



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 18-02844
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne Driskill, Esquire, Department Counsel

For Applicant: Catie E. Young, Esquire

October 4, 2019

\_\_\_\_\_  
**Decision**  
\_\_\_\_\_

ROSS, Wilford H., Administrative Judge:

Applicant used cocaine three times between 2012 and 2014, while holding a security clearance. Applicant has not had any further involvement with illegal drugs, and his life and career show successful mitigation. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIP) on May 23, 2017. (Government Exhibit 1.) On December 14, 2018, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense*

*Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, effective within the Department of Defense on June 8, 2017..

Applicant answered the SOR in writing (Answer) on March 15, 2019, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 30, 2019. The case was assigned to another administrative judge on May 14, 2019. It was reassigned to me on May 22, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on June 10, 2019. I convened the hearing as scheduled on July 31, 2019. The Government offered Government Exhibits 1 and 2, which were admitted without objection. Applicant offered Applicant Exhibits A through F, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open to permit him to submit additional evidence. On August 19, 2019, he submitted Applicant Exhibit G, which was admitted without objection and the record closed. DOHA received the transcript of the hearing (Tr.) on August 12, 2019.

### **Findings of Fact**

Applicant is a 38-year-old single employee of a defense contractor. He has a bachelor's degree, and two master's degrees. He is employed as a strategic planner, and is seeking to retain a security clearance previously granted in connection with his employment. He has worked for his employer since 2004 and received a security clearance in approximately 2007. (Tr. 14-16; Government Exhibit 1 at Sections 12, 13A, and 17.)

#### **Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used illegal drugs. Applicant admitted the single allegation under this paragraph.

Applicant used cocaine a total of three times in his life – once in 2012, once in 2013, and a final time in 2014. Each use coincided with parties or concerts that Applicant was attending. Applicant never purchased any of the cocaine he used. Applicant admitted that he got “caught up in the scene,” on the occasions when he used the drug. “I justified that it was okay to do and then regretted it.” During the time he used cocaine Applicant had a security clearance, but was not working on a classified program. (Tr. 25-30.)

Applicant has not used drugs since 2014, and has no desire to use illegal drugs in the future. Applicant does not associate with anyone who uses illegal drugs. When he found himself in about September 2018 at a party where other people in the group were using drugs, he removed himself from that vicinity. Applicant Exhibit A is a signed

statement of intent to abstain from all drug involvement, acknowledging that any future involvement is grounds for immediate revocation of national security eligibility. Applicant took a drug test with negative results in April 2019. (Tr. 33-34, 37-38, 40-41; Applicant Exhibit F.)

## **Paragraph 2 (Guideline E – Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows poor judgment, untrustworthiness or unreliability. Applicant admitted subparagraph 2.a, which alleged that his drug use described under Paragraph 1, above, was cognizable under this guideline as well.

## **Mitigation**

Applicant submitted evidence showing that he is a highly respected and successful person and employee. He has a demanding job, and does it well. He submitted evaluations from 2013 through 2019 showing that he is consistently recognized as a top performer. Applicant's current manager delegates authority to Applicant because of his "responsible character." (Tr. 18-21, 49; Applicant Exhibits C, D, E, and G.)

Letters of recommendation were submitted for Applicant from people who know him personally and professionally. Three co-workers, and a friend who has a very responsible job in the financial industry, recommend him for a position of trust, and also indicated their understanding of the allegations in the SOR. (Tr. 21-23; Applicant Exhibit B.)

## **Policies**

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context of a number of variables 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. In addition, the administrative judge may also rely on his or her own common sense, as well as

knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that, “Any 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)**

The security concern relating to Drug Involvement is set forth 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (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 eligibility.

Applicant's very minor cocaine use was in the distant past, ending in 2014, five years ago. Applicant submitted a signed statement of intent, and has freely informed co-workers and friends of this drug use. He has successfully mitigated the security significance of his drug use. Paragraph 1 is found for Applicant.

## **Paragraph 2 (Guideline E – Personal Conduct)**

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing. . . .

The following mitigating conditions under AG ¶ 17 apply to the facts of this 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.

His five years of abstinence, along with Applicant's conduct and testimony, show a credible intent not to use cocaine, or any other illegal drugs, in the future. Applicant's conduct since 2014 has been exemplary. He fully appreciates and embraces the obligations associated with national security eligibility, and has been forthright in disclosing his previous minor drug experimentation. AG ¶¶ 17(c) and 17(d) apply. Paragraph 2 is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility by considering the totality of the applicant's conduct and all relevant 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), the ultimate determination of whether the granting or continuing of national security eligibility is clearly consistent with the interests of national security must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant has mitigated his minor cocaine use that ended five years ago. He is a law abiding, trustworthy, and responsible person and employee. Any potential for pressure, coercion, or duress has been eliminated, and such conduct is unlikely to recur. Overall, the record evidence does not create doubt as to Applicant's present suitability for national security eligibility.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge