



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



## Appearances

For Government: Brian L. Farrell, Esq., Department Counsel  
For Applicant: *Pro se*

12/31/2025

## Decision

HALE, Charles C., Administrative Judge:

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

## Statement of the Case

Applicant submitted a security clearance application (SCA) on August 23, 2023. On September 25, 2024, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, E, and J. 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 October 2, 2024, 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 9, 2025. On July 1, 2025,

a complete copy of the file of relevant material (FORM) was received by Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He provided a 13-page Response, which consisted of a single page statement and exhibits. The case was assigned to me on December 5, 2025.

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

### **Findings of Fact**

In Applicant's Answer to the SOR, he admitted he purchased and used marijuana from August 2019 through March 2023, SOR ¶ 1.a and SOR ¶ 3.a. He admitted falsifying his answers on his SCA and in his timecards, and being counseled for using marijuana during a lunch break at work in 2023, SOR ¶¶ 2.a-2.b and SOR ¶ 1.b. 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 25 years old. He earned his bachelor's degree in May 2022. He has never held a security clearance. He is single and has no children. (GE 3 at 5, 8, and 27.)

**SOR ¶ 1.a: You purchased and used marijuana with varying frequency from on or about August 2019 through March 2023.** This allegation was cross alleged under Guideline J. Applicant admitted in his Answer that he was introduced to marijuana for the first time while in college. He stated his usage during those years made it difficult for him to stop "the habit" when he entered the workforce. He noted he had severely reduced his frequency of use but was unable to stop completely until several months after he had graduated. (Answer.) In his Response to the FORM, he provided two July 2025 certificates of completion, one for drug and alcohol awareness and the other for marijuana. Additionally, with his Response he provided a statement to abstain from any future drug use and a July 2025 negative drug testing result, for amphetamines, cocaine, marijuana, methamphetamines, opiates, phencyclidine (PCP). (Response at 2, 11, 12, 13.) He discussed his drug use with a DoD investigator during his personal subject interview (PSI) in 2023 and admitted his use in response to Government interrogatories. (GE 4; GE 5.)

**SOR ¶ 1.b: On or about March 30, 2023, you were counseled by your supervisor for smoking marijuana during a lunch break at work.** Applicant admitted the allegation. In his Answer he stated he was pulled aside by a supervisor to discuss what had happened, which resulted in him still getting to keep his job. He stated, "from that day onwards, I have not used marijuana in any form and will continue abstaining from all drugs under any circumstances." He admitted this event in an interview with a DoD investigator in December 2023 and in response to Government interrogatories. Additionally, his supervisors discuss his admissions in their email exchange when he was

confronted by them concerning his smoking marijuana during a lunch break at a jobsite. (Answer; GE 4 at 7; GE 5 at 7; GE 6.)

**SOR ¶ 2.a: Falsified material facts on an SCA dated August 2, 2022, pertaining to “Section 23-Illegal Use of Drugs or Drug Activity” when you stated “No” to whether you had illegally used drugs or controlled substances in the last seven years.** Applicant admitted in his Answer that he failed to disclose on his SCA that he had illegally used marijuana. He acknowledged he “purposefully provided false answers to questions related to drug use” on his SCA because he “was worried that admitting to using any drugs in the past would automatically terminate [his] my clearance application.” He has since learned “that many people in the past have been cleared despite a history of drug use, because they were honest about it on the [SCA].” (Answer.)

Applicant was interviewed by a DoD investigator in October 2023 and disclosed his drug use from 2019 to 2022. In December 2023 in a follow-up interview he disclosed further drug use in 2023 that had contributed to his termination. He admitted this drug use in response to Government interrogatories. (GE 4 at 4-5, 7; GE 5 at 4, 7.)

**SOR ¶ 2.b: On or about May 8, 2023, you were terminated from your position at [your employer] for drug use, frequently failing to report to work in a timely manner and falsifying your time records – despite being counseled on numerous occasions about required working hours and being verbally warned on or about March 30, 2023.** Applicant admitted the allegation. He stated he was reprimanded by his supervisor he was still having issues being at the jobsite during the required hours and was very unhappy with his working conditions at the time. He acknowledges he immaturely took matters into his own hands and instead of asking for permission first, he worked from home for about 2 hours each day. He argues that he “still firmly believe[s]” that his work output was improved when working from home, “despite the fact [his] timesheets were technically falsified.” In an October 2023 interview with a DoD investigator Applicant did not discuss his employment drug use counseling with the DoD investigator until confronted. He gave as his reason for the omission that he was afraid it would keep him from getting a security clearance. He stated he used marijuana in the workplace because he was depressed. (Answer; GE 4 at 3-7; GE 5 at 7; GE 6.)

Applicant offered three character letters from persons who held security clearances and understood the obligations of a security clearance holder. The letters describe Applicant as someone who consistently demonstrates a high level of professionalism and integrity in all his interactions and has a strong work ethic and consistently goes above and beyond what is expected of him. His Program Manager described Applicant as someone he trusted enough that after his security clearance was denied he assigned Applicant to an unclassified contract. (Response.)

