



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 24-02337

Applicant for Security Clearance

Appearances

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

01/05/2026

Decision

BENSON, Pamela C., Administrative Judge:

Guideline H (drug involvement and substance misuse) and Guideline E (personal conduct) security concerns are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On June 18, 2024, Applicant completed an Electronic Questionnaires for Investigations Processing (eQIP), also known as a security clearance application (SCA). On February 3, 2025, 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 H and E. Applicant responded to the SOR on February 14, 2025. (Answer) Applicant requested a Defense Office of Hearings and Appeals judge make a determination on the written record.

On March 7, 2025, Department Counsel submitted a file of relevant material (FORM), which included Government Exhibits (GE) 1 through 7. The FORM was provided to Applicant, which she received on May 20, 2025. She had 30 days to respond to the FORM, file any objections or provide additional information. On May 9, 2025, Applicant responded to the Government's FORM. She submitted Applicant Exhibits (AE) A and B, and she did not raise any objections to the Government's evidentiary exhibits. I admitted all the exhibits into evidence without objections from either party.

Findings of Fact

In Applicant's Answer, she admitted all of the SOR allegations. (SOR ¶¶ 1.a through 1.d, and 2.a through 2.c.) Her admissions are accepted as findings of fact.

Applicant is 30 years old. She worked for employer "A" from September 2022 to December 2022. She appears to have temporarily worked for a federal contractor from about July 12, 2024, until a few weeks later, when her interim security clearance was revoked. There is no indication in the record of subsequent employment. According to her June 2024 eQIP, she is unmarried and does not have any children. She lives in a state that legalized the recreational use of marijuana in 2021. This is Applicant's first application for a DOD security clearance. (GE 3, 6, 7; AE B)

Drug Involvement and Substance Misuse

SOR ¶¶ 1.a and 1.b allege Applicant used and purchased marijuana with varying frequency from about 2018 until about August 2024. (GE 1, 2)

SOR ¶ 1.c alleges Applicant used marijuana with varying frequency, from about July 2024 to about August 2024, while she was in a sensitive position, i.e., one in which she held an interim security clearance. Although Applicant admitted this allegation in her Answer, she denied that at the time she was aware marijuana was prohibited by federal law or that it was not permitted while possessing a DOD security clearance. (GE 1, 2)

SOR ¶ 1.d alleges Applicant failed a urinalysis test in about December 2022, after she tested positive for marijuana. Applicant admitted she was given a drug test by employer A. (GE 1, 2; AE B)

Personal Conduct

SOR ¶ 2.a alleges Applicant was fired by employer A in about December 2022 for testing positive for tetrahydrocannabinol (THC), the active component in marijuana, as set forth in SOR ¶ 1.d, above. Applicant admitted this information but stated in her Answer that even though marijuana was legal in her state of residence, she was not aware that

marijuana use was prohibited by her employer's workplace drug policy. During her August 2024 background interview by an authorized DOD investigator, Applicant was confronted about her failure to disclose this previous employer A on her June 2024 eQIP. She told the investigator that she had forgotten about this employment. (GE 1, 2, 3, 4; AE B)

SOR ¶ 2.b alleges Applicant falsified material facts on an eQIP, executed on June 18, 2024, in response to "**Section 13C – Employment Record** Have any of the following happened to you in the last 7 years that you have not previously listed? * Fired from a job? * Quit after being told you would be fired? * Left a job by mutual agreement following charged or allegations of misconduct? * Left a job by mutual agreement after notice of unsatisfactory performance? * Received a written warning, been officially reprimanded, suspend, or disciplined for misconduct in the workplace, such as a violation of security policy?"

Applicant answered these questions with a "No" response, and she failed to disclose that she had been fired by her previous employer after testing positive for marijuana in December 2022, as set forth in subparagraph 2.a, above. Applicant stated in her Answer that she did not intend to respond "No" to this eQIP question without further explanation. (GE 1, 2; AE B)

SOR ¶ 2.c alleges Applicant falsified material facts on an eQIP, executed by her on June 18, 2024, in response to "**Section 23 – Illegal Use of Drugs or Drug Activity and 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?"; and "**Illegal Drug Activity** In the last seven (7) years, have you been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling, or sale of any drug or controlled substance?"

Applicant answered both questions with a "No" response, and she failed to disclose that she had used and purchased marijuana from about 2018 to at least June 2024, as set forth in subparagraphs 1.a and 1.b, above. In her Answer, Applicant stated she did not realize she needed to disclose her use of marijuana since it is legal in her state of residence. She did not explain why she failed to list this information when the eQIP instructions specifically stated, "The following questions pertain to the illegal use of drugs or controlled substances ...in accordance with Federal laws, even though permissible under state laws." (GE 1, 2; AE B)

Applicant provided a letter from the federal contractor's account manager. He discussed that, about a month after Applicant had submitted her eQIP, she was contacted by a DOD investigator to find out why she had failed to disclose employer A on her application, as required. According to the letter, Applicant freely admitted to the investigator that she had been fired following her positive drug test for marijuana in December 2022.

The account manager also explained in the letter that the investigator asked Applicant about the use of illegal drugs, which was not listed on the eQIP. She admitted that she was currently using marijuana, which is legal in her state of residence. When the investigator explained to her that federal law supersedes state law, which prohibits the use of marijuana, Applicant stated she would stop using marijuana altogether. She did not list her current and illegal use of marijuana on her eQIP because she considered it legal under state law. The omission was not intentional. It is important to note that I am uncertain how the account manager became aware of this information, whether he personally sat in during Applicant's background interview, or because Applicant told him this information.

The account manager requested that Applicant's security clearance be reinstated as he considered her to be a dedicated and highly competent professional. He characterized Applicant as an asset in the overall mission of protecting national security. (AE B)

Applicant also submitted a voluntary drug test she took in March 2025. The test results showed that she did not test positive for any illegal substance, to include the marijuana metabolite. (AE A)

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 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 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable in this case:

AG ¶ 25(a) any substance misuse;

AG ¶ 25(b) testing positive for an illegal drug;

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

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

Applicant admitted facts that trigger disqualifying conditions AG ¶¶ 25(a), 25(b), 25(c) and 25(f).

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's use of marijuana was frequent and recent, and she should have been aware that using marijuana while holding an interim DOD security clearance was, at the very least, prohibited by the federal contractor's workplace drug policy. The SOR alleges and Applicant admits she used and purchased marijuana from about 2018 to at least August 2024. Although there is no evidence of any illegal drug use after August 2024, Applicant's use and purchase of marijuana while holding an interim security clearance is troubling. After being fired from employment in December 2022, Applicant was placed on notice that, although marijuana use is legal in her state, she must also consider whether marijuana use is permitted by a particular employer's current drug policy. She has not learned from past mistakes. Her statement that no one informed her that she should not use marijuana while holding a DOD security clearance and working for a federal

contractor is difficult to accept at face value. Even if true, it would suggest a level of naiveté and lack of awareness that is concerning for someone who had recently been terminated by a previous employer after testing positive for marijuana that was prohibited by the employer's drug policy.

Applicant's credibility is questionable and certainly undermines her claims of innocence. I find more time is needed to show a pattern of abstinence following six years of marijuana use. Applicant's drug involvement continues to cast doubt on her current reliability, trustworthiness, and good judgment. None of the mitigating conditions are sufficiently applicable to overcome these security concerns.

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.

The record evidence shows that Applicant failed to disclose her previous employer, her December 2022 drug-related job termination by employer A, and her illegal drug use on her June 2024 eQIP. She did not provide a reasonable explanation for her failure to disclose a previous employer or job termination for cause. Applicant omitted the marijuana use on the eQIP because she believed marijuana use, legal in her state, could not be considered illegal. I found her credibility questionable. AG ¶ 16(a) applies.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following 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; 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.

As mentioned earlier, Applicant's previous notice that although a state may sanction recreational marijuana use, an employer can prohibit employees from using marijuana through the employer's workplace drug policy. Applicant tested positive for marijuana in December 2022, and because she violated the terms of her employer's drug policy, she was fired in December 2022. A year and a half later, she completed a security clearance application for employment with a federal contractor. She failed to list this previous employer, her December 2022 drug-related job termination, and her current use of marijuana. She claimed that she had forgotten about employer A, she did not mean to respond "No" to an eQIP question about any employment termination for cause, and she did not list her current use of marijuana because she considered it legal under state law. She did not provide a plausible explanation why the marijuana use was omitted since the eQIP instructions specifically stated, "The following questions pertain to the illegal use of drugs or controlled substances ...in accordance with Federal laws, even though permissible under state laws."

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.

I have taken into account all of these factors, and I find Applicant's omissions were deliberate for the purpose of hiding adverse information from the government. After she submitted a "clean" eQIP, Applicant was granted an interim security clearance and started working for the federal contractor. She did not make prompt, good-faith efforts to correct her omissions until she was confronted with adverse information during her background investigation. Deliberately providing false information on an eQIP is not a minor offense. It strikes at the heart of the security clearance investigation process. These actions raise questions about Applicant's reliability, trustworthiness, and judgment. AG ¶¶ 17(a), 17(c), and 17(d) do not 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 H and E 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I also took into account the supportive testimony from the federal contractor's account manager, as well as Applicant's negative drug test result from March 2025. However, I also contemplated her intentional omission of relevant and material information on her security clearance application, and her continued use of marijuana after obtaining an interim security clearance. Applicant failed to provide sufficient evidence to mitigate the drug involvement and personal conduct security concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guidelines H and 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:

Paragraph 1, Guideline H: AGAINST APPLICANT

Subparagraphs 1.a - 1.d: Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraphs 2.a – 2.c: Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge