



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 20-00365
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ross Hyams, Esq., Department Counsel  
For Applicant: *Pro se*

10/05/2020

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**Decision**

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MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant used marijuana, LSD, and hallucinogenic mushrooms in college. He also used Adderall that was not prescribed for him. While he is not likely to use any illegal hallucinogenic drugs or Adderall in the future, he continued to use marijuana after college to as recently as February 2020. Drug involvement and substance misuse security concerns are not adequately mitigated. Clearance is denied.

**Statement of the Case**

On May 1, 2020, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H, drug involvement and substance misuse. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue security clearance eligibility for him. The DCSA CAF took the action 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 National Security Adjudicative Guidelines (AG) effective June 8, 2017, applicable to all adjudications for national security eligibility or eligibility to hold a sensitive position.

Applicant submitted an undated response to the SOR allegations in which he requested a decision on the written record in lieu of a hearing before a Defense Office of Hearings and Appeals (DOHA) administrative judge. On or about June 29, 2020,<sup>1</sup> the Government submitted a File of Relevant Material (FORM), including six items consisting of its documentary evidence. DOHA forwarded a copy of the FORM to Applicant on July 1, 2020, and instructed him that any response was due within 30 days of receipt. Applicant received the FORM on July 16, 2020. No response was received by the August 16, 2020 deadline for his response. On September 15, 2020, the case was assigned to me to determine whether it is clearly consistent with the interests of national security to grant or continue a security clearance for Applicant. I received the case file on September 18, 2020.

### **Findings of Fact**

The SOR alleges under Guideline H that Applicant used marijuana with varying frequency from approximately August 2012 to February 2020 (SOR ¶ 1.a); LSD and (hallucinogenic) mushrooms with varying frequency from approximately March 2015 to May 2018 (SOR ¶ 1.b); and Adderall not prescribed for him from August 2015 to April 2016 (SOR ¶ 1.c). Additionally, the SOR alleges that he expressed in April 2019 an intent to continue to use marijuana in the future (SOR ¶ 1.d). (Item 1.) When Applicant answered the SOR, he admitted the allegations without explanation. (Item 3.)

After considering the FORM, which includes Applicant's answer to the SOR allegations (Item 3), I make the following findings of fact:

Applicant is a 24-year-old college graduate seeking a DOD security clearance to work as a junior software developer with a defense contractor. In June 2018, he was offered the position contingent on a favorable adjudication of his security clearance eligibility. (Items 4-5.) He is unmarried and has no children. Applicant attended college in his home state, and he currently resides in his home state. (Item 4.)

On September 2, 2018, Applicant completed and certified to the accuracy of a Questionnaire for National Security Positions (SF 86). In response to an inquiry concerning whether he had illegally used any drug or controlled substance in the last seven years, Applicant reported that he started using marijuana as a teenager in approximately August 2012 "to cope with a strict home life/school stress and it became habit." He gave a date of July 2018 for his most recent marijuana use and related that he used marijuana "recreationally and as a de-stresser. Smoked on weekends during high school, ramped up to every day after entering university for about four straight years." Applicant responded negatively to whether he intended to use marijuana in the future, and gave the following explanation:

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<sup>1</sup> The FORM bears a date of "July 29, 2020," but a transmittal letter dated July 1, 2020. Applicant signed the transmittal receipt on July 16, 2020. The FORM was likely submitted on June 29, 2020. On September 23, 2020, I contacted Applicant to confirm his receipt of the FORM. He indicated that he received the FORM and did not to file a response.

I mainly smoked marijuana to deal with the excessive stress my education put on me. Since graduating college three months ago, my life became significantly easier to manage. I stopped feeling the urge to smoke, allowing me to quit cold turkey recently. Additionally, I have grown as a person since I was 16 and found healthier ways of working through my personal issues. (Item 4.)

Applicant also disclosed on his SF 86 that he used the hallucinogenic drugs LSD and mushrooms between March 2015 and May 2018, to the following extent:

Initially taken purely out of curiosity. I tripped a few more times because I found it quite enjoyable. These were few and far between, sometimes going as long as 10 months without use. 1 month was the smallest time frame between uses. My combined number of uses of [the drugs] totals 12, 10 LSD and 2 mushrooms.

Applicant denied any intention to use hallucinogenic drugs in the future because of their affects on his brain and body. He related that his mood was adversely affected for several days after his most recent use, which he took as a warning that he “could permanently damages his psyche.” In response to an SF 86 inquiry into whether he had intentionally engaged in the misuse of prescription drugs in the last seven years, Applicant reported that he used Adderall twice as a study aid between August 2015 and April 2016. (Item 4.)

On April 1, 2019, Applicant was interviewed by an authorized investigator for the Office of Personnel Management (OPM). When asked about his drug involvement, Applicant volunteered that he last used marijuana in January 2019. He explained that he used marijuana recreationally and as a sleep aid, outside, in his college dormitory, and at his current residence. He used marijuana with five friends, whom he named. He acknowledged that he continues “to correspond with them.” He related that he obtained his marijuana from “various random individuals.” Applicant indicated that he felt dependent on marijuana, but he denied any adverse affects from the drug other than that his marijuana use caused some strain in his relationship with his father and some decline in his grades. Applicant related that he used LSD and hallucinogenic mushrooms in his college dormitory with four of the same friends with whom he used marijuana. As for his limited Adderall use as a study aid in college, he obtained it from someone with whom he is no longer in contact. Applicant denied any intent to use illegal drugs or misuse a prescription drug in the future but also then admitted that he could possibly use marijuana again. On June 5, 2019, the OPM investigator interviewed Applicant by telephone. Applicant admitted that he continues to associate with the five friends involved in and knowledgeable about his marijuana use. (Item 5.)

In response to DOHA interrogatories inquiring about his illegal drug involvement, Applicant indicated on February 24, 2020, that he used marijuana as recently as February 14, 2020. He explained that his use of marijuana varied from months of no involvement to months of daily use. He denied any intent to use marijuana in the future “unless circumstances change or it becomes legal nationwide.” Applicant reported no use of LSD or

hallucinogenic mushrooms since May 2018 and no use of non-prescribed Adderall since April 2016. He denied any intent of future use of any of the drugs. (Item 6.)

## **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 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.” 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.

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 that 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. Section 7 of EO 10865 provides that 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**

The security concerns about drug involvement and substance misuse are 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.

Despite some states' legalization or decriminalization of small amounts of marijuana for recreational use, marijuana remains a Schedule I controlled substance under 21 U.S.C. § 812. Schedule I drugs are those which have a high potential for abuse; have no currently accepted medical use in treatment in the United States; and lack accepted safety for use of the drug under medical supervision. Applicant began using marijuana in August 2012, the summer before his junior year in high school. He continued to use marijuana on weekends in high school. While in college from August 2014 to May 2018, he used marijuana "up to every day after entering [the] university for about four straight years." He also used LSD ten times and hallucinogenic mushrooms twice between March 2015 and May 2018, and Adderall not prescribed for him twice between August 2015 and April 2016. Applicant has abstained from hallucinogenic drugs and Adderall since he graduated from college, but he continued to use marijuana on occasion to as recently as February 14, 2020. Disqualifying condition AG ¶ 25(a), "any substance misuse," clearly applies.

Regarding AG ¶ 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," Applicant obtained the drugs that he used from others. It is unclear whether he purchased or contributed funds for any of the drugs that he used. While Applicant had physical possession of the drugs that he used when he used them, illegal possession was not alleged as a separate disqualifier. AG ¶ 25(c) is not implicated.

AG ¶ 25(g), "expressed intent to continue drug involvement and substance misuse or failure to clearly and convincingly commit to discontinue such misuse," warrants consideration. When Applicant applied for a security clearance in September 2018, he stated that he had been able to quit using marijuana "cold turkey" after a recent use in July 2018, and that he did not intend to use marijuana in the future. Yet, as he volunteered during his April 1, 2019 interview, he last used marijuana in January 2019. During his interview, he stated that he might use marijuana in the future, and the evidence shows that he used marijuana as recently as February 14, 2020. He now intends to forego any future marijuana use "unless circumstances change or it becomes legal nationwide." His candid disclosure about his drug involvement on his SF 86, during his subject interview, and in

response to DOHA interrogatories allow me to accept as credible his February 2020 intention to forego any future marijuana use unless circumstances change, such as if marijuana use is legalized nationwide. Even so, he has clearly shown an inability to abide by this intent to abstain. His failure to convincingly demonstrate a commitment to abstain from marijuana establishes AG ¶ 25(g).

Applicant bears the burden of establishing that matters in mitigation apply, and given the extent and recency of his drug involvement and substance misuse, he bears a heavy burden. AG ¶ 26 provides for mitigation as follows:

(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 an individual's current reliability, trustworthiness, or good judgment;

(b) the individual acknowledges his or 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 illegal drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's use of hallucinogenic mushrooms went beyond experimentation, but it was limited to the college environment. His abuse of non-prescribed Adderall occurred twice during his sophomore year in college, and so it can reasonably be considered infrequent. AG ¶¶ 26(a) and 26(b) apply in mitigation of his Adderall use, and AG ¶ 26(b) applies in mitigation of his use of hallucinogenic drugs.

However, none of the mitigating conditions apply to Applicant's marijuana use. Applicant's use of marijuana became "a habit" for him in college. He continued to use marijuana after graduating from college and leaving the dorm environment. The change in his environment brought some decrease in the frequency of his involvement, but it did not

bring about a cessation of his use. He continues to associate with friends involved in his recreational use. Applicant has also used marijuana as a sleep aid. He used marijuana after he submitted his SF 86 and was interviewed for his security clearance, which casts serious doubts about whether he can be counted on to comply with federal laws and DOD policies and regulations concerning the possession and use of illegal drugs. Perhaps most concerning, he has shown an inability to abide by his promises to the DOD that he will abstain from marijuana. Although his candor about his drug involvement and substance misuse weighs in his favor, it does not immunize him from the negative security implications of his extensive marijuana involvement. The risk of Applicant using marijuana in the future cannot be ruled out. The drug involvement and substance misuse security concerns are not fully mitigated.

### **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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at 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.

Security clearance decisions are not intended to punish applicants for past transgressions, and Applicant's candor about his drug involvement weighs in his favor. Yet, it is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or renewal of a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9<sup>th</sup> Cir. 1990). The Government must be able to rely on those persons granted security clearance eligibility to fulfill their responsibilities consistent with laws, regulations, and policies, and without regard to their personal interests. Applicant's history of marijuana use raises enough doubt in that regard to where I am unable to conclude that it is clearly consistent with the national interest to grant him eligibility for a security clearance.

## Formal Findings

Formal finding 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
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b-1.c:	For Applicant
Subparagraph 1.d:	Against Applicant

## Conclusion

In light of all of the circumstances, it is not clearly consistent with the national interest to grant eligibility for a security clearance for Applicant. Eligibility for access to classified information is denied.

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Elizabeth M. Matchinski  
Administrative Judge