occasions between 2019 and 2024, while employed in a sensitive position. Despite being cited for marijuana possession, he did not change his behavior, nor did he change his behavior after assuming a position of public trust. His continued marijuana use, cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is not fully established. Applicant admitted his drug use, and he has recently changed his behavior. He states he no longer socially associates with persons that use drugs or controlled substances and is no longer engaged in activities or enters environments where drug or controlled substance use is present. He signed a statement of intent to abstain from all drug involvement and substance misuse. He only recently abstained from marijuana use and has stated given his family responsibilities he does not intend to use any illegal drugs in the future. Insufficient time has passed to mitigate his lengthy history of marijuana use. The security concern regarding his drug involvement is not mitigated.

Guideline E, Personal Conduct

SOR ¶ 1.a alleges the Applicant's drug involvement as a security concern for personal conduct, which is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's admitted drug use raises the following disqualifying condition, under AG ¶ 16:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group.

Applicant's drug use in SOR ¶ 2.a is cross alleged under SOR ¶ 1.a as a personal conduct security concern. His drug use between April 2004 and January 2024, including

on multiple occasions between 2019 and 2024, while employed in a sensitive position raises disqualifying conditions under both Guidelines E and H. See AG ¶ 16(e). However, I find “For Applicant” with respect to SOR ¶ 1.a because his illegal drug use is more appropriately and fully addressed under Guideline H. Duplicative coverage of his illegal drug use while employed in a sensitive position in my findings under Guideline E is not warranted in this case. In addition, he could not be coerced or pressured by information of his history of marijuana use. Guideline E security concerns are mitigated.

Whole-Person Concept

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. In applying the whole-person concept, an 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. 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 have applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. Insufficient time has passed since his last use of illegal drugs to overcome the extent and seriousness of his conduct. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

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 mitigated security concerns under Guideline E; however, he has not mitigated the security concerns raised by his conduct under Guideline H.

Formal Findings

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

Paragraph 1: Guideline E:

FOR APPLICANT

Subparagraph 1.a:	For Applicant
Paragraph 2: Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale
Administrative Judge