



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



In the matter of:)
)
) ISCR Case No. 24-00804
)
Applicant for Security Clearance)

Appearances

For Government: Troy Nussbaum, Esq., Department Counsel
For Applicant: Sean Rogers, Esq.

02/26/2026

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the drug involvement security concern stemming from his marijuana use but failed to mitigate the personal conduct security concern generated by the falsification of his public trust application in 2016. Under these circumstances, I conclude Applicant failed to mitigate the security concern. Clearance is denied.

Statement of the Case

On June 17, 2024, the Defense Counterintelligence and Security Agency Adjudication and Vetting Services (AVS), issued a statement of reasons (SOR) setting forth allegations under Guideline H, drug involvement, and Guideline E, personal conduct, as to why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The AVS took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security*

Clearance Review Program (January 2, 1992), as amended (Directive); and the National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017.

On June 21, 2024, Applicant answered the SOR, admitting all the allegations except those set forth in subparagraphs 2.b and 2.c. He requested a hearing, whereupon the case was assigned to me on April 2, 2025. On May 2, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice of video teleconference hearing, scheduling the case for June 16, 2025. At the hearing, I received five government exhibits, marked as Government Exhibit (GE) 1 through GE 5, and 16 Applicant exhibits, marked as Applicant Exhibit (AE) A through AE P. The transcript was received July 1, 2025. 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

Applicant is a 32-year-old single man. He graduated from high school in 2011 and college in 2015, earning a bachelor of science degree. (AE G at 2) He has been working for a defense contractor for the past seven years in the field of software engineering at various positions within the company.

Applicant is highly respected on the job and in his community. According to a former coworker, he has a unique ability to foster collaboration with teammates, which has aided in successful project completion and helped secure new contracts. (AE L) According to a former supervisor, Applicant “is an awesome team player [who] possesses great technical aptitude and willingness to share his knowledge and lessons learnt [sic].” (AE K)

Applicant has a history of marijuana consumption. He first used it in 2008 while in high school at age 15. (Tr. 20) He did not use it again until his senior year in college in 2014. (Tr. 21; GE 1 at 12) That year, his use ranged from a few times per week to periods when he did not smoke. After graduating from college, he did not smoke marijuana for two years, then resumed, smoking marijuana during a two-week period in 2017. (Tr. 22) He did not smoke for the next two years, then resumed in 2019, smoking marijuana during a two-week period before stopping, and not using marijuana again until 2023. (Tr. 22-23) He has not used it since then. (Tr. 22-23)

Applicant took a hair follicle drug test in 2024, and another one in 2025. (Answer at 7; AE F) Both were negative for marijuana. (Tr. 28; AE F)

Applicant has friends who use marijuana. (Tr. 30) He has “spoken pretty clearly to [them] that he [doesn’t] do it,” anymore. (Tr. 30) His friends respect his wishes not to use

marijuana in his presence. If there is a situation where Applicant cannot control the social environment where marijuana use is occurring, he will remove himself. (Tr. 30)

Some of Applicant's marijuana use and purchase occurred after completing both an Electronic Questionnaire for Investigations Processing (e-QIP) in July 2021 and an e-QIP in February 2016. (GE 2, GE 3) When Applicant used marijuana, he was aware of his employer's policy forbidding its use (GE 4 at 1) Applicant has been aware since February 2016 that marijuana was illegal under federal law. (GE 4 at 2)

Applicant's e-QIP, completed in 2021, required him to disclose any drug use that occurred within seven years of his completion of the application. (GE 2 at 31) Applicant did not disclose his marijuana use, as required. (Answer at 5) He acknowledged that he should have included his marijuana use and attributed his omission to carelessness.

