



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



In the matter of:)
)
) ISCR Case No. 24-01918
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

12/29/2025

Decision

BLAZEWICK, Robert B., Chief Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

On December 20, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and E. Applicant responded to the SOR on January 20, 2025 (Answer) and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on April 21, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on May 12, 2025. He timely submitted one document, which I labeled as Applicant's Exhibit (AE) A. The case was assigned to me on September 4, 2025. The Government exhibits included in the FORM and AE A are admitted in evidence without objection. This decision was delayed when all administrative judges were furloughed from October 1 through November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

Findings of Fact

The SOR alleges that Applicant used marijuana from 1999 to May 2024, including while possessing a security clearance from 2005 to May 2024 (SOR ¶¶ 1.a, 1.b, 2.a); that he used a cream containing Tetrahydrocannabinol (THC) in 2019 (SOR ¶¶ 1.c, 2.a); that he falsified material facts on his security clearance application (SCA) in 2005 when he failed to disclose an alcohol treatment program he attended (SOR ¶ 2.b); that he falsified material facts on his SCAs in 2011, 2016, and 2023, when he failed to disclose his marijuana use and use while possessing a security clearance (SOR ¶¶ 2.c-h); that he entered a restricted area without program access in 2017 (SOR ¶ 2.i); and that he was arrested for driving under the influence (DUI) in 2018 (SOR ¶ 2.j). In his Answer, Applicant admitted all the allegations.

Applicant is 61 years old. He has been married since 2010 and was previously married from 1996 to 2001. He has one minor child. He earned an associate's degree in 1989 and did not serve in the military. He has been employed with a defense contractor since 2002. He was first granted a clearance in 2005. (Item 7)

Applicant first completed an SCA in December 2005. When asked whether he had used any illegal drugs or controlled substances in the last seven years, he answered "yes," and reported that he used marijuana about five times from 1999 to 2000 while going through his divorce. When asked in the same SCA whether his use of alcoholic beverages resulted in any alcohol-related treatment or counseling, he answered "no." (Item 4)

In March 2011, Applicant completed a second SCA. He completed a third SCA in June 2016 and a fourth SCA in November 2023. On each SCA, when asked whether he had used any illegal drugs or controlled substances in the last seven years, he answered "no." On each SCA, when asked whether he had ever used any illegal drugs or controlled substances while possessing a security clearance,¹ he answered, "no." On his 2023 SCA, which explicitly instructs applicants to list both original charges and lesser offenses, he reported a May 2017 reckless driving arrest and conviction. He reported that his sentence involved three years of probation, traffic school, and fines, and that he had paid everything in full. (Items 5-7)

Applicant had a background subject interview (SI) with a background investigator in April 2024. He reported that he was arrested for misdemeanor reckless driving in 2017 or 2018 when he failed to stop at a stop sign and was then administered a field sobriety test and breathalyzer, which indicated he was over the legal limit of blood alcohol concentration (BAC). During the interview, he also disclosed voluntarily attending alcohol treatment in 2001 or 2002. He stated that it involved one week of inpatient treatment and one week of outpatient treatment. He stated he had not reported this period of treatment in previous investigations due to an oversight. In his SOR Answer pertaining to the Guideline E allegation of failing to report the 2001 or 2002 treatment on his 2005 SCA

¹ The wording of both questions varied slightly from one SCA to another, but the substance of the questions remained the same. See Items 5-7, Section 23: Illegal Use of Drugs or Drug Activity.

(SOR ¶ 2.b), Applicant listed several Guideline G mitigating conditions pertaining to the passage of time, efforts taken to overcome the problem, and successful completion of a treatment program. (Items 3, 8)

An April 2018 incident report indicates that Applicant was arrested on April 1, 2018, for DUI. It states that his breathalyzer result (BAC) was 0.12 percent. In an update, it states that the charge was reduced to reckless driving and that he was sentenced to 36 months of probation, ordered to complete a DUI alcohol class, and to pay a fine. In his Answer, Applicant stated that he completed all required classes and attended Alcoholics Anonymous meetings for three months. (Items 3, 9)

During his 2024 SI, Applicant admitted that in 2019, he used a cream containing THC every other day for six to eight months. He stated someone gave it to him, and he used it to help with arthritis pain in his hand. He stated he no longer uses the cream. (Item 8)

Applicant also admitted that over the past 15 years, he has smoked marijuana one to two times per month. He stated his spouse provides it to him, and he does not know where she obtains it. He also admitted to trying marijuana gummies on one or two occasions. He explained that he first tried marijuana in high school and started using it more regularly in 2010 or 2011 after quitting smoking tobacco. He admitted that he did not report his use on his SCAs because he was ashamed to admit the marijuana use, and he wanted to get a security clearance. When asked more specifically why he did not report use while possessing a security clearance, he stated that he did not read the question clearly, but then admitted he lied because he was trying to minimize and justify his use of marijuana. He told the investigator he did not view marijuana as illegal. In his Answer pertaining to the Guideline E allegations of failure to disclose marijuana use and use while possessing a clearance (SOR ¶¶ 2.c-h), Applicant listed several Guideline H mitigating conditions pertaining to the passage of time and efforts to overcome the problem. He also submitted a statement of intent to abstain from all drug involvement with his Answer.² (Answer; Items 3, 8)

In his December 2024 response to an interrogatory, Applicant reported “infrequent” marijuana use from 2010 to May 2024. (Item 8 at 19) He reported that he did not have any intentions of future use because he would like to keep his clearance and not jeopardize his ability to work on closed programs. He stated that he became aware of the illegality of marijuana on the federal level in April 2024 when the SI interviewer discussed it with him. Applicant stated he does not associate with people who use illegal substances or frequent places where illegal substances are used, and he stated he would leave immediately if he found himself in such a situation. (Item 8)

² Although referenced in the Government’s FORM, the statement of intent was not included in Item 3 (Applicant’s Answer to the SOR dated January 20, 2025). Nevertheless, it was already included in the record with the rest of the Answer and I was able to review it.

A December 2017 incident report indicates Applicant was cited for a security infraction. It states that he did not have access for a particular classified program but entered the program's special access program facility area. Prior to entering the area, he was asked if he was approved for access to the classified program, and he "responded in a manner that misrepresented his access." (Item 9 at 3) He then tried two different combinations to enter the door, entering successfully after the second try. It was discovered that he did not have program access, and he was escorted out of the area, but not before he inadvertently viewed a classified program model from a special access program to which he was not briefed. He was required to complete an Inadvertent Disclosure Statement and was verbally counseled. In his Answer, Applicant stated that he was asked by his manager to open the door. (Items 3, 9)

In his response to the FORM, Applicant submitted a written statement in which he expressed his commitment and dedication to his work. He stated that he acknowledged the mistake of not reporting accurate information on his SCA and he deeply regrets the decision. He stated he was ashamed of the decision and takes full responsibility. (AE A)

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) implemented by the DOD on June 8, 2017.

"[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." EO 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.” EO 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 “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* 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.

The following disqualifying conditions are relevant:

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

AG ¶ 25(c): illegal possession of a controlled substance . . . ; and

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

AG ¶¶ 25 (a), (c) and (f) are established by Applicant's admissions regarding his marijuana use and use while in a sensitive position. There is insufficient evidence in the record, however, pertaining to the THC content and origin of the THC cream to determine whether it meets the definition of a "controlled substance" and whether its use meets the definition of "substance misuse." SOR ¶ 1.c is found for Applicant.

As to SOR ¶¶ 1.a and 1.b, 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.

AG ¶ 26(a) is not established. Applicant's involvement with marijuana was frequent, occurring once or twice monthly over the course of at least 14 years, and it did not occur under circumstances making recurrence unlikely. Notably, he continued using marijuana for a month after his SI, during which he was informed that marijuana use is

illegal under federal law. The key issue is whether it is mitigated by the passage of time. The first prong of AG ¶ 26(a) (happened so long ago) focuses on whether the drug involvement was recent. There are no bright-line rules for determining when conduct is recent. If the evidence shows that a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant reported using marijuana throughout middle age, ceasing less than two years ago. This most recent period of marijuana usage, roughly 2010 to 2024, all occurred while he possessed a security clearance. While under some circumstances a year and a half of abstinence could be considered a significant period of time, when contrasted with Applicant's 14-year history of marijuana use and the fact that his drug use was not able to be examined and adjudicated in his second or third background investigations due to his failure to disclose it, it is not a sufficiently lengthy period of abstinence to fully establish the mitigating condition.

Taken together, the span of use and the exceedingly poor judgment he exercised when choosing to use marijuana while possessing a security clearance cast doubt on his current reliability, trustworthiness, or good judgment. AG ¶ 26(a) is not established for Applicant's marijuana use and his use after being granted a security clearance. (SOR ¶¶ 1.a-1.b)

AG ¶ 26(b) is not fully established. Applicant provided a signed statement of intent in his Answer, and in his response to interrogatories he attested that he has disassociated from drug-using associates and has changed or avoided the environment where marijuana was used. He also submitted a letter expressing how seriously he takes his job and its responsibilities. Though I gave considerable weight to this evidence, his lengthy history of drug use and his use while granted a security clearance lessens the credibility and sincerity of his statement and the impact of his letter.

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 are 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;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(2) any disruptive, violent, or other inappropriate behavior;

(3) a pattern of dishonesty or rule violations.

Applicant was a regular user of marijuana for over a decade and chose to use drugs after being granted a security clearance. As discussed in my Guideline H analysis above, taken together, this behavior illustrates a pattern of poor judgment and rule-breaking and clearly establishes AG ¶¶ 16(c) and 16(d) with respect to SOR ¶ 2.a, except as it pertains to allegation ¶ 1.c. His security infraction and his DUI further add to this overall picture of poor judgment and rule-breaking, and establish AG ¶¶ 16(c) and 16(d) as to SOR ¶¶ 2.i and j.

Applicant admitted falsifying his answers on his SCAs pertaining to alcohol treatment and marijuana use. AG ¶ 16(a) is established as to SOR ¶¶ 2.b-2.h, except as it pertains to allegation ¶ 1.c in SOR ¶¶ 2.g and h.

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

(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.

In light of my findings under Guideline H, neither AG ¶ 17(c) nor AG ¶ 17(d) are established for SOR ¶ 2.a. Although Applicant provided evidence that he is now abstinent and has no intent to use marijuana in the future, the concerns surrounding Applicant's overall course of conduct when he was using marijuana undercut the evidence in mitigation.

Neither of these AGs is established for the falsification allegations. Although some of the allegations are quite old, when taken together, they demonstrate an ongoing course of conduct spanning nearly 20 years where Applicant repeatedly chose to lie in his background investigations. This behavior is not minor nor infrequent and continued until relatively recently, at least until the last SCA in November 2023. Although Applicant has said he regrets his actions and takes full responsibility, his complete disregard for truthfulness in the background investigation process is so grievous that I cannot conclude this is behavior that is unlikely to recur, and I find that it casts doubt on Applicant's reliability, trustworthiness, and good judgment. SOR ¶¶ 2.b-2.h are not mitigated.

While the Applicant's 2017 security infraction and 2018 DUI occurred several years ago under unique and unrepeated circumstances, integrity issues are raised in both of these incidents and thus they remain ongoing concerns in light of the falsification allegations. He reportedly misrepresented his access to enter an unauthorized area during the security incident. Furthermore, although his DUI charge was pleaded down to reckless driving, he only described the initial arrest as reckless driving on his SCA and in his SI—he never mentioned that he was charged with DUI even though the SCA explicitly instructs applicants to list both the original charge and the lesser offense. Given his documented history of deception, this appears to be another instance of him minimizing the truth. When considering these two additional instances of dishonesty alongside the falsification allegations, it is clear that Applicant's behavior as alleged in SOR ¶¶ 2.i and 2. j is not 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 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. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome this presumption. 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 not mitigated the security concerns raised by his drug involvement and substance misuse and personal conduct.

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 H (Drugs/Misuse): AGAINST APPLICANT

 Subparagraphs 1.a-1.b: Against Applicant

 Subparagraph 1.c: For Applicant

Paragraph 2, Guideline E (Personal Conduct): AGAINST APPLICANT

 Subparagraph 2.a: Against Applicant as to
 SOR ¶¶ 1.a and 1.b; For Applicant
 as to SOR ¶ 1.c

Subparagraphs 2.b-2.f:	Against Applicant
Subparagraphs 2.g-2.h:	Against Applicant as to SOR ¶¶ 1.a and 1.b; For Applicant as to SOR ¶ 1.c
Subparagraphs 2.i-2.j:	Against Applicant

Conclusion

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

Robert B. Blazewick
Administrative Judge