



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



In the matter of:	)	
	)	
	)	ISCR Case No. 19-02835
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson., Esq., Department Counsel  
For Applicant: Sean M. Bigley, Esq.

06/02/2020

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the security concerns under Guidelines H (drug involvement and substance misuse) and E (personal conduct). Eligibility for access to classified information is granted.

**Statement of the Case**

On November 19, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and E. The action was taken under Executive Order (EO) 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on January 25, 2020, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on March 3, 2020. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file

objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 13, 2020. Applicant responded to the Government's FORM (FORM Response) on April 2, 2020. The case was assigned to me on April 28, 2020. The Government's documents identified as Government Exhibit (GE) 1 through 3 are admitted in evidence without objection.

### **Findings of Fact**

In her Answer, Applicant admitted the allegations in SOR ¶¶ 1.a to 1.f and denied SOR ¶¶ 1.g to 1.i. I construe her lack of a specific admission or denial to SOR ¶ 2.a as a denial. (Answer)

Applicant is 27 years old. As of her Answer, she was single and did not have any children. She graduated from high school in June 2011 and earned a bachelor's degree in May 2018. She has worked as a systems engineer for a defense contractor since August 2018. She has never held a security clearance. (GE 1)

Applicant recreationally used: (1) marijuana, with varying frequency, from June 2008 to October 2018; (2) ecstasy, 10 to 20 times, from June 2011 to July 2018; (3) cocaine, with varying frequency, from January 2014 to July 2018; and (4) LSD in November 2017. She first used marijuana in high school, at age 15. She continued to use marijuana in high school, from ages 15 to 18, approximately four times monthly with friends. In college, from ages 18 to 22, she used marijuana daily to four times a week, at parties or friends' homes. During her latter years in college, from ages 22 to 25, she used marijuana between 10 to 48 times a year. In 2018, at age 25, she smoked marijuana approximately 20 times. She used marijuana in October 2018 while attending a college homecoming game. She approximated in her August 2018 security clearance application (SCA) that she smoked marijuana "well over 1000" times in total. Between October 2012 and July 2015, she purchased marijuana from a friend "pretty frequently," approximately 30 times, for her personal use. (GE 1, 2)

Applicant's first use of ecstasy in 2011, at age 18, was at her high-school prom. She subsequently used ecstasy during the weekends from 2011 to 2018 at friends' homes, music festivals, or during trips to state A. She used ecstasy in July 2018 at a music festival. (GE 1, 2)

Applicant's first use of cocaine in 2014, at age 21, was with a friend at a college party. From 2014 to 2015, she used cocaine four times monthly during the weekends at college parties or concerts. From 2015 to 2018, she used cocaine two to three times yearly at music festivals. She used cocaine in July 2018 during a weekend trip to state A. Between April 2016 and May 2018, she purchased cocaine twice for a music festival and a few other times while consuming alcohol. She attributed her purchase of cocaine to being "young and dumb." She stated in her SCA and during her background interview that she did not intend to use cocaine again because she did not like the next-day side effects and she did not want to risk her job. Applicant's one-time use of LSD in 2017 was at a concert with a friend. (GE 1, 2)

Applicant stated in her SCA that she intended to use marijuana in the future because “[i]t’s not illegal in [state B--the state in which her family resides] and I enjoy the effects of THC.” She also stated that she would “most likely use [ecstasy] again if I go to another music festival” and she “might take LSD at a music festival.” She stated during her January 2019 background interview, however, that she no longer wanted to use illegal drugs. She also stated that she had no future intent to purchase marijuana or cocaine. She stated that her motivation to stop using and purchasing illegal drugs was her employment. She acknowledged during her interview that she still associated with the individuals with whom she previously used illegal drugs. In January 2020, Applicant signed a statement of intent to not use any illegal drugs or abuse any prescription drugs in the future. (Answer; GE 1, 2)

Applicant received an award from her employer in December 2019 for excellent performance. Her first character reference, her boyfriend whom she met in 2018 through mutual work friends, described her as extremely reliable and a serious employee. He stated that he held a security clearance and he was aware of the SOR allegations. He wrote:

[Applicant] moved very far away from the people and places which were associated with her past indiscretions with drugs and is in a completely different environment which doesn’t promote that sort of behavior. I have never see that type of behavior nor do I think it will recur based on her dedicated work ethic.

(Answer)

Applicant’s second character reference is a friend of two years and a U.S. military veteran who previously held a security clearance. He stated that he and Applicant became friends through his wife, whom Applicant met at work, and they socialize frequently for dinner or game nights. He stated that Applicant did not truly understand the seriousness of a security clearance until after she moved to state C and began working for her current employer. He described her as a career-oriented, responsible, and trustworthy individual. (Answer)

## **Policies**

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 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny 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. The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that “[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security.”

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.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that adverse decisions shall be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

### **Guideline H, Drug Involvement and Substance Misuse**

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse as:

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. I considered the following relevant: “(a) any substance misuse . . .”; “(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia”; and

“(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.”

Applicant used marijuana, ecstasy, cocaine, and LSD, at various occasions between 2008 and 2018. She purchased marijuana between 2012 and 2015, and cocaine between 2016 and 2018, for her personal use. She also stated in her SCA that she intended to use marijuana in the future and she would also likely use ecstasy and LSD again. AG ¶¶ 25(a), 25(c), and 25(g) are established.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

(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;

(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 acknowledged during her background interview that she still associated with the individuals with whom she previously used illegal drugs. As such, AG ¶¶ 26(b)(1) and 26(b)(2) are not established.

Applicant’s drug involvement primarily occurred while she was in high school and college, and before she began working for her current employer. Her last use of any illegal drug occurred in October 2018 and her last purchase of any illegal drug occurred in May 2018. There is no evidence that she has since used or purchased any other illegal drug or misused any legal drugs. Her maturity is further demonstrated by her statement during her background interview that she no longer intended to use or purchase illegal drugs, and her motivation to stop using and purchasing illegal drugs was her employment. She also signed a statement of intent to not use any illegal drugs or abuse any prescription drugs in the future. Both of her character references attested to her trustworthiness and stated that she learned the seriousness of a security clearance since working for her current employer. Her employer awarded her excellent performance in 2019. I find that AG ¶¶ 26(a) and 26(b)(3) are established.

## Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. The following are potentially applicable in this case:

(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.

For the same reasons set forth above in my Guideline H analysis, the evidence is sufficient to raise AG ¶¶ 16(e) and 16(e)(1) as disqualifying conditions.

Conditions that could mitigate the personal conduct security concerns are provided under AG ¶ 17. The following are potentially applicable:

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

For the same reasons as set forth above in my Guideline H analysis, I find that AG ¶¶ 17(c), 17(d), and 17(e) are established as to SOR ¶ 2.a.

## 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 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 to grant eligibility for a security clearance 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in this whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the drug involvement and personal conduct security concerns.

## 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.i:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Candace Le'i Garcia  
Administrative Judge