



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



In the matter of: )  
 )  
----- ) ISCR Case No. 20-03656  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire  
For Applicant: *Pro se*

07/08/2021

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On April 27, 2020, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement). The action was taken under Executive Order 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) effective within the DOD on or after June 8, 2017. In responses dated February 22, 2021, and February 23, 2021, he admitted all allegations raised and requested a determination based on the written record.

On April 8, 2021, the Government issued a File of Relevant Material (FORM) with six attachments (“Items”).The Applicant submitted a response to the FORM on June 3, 2021. The case was assigned to me on June 25, 2021. Based on my review of the case file and submissions, I find Applicant mitigated drug involvement security concerns.

## Findings of Fact

Applicant is a 24-year-old management analyst who graduated with an undergraduate degree in May 2019. He is single and currently lives with his parents. Applicant has no criminal record. He started working for his present employer in January 2020. The following month, he learned that he would need to apply for a security clearance, which he did in March 2020. In his application, he was completely candid about past illegal drug use and has been forthcoming about the topic ever since.

During his senior year of high school, Applicant first used illegal drugs. As a senior in 2014, he used marijuana about two times. Applicant never used the drug again until March 2016, during his freshman year of college. His marijuana use slowly increased until he regularly used the drug until his May 2019 graduation. He also purchased the drug on various occasions between 2017 and September 2019. After graduation, his marijuana use declined, but did not completely cease. Between May 2019 and February 2020, he used the drug approximately 7 – 10 times. As he began his current job, he quit using marijuana. He knew drug use was against his employer's policies. (FORM, Item 5 at 43; Item 6 at 2-4) When informed he would need to apply for a security clearance, the seriousness of his past drug use became apparent. He candidly detailed his past drug use on his security clearance application.

In addition to his past marijuana use, Applicant also disclosed his use of cocaine approximately 20-25 times during college. He also noted that he used it one more time in November 2019, between college and finding employment. The cocaine he used belonged to others, but he volunteered that he once purchased the drug in April 2018, during what he described as a low point in his life. (FORM, Item 4 at 1). He also used LSD in September 2017 and April 2018 while on college camping trips.

Applicant reiterated that he has quit using illegal drugs. He has no desire to use cocaine or LSD again. Although he believes marijuana should be legalized, he intends to continue staying away from marijuana in order to lead a more adult life and pursue a professional career. (FORM, Item 6 at 6) His signed response to the FORM repeats that commitment. (Response to the FORM)

On May 25, 2021, Applicant met with a licensed substance abuse treatment professional (LSATP) and counselor (LPC) who is also a certified substance abuse counselor. It was determined that Applicant's present alcohol and drug use do not constitute a substance use disorder. His alcohol use is limited to the occasional beer on weekends. The counselor confirmed Applicant's intention to refrain from illegal drugs for professional reasons. It was concluded that Applicant's abstinence to date demonstrates his willingness and ability to refrain from illegal drug use.

Applicant, himself, stresses that he has matured since starting work and commencing a career. (Response to the FORM) He wrote that he has had sufficient time to reflect on his past behavior and regrets his former immaturity. He now lives far from college and presently lives with his family, and his goals and aspirations reflect his

maturation. He noted, "I hope the changes I have made in my life now to a commitment to a career, settling down and having a family of my own someday, will warrant this opportunity to obtain and maintain my personal clearance." (Response to the FORM)

## **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 used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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. Under the AG, any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national interest. In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

The Government must present evidence to establish controverted facts alleged in the SOR. Under the Directive, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

## **Analysis**

The security concern for this guideline (Guideline H) is set forth in AG ¶ 24. There, it is noted that the illegal use of a controlled substance, and the use of other substances that can 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. Such use also raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Here, Applicant used marijuana with varying frequency from late 2014, when he was in high school, through early February 2019, as he began his present work. He purchased the drug between 2017 and September 2019 on various occasions. He also used cocaine between November 2016 and November 2019, and bought the drug once in April 2018. In addition, he used LSD twice, between September 2017 and April 2018. This drug use raises AG ¶ 25:

(a) any substance misuse . . . .

The Government's substantial evidence, as confirmed by Applicant's admissions, raises the security concerns noted under this guideline. Therefore, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate related security concerns.

Under Guideline H, conditions that could mitigate security concerns arising from drug involvement and substance misuse are enumerated. The following mitigating conditions under AG ¶ 26 potentially apply to Applicant's case:

(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's past drug use began in high school and continued when he went away to college. Like many of his peers in that age frame, his use started as experimental, then became recreational. As he completed his university undergraduate degree, his drug use waned.

Upon graduation and his acceptance of a job that would prove to be the first step toward a career, Applicant gave up drug use in order to comport his behavior with that of a mature professional. His goals now are to establish himself as a professional in his field. His past drug use was candidly detailed on his security clearance application, not hidden or obfuscated by lies or excuses. He has been forthcoming about his past drug use ever

since. He is now far from his collegiate milieu and enjoys the stability of his family's household. Given these facts, Applicant's age, and circumstances, his past drug use can be described as youthful indiscretion that he, himself, openly recognizes as unlawful and inconsistent with both a professional career and the maintenance of a security clearance.

There is no indication Applicant spends time with drug-using acquaintances or in environments conducive to drug use. He has written of his intent not to go back to drug use now that he has committed himself to a professional career. He is now at an age where he can reinvent himself as a mature adult, not just a socializing college student. A thorough evaluation by a qualified LSATP/LPC indicates that Applicant has no dependence on any substances, including alcohol, and that Applicant recognizes his past drug use was immature and illegal. Under these facts, and given Applicant's youth and recent adjustment to a mature, professional lifestyle, AG ¶ 26(a)-(b) apply.

### **Whole-Person Concept**

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed in the AG. The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. In addition to Applicant's drug use, I considered available facts related to his age, reasons for using illegal drugs and the existent circumstances during his period of drug use, recent maturation, academic status, professional goals and attainments, present lifestyle, and future intentions.

Like many of today's youth, Applicant tried, experimented, then used illegal drugs in high school and college. Between college and starting professional work, his drug use waned, then was put aside so he could reinvent himself as an aspiring young professional. He was thoroughly honest and detailed about his past drug use. He also provided highly believable reasons for quitting their use, thus helping to demonstrate his maturation since school.

A counselor has confirmed that Applicant has no dependencies and is sincere in his commitment to eschew drugs in favor of a professional career. By all appearances, Applicant's past drug use, while relatively recent, has been put behind him. While only drug-free for a year-and-a-half, that is a significant time period for one his age. I find Applicant is sincere in his commitment to remain drug-free. Drug involvement security concerns are mitigated.

## **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.e:	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 a security clearance. Eligibility for access to classified information is granted.

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Arthur E. Marshall, Jr.  
Administrative Judge