## **Guideline J**

SOR ¶ 3.a cross-alleges the information set forth in SOR ¶ 1.a. Applicant admits the allegation. See the above findings of fact for the underlying conduct involving his

criminal conduct.

In his Response to the FORM he stated:

I would also like to make a statement regarding my association with drug users, a claim that was made against me in ISCR Case No. 24-01562. It is true that during my interview with an investigator I claimed that I am still friends with the individuals I used illegal substances within college, as they have not done anything to warrant cutting them out from my life completely. While I do still consider them my friends, my correspondence with them is about as minimal as it could possibly be. I have not seen a single one of them in person since our graduation in May of 2022 and have no plans to see any of them in the foreseeable future. They also have their own careers now and have left their past drug use behind in order to maintain employment. On the rare occasion we speak, which is via group text chat on Snapchat, our conversations are short and have absolutely nothing to do with any drugs whatsoever. These are people that I spent several years of my life interacting with on a daily basis - friends that I struggled through classes with and made good memories with. I firmly believe that cutting them out from my life completely says a lot more about my character and who I am as a person more than drug use from well over 3 years ago does. This statement may carry no weight in terms of mitigating my security concerns, but that is why I have provided several other documents that do.

## **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**

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 in his SCA and Answer make the following disqualifying conditions under AG ¶ 25 applicable:

- (a): any substance misuse (see above definition); and
- (c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The following mitigating conditions under AG ¶ 26 are potentially applicable:

- (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.

AG ¶¶ 26(a) and 26(b) are not established. Applicant admitted using marijuana between August 2019 through March 2023, and being counseled about it by a workplace supervisor, after being caught smoking marijuana at work. His behavior is recent and was not infrequent. He admitted he had a habit he had difficulty quitting. His use of marijuana while at his workplace is a circumstance that further cast doubt on his current reliability, trustworthiness, and good judgment. Insufficient time has passed to determine if his state of intent and dissociation from drug-using contacts is credible.

## **Guideline E, Personal Conduct**

The security concern for personal conduct 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 intentional failure to disclose his marijuana use in his SCA and the subsequent disciplinary action by his previous employer make the following disqualifying conditions, under AG ¶ 16 applicable:

(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; and

(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

There is insufficient evidence of a written or recorded commitment made by Applicant to the employer as a condition of employment. AG ¶ 16(f) does not apply.

The following mitigating conditions, under AG ¶ 17, are potentially relevant:

(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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.

AG ¶¶ 17(a) and 17(c) are not established for SOR ¶¶ 2.a and 2.b. Applicant admitted he deliberately lied on his SCA to obtain his position and admitted his behavior in the workplace, despite being counseled. His actions cast doubt on his reliability, trustworthiness, and good judgment.

Regarding SOR ¶ 2.a, the evidence reflects that Applicant admitted his SCA omissions and action to an investigator after being confronted during his PSI. Applicant's false statements concerning his drug use are not "minor," because such statements strike at the heart of the security clearance process. See ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011). An applicant who deliberately fails to give full, frank, and candid answers to the government in connection with a security clearance investigation or adjudication interferes with the integrity of the industrial security program. See ISCR Case No. 01-

03132 at 3 (App. Bd. Aug. 8, 2002). Applicant's false statements were recent and calculated to give him the most favorable hiring profile for his application for a position requiring a security clearance.

Regarding SOR ¶ 2.b, Applicant admitted to frequently failing to report to work in a timely manner and falsifying his time records – despite being counseled on numerous occasions about required working hours and being verbally warned. His actions after being counselled cast doubt on his reliability, trustworthiness, and good judgment. Insufficient time has passed given the repeated actions. AG ¶ 17(c) does not apply.

### **Guideline J: Criminal Conduct**

AG ¶ 30 expresses the security concern for 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.

The following disqualifying condition is potentially applicable as detailed in AG ¶ 31:

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

Applicant's misconduct is documented in his SCA and PSI interviews. The above disqualifying conditions apply.

SOR ¶ 3.a. cross-alleges Applicant's drug possession and use as detailed in SOR ¶ 1.a as a criminal conduct security concern. His drug use raises disqualifying conditions under both Guidelines J and H. See AG ¶ 31(b). However, I find "For Applicant" with respect to SOR ¶ 3.a because his illegal drug use is more appropriately and fully addressed under Guideline H. Duplicative coverage of his illegal drug possession and use in my findings under Guideline J is not warranted in this case.

### **Whole-Person Concept**

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall common sense 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, E, and J in my whole-person analysis and have applied the adjudicative factors in AG ¶ 2(d). Applicant's statement to abstain from any future drug use and the July 2025 negative drug testing result, along with the character statements, were relevant. 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 and falsifications 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, E, and J and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his conduct under Guidelines H and E. This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future.

### **Formal Findings**

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

Paragraph 1: Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2: Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	Against Applicant
Paragraph 3: Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For 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