



DEPARTMENT OF DEFENSE
DEFENSE LEGAL SERVICES AGENCY
DEFENSE OFFICE OF HEARINGS AND APPEALS
APPEAL BOARD
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Date: June 9, 2025

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 In the matter of:)
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 Applicant for Security Clearance)
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ISCR Case No. 24-00913

APPEAL BOARD DECISION

APPEARANCES

FOR GOVERNMENT

Andrea M. Corrales, Esq., Deputy Chief Department Counsel

FOR APPLICANT

Brittany Forrester, Esq.

The Department of Defense (DoD) declined to grant Applicant a security clearance. On September 17, 2024, DoD issued a Statement of Reasons (SOR) advising Applicant of the basis of that decision – security concerns raised under Guideline H (Drug Involvement and Substance Misuse), Guideline E (Personal Conduct), and Guideline J (Criminal Conduct) of the National Security Adjudicative Guidelines (AG) in Appendix A of Security Executive Agent Directive 4 (effective June 8, 2017) and DoD Directive 5220.6 (Jan. 2, 1992, as amended) (Directive). On March 31, 2025, Defense Office of Hearings and Appeals Administrative Judge Roger C. Wesley denied Applicant national security eligibility. Applicant appealed pursuant to Directive ¶¶ E3.1.28 and E3.1.30.

Under Guideline H, the SOR alleged that Applicant used marijuana with varying frequency between August 2017 and July 2021, including while granted access to classified information. He also used psychedelic mushrooms in April 2019 and cocaine in August 2022, while granted access to classified information. These allegations were cross alleged under Guideline J. The SOR further alleged under Guideline E that Applicant deliberately failed to disclose the foregoing marijuana use on his March 2018 security clearance application (SCA), and failed to disclose his foregoing

marijuana, psychedelic mushroom, and cocaine use, including his use while holding a security clearance, on his January 2023 SCA. The Judge found against Applicant on the Guideline E allegations. The Judge found for Applicant on the Guideline H and Guideline J allegations, and those favorable findings are not in issue on appeal as the Government did not cross-appeal.

Background

Applicant is in his mid-20s. He has never married and has no children. He earned two bachelor's degrees in May 2020. Since June 2020, Applicant has been employed by his current employer, a government contractor, in various capacities. He was hired as a summer intern for a different government contractor in 2017. He subsequently worked for the same contractor in the summers of 2018 and 2019. He first obtained a security clearance in 2018 for his summer internship. He had access to classified information during the summer of 2018, the summer of 2019, and after starting to work for his current employer.

Between August 2017 and July 2021, Applicant used marijuana experimentally four times at parties or social gatherings while in college. He also tried psychedelic mushrooms once in April 2019 and cocaine once in August 2022. His cocaine use was while employed by his current employer. He obtained the marijuana, psychedelic mushrooms, and cocaine from friends for free. All drug usage occurred while under the influence of alcohol.

Applicant completed an SCA in March 2018 for his summer internship while in undergraduate school. On it, he intentionally failed to disclose his experimental use of marijuana in 2017 and 2018. In a second SCA completed in January 2023, he again intentionally failed to disclose his past use of illegal drugs — in this case, his experimental use of marijuana, psychedelic mushrooms, and cocaine.

Following his completion of his 2023 SCA, Applicant disclosed his past drug use to his former design lead and supervisor. In March 2023, three months after completing his second SCA, Applicant was asked to meet an investigator from the Office of Personnel Management (OPM) to review the information in his 2023 SCA. When the OPM investigator asked about his past drug use, Applicant provided full and accurate accounts of his drug use history without any evidence of confrontation. He did so out of feelings of guilt over his previous omissions of his past drug use.

Discussion

There is a strong presumption against the grant or maintenance of a security clearance. *See Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). After the Government produces evidence raising security concerns, an applicant bears the burden of persuasion concerning mitigation. *See* Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that a clearance may be granted only when “clearly consistent with the interests of the national security.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). “Any doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.” AG ¶ 2(b).

Challenges to Factual Findings

The Judge made several incorrect or contradictory findings when discussing Applicant's background and in his analysis of the case. For instance, the finding that Applicant has "never married and has no children" is accurate, despite the Judge's finding in the next paragraph of his decision that incorrectly states "Applicant married in May 2022 and has one stepchild (age 10) from this marriage." Decision at 3. This error appears to be typographical and, on its own, was not likely harmful. *See* ISCR Case No. 99-0500 at 2 (App. Bd. May 19, 2000). This, however, is not the end of the factual errors.

Of particular relevance is the Judge's mathematical error in calculating the timeframe between Applicant's first SCA and his admissions of drug use to the OPM investigator. Applicant claims that, throughout the Decision, the Judge misstates this timeframe as an eight-year gap when it was only five years. As Applicant's first SCA was completed in March 2018, and he disclosed his falsification in March 2023, Applicant's math is correct. There was a five-year gap between the first omission and the disclosure. This error permeated the Judge's analysis under Guideline E. The Judge first found as troubling "the eight-year time lapse" between Applicant's 2018 SCA and 2023 interview disclosure. *Id.* at 10. Next, the Judge found, "Even with a more expansive construction of the 'prompt' prong of [AG] ¶ 17(a) by the Appeal Board, Applicant's cumulative delays of over eight years (i.e., January 2018 through March 2023) to make [the] right decision to voluntarily disclose his past use of illegal drugs came way too late to satisfy the Appeal Board's reasonable time interpretations of the prompt prong of [AG] ¶ 17(a)." *Id.* at 11. The Judge incorrectly noted the start date of the relevant timeframe as *January* 2018 and, despite accurately identifying the relevant years, he again asserted the confession occurred over eight years later. Elsewhere in his analysis, he dropped the reference to the dates and indicated that "Challenging is the reconciling of this eight-year gap with an even stretched meaning of the prompt prong in [AG] ¶ 17(a)." *Id.* at 10.

Similarly, the Judge found that, "With over five years of unbroken employment with his current employer he had plenty of opportunities to correct his omissions of marijuana use in his 2018 [SCA] but declined to do so out of concern for his security clearance." *Id.* at 10. Applicant has been employed by his current employer since June 2020. The Judge's finding calculates the timeframe *through his March 2025 decision*, but Applicant disclosed his falsification in March 2023, at which point he had less than three years of unbroken employment with his current employer.

The Judge also opined that it was "unclear" if the possibility of a future polygraph influenced Applicant's decision to disclose his drug use in 2023. *Id.* at 5. The record, however, does not support a finding of uncertainty as Applicant testified at hearing that he had no awareness of any future polygraph or even the possibility of one, and therefore the possibility of a polygraph played no part in his decision to disclose his drug use history. Tr. at 53-54. Because the voluntary nature of a corrective disclosure is undercut when the disclosure is prompted by the threat of the information being discovered by some other means,¹ we cannot conclude that the Judge's finding in this regard was harmless or that it – or the foregoing timeframe errors – did not impact his analysis under AG ¶ 17(a).

¹ *See, e.g.*, ISCR Case No. 20-03502 at 3 (App. Bd. Jan. 27, 2023).

Applicant is entitled to an adjudication of his security eligibility after consideration of all available, reliable information. Directive ¶ 6.3. Public confidence in the industrial security program relies in part on the appearance of a fair and impartial adjudication in light of the record as a whole. In a case where the Judge makes multiple findings about an applicant that have no foundation in the record, the Judge’s decision is undermined and so is confidence in the industrial security program. ISCR Case No. 11-01393 at 2 (App. Bd. Jul. 25, 2012). Taken together, the errors identified above undercut the presumption that the Judge considered all the record evidence.

Guideline E and Whole-Person Concept

On appeal, Applicant also challenges the Judge’s failure to apply mitigating conditions AG ¶¶ 17(a)² and 17(e)³, and to consider the record evidence in light of the Whole-Person Concept. The Judge’s analysis of potential mitigation under Guideline E was flawed, based upon his reliance on the factual errors addressed above.⁴ Additionally, we note that Applicant was a college student when he completed his first SCA and only worked for a government contractor as an intern for a few months in the summers of 2017, 2018, and 2019. The Judge acknowledged Applicant “reported brief periods of unemployment in 2018-2019, 2017-2018, and 2015-2016;” however, these “brief” periods were of approximately ten months each, while Applicant attended undergraduate school. Decision at 3. These are circumstances that should also be weighed in his analysis of this mitigating condition and under the Whole-Person Concept.

Conclusion

We conclude that the best resolution of this case is to remand it to the Judge for the opportunity to address the errors identified herein and thereafter determine if Applicant has or has not sufficiently mitigated the Government’s remaining concerns under Guideline E. *See* ISCR Case No. 22-01002 at 4 (App. Bd. Sep. 26, 2024) (remand is appropriate when the errors can be corrected and there is a significant chance of reaching a different result upon correction.). Upon remand, the Judge is required to issue a new decision. Directive ¶ E3.1.35. The Board retains no jurisdiction over a remanded decision; however, the Judge’s decision issued after remand may be appealed. Directive ¶¶ E3.1.28 and E3.1.30.

² AG ¶ 17(a) “the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts.”

³ AG ¶ 17(e) “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.”

⁴ An Applicant should have confidence that his case was fairly and accurately assessed. In this instance, we do not know if the Judge’s mathematical error would have altered the Judge’s analysis or not. That analysis is for him to make on remand, considering the entire record of facts and applicable regulations. It is not for us to decide today.

Order

The decision in ISCR Case No. 24-00913 is **REMANDED**.

Signed: Moira Modzelewski

Moira Modzelewski
Administrative Judge
Chair, Appeal Board

Signed: Allison Marie

Allison Marie
Administrative Judge
Member, Appeal Board

Signed: Jennifer I. Goldstein

Jennifer I. Goldstein
Administrative Judge
Member, Appeal Board