Applicant completed another e-QIP in May 2023. (GE 1) in response to questions about drug use set forth in Section 23, he comprehensively disclosed his history of marijuana use. (GE 1 at 36) In July 2024, Applicant executed an affidavit pledging not to use marijuana in the future with the understanding that doing so would be grounds for revocation of his security clearance. (AE E at 1)

Applicant's e-QIP, completed in 2016, required him to disclose any marijuana use within one year of completing the application. (GE 3) He contends that his negative response was not a falsification because he had not used marijuana within a year before completing the application. When asked at the hearing to reconcile this testimony with a 2024 interrogatory response in which he noted that he purchased marijuana within the one-year time frame of completing the 2016 application (GE 4 at 3), Applicant claimed that he purchased marijuana for a classmate who was struggling with anxiety and did not know where to purchase it because he was from out of town. (Tr. 36) He could not recall the name of the individual for whom he allegedly purchased the marijuana. (Tr. 37)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered in evaluating an applicant's eligibility for access to classified information. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the

adjudicative process. The administrative judge's overall adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a conscientious scrutiny of several variables collectively known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 1(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline H, Drug Involvement

Under this guideline, "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 ¶ 24)

Applicant's history of marijuana use triggers the application of AG ¶ 25(a), "any substance misuse." Much of Applicant's marijuana use occurred when he was aware of his company's drug policy forbidding the use of illegal drugs. In addition, some of his marijuana use occurred after completing a 2016 e-QIP and a 2021 e-QIP. Conversely, the one time that Applicant used marijuana after the 2021 e-QIP was three years ago. Moreover, it was the only time he used marijuana in the past six years.

In July 2024, Applicant executed a signed statement expressing his intent not to resume marijuana and acknowledging that future marijuana resumption could lead to the revocation of his clearance eligibility. AG 26(b)(3), "providing a signed statement of intent to abstained from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility," applies.

Although Applicant has friends who use marijuana, he has unequivocally admonished them not to smoke it in his presence. If there is a situation where Applicant cannot control the social environment where marijuana use is occurring, he will remove himself. Under these circumstances, AG 26(b)(2), "changing or avoiding the environment where drugs were used," applies.

Given the infrequency of Applicant's use of marijuana over the past six years, the amount of time that has elapsed since his last use, and the steps he has taken to manage his social environment so that he can avoid marijuana users, I conclude that 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," applies.

Guideline E: Personal Conduct

The security concern under this guideline is set forth in AG ¶ 15 as follows:

[c]onduct 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 information is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

Applicant's past marijuana use is mitigated for the reasons set forth in the Guideline H analysis, above. I resolve subparagraph 2.a in his favor. Applicant's omission of his marijuana use from his 2021 e-QIP, as alleged in subparagraph 2.b, and from his 2016 e-QIP, as alleged in subparagraph 2.c, raises the issue of whether 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," applies. Applicant contends that his omission was carelessness, not intentional. In light of his unprompted disclosure of this marijuana use when required in response to Section 23 of a security clearance application that he completed two years later I conclude that his explanation for the 2021 omission was credible. AG ¶ 16(a) does not apply, and I resolve subparagraph 2.b In his favor.

Appellant contends that his negative response to the 2016 clearance application about past marijuana within one year of the application was not false because although he used it years before completing the application, he had not used it within one year of completing the application. The credibility of this explanation collapsed under cross-examination when Applicant provided an outlandish explanation about how he purchased marijuana during that time, as he explained in his response to a 2024 interrogatory, but instead of using it, provided it to someone else, whom he could not recall. Under these circumstances, Applicant's omission of relevant information about his past marijuana use from his 2016 e-QIP constitutes a deliberate falsification, as alleged in subparagraph 2.c. AG ¶ 16(a) applies without mitigation. In sum, Applicant failed to mitigate the personal conduct security concern.

Whole-Person Concept

Applicant's past marijuana use no longer poses a security concern. However, his failure to be forthcoming about his past marijuana use generates a security concern that he failed to mitigate.

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 :	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT

Subparagraphs 2.a – 2.b:

For Applicant

Subparagraph 2.c:

Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge