



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 19-03941  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara Karoian, Esq., Department Counsel  
For Applicant: Alan A. Edmunds, Esq.

10/13/2021

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guidelines D (sexual behavior), H (drug involvement and substance misuse), and J (criminal conduct), but he did not mitigate the security concerns under Guideline E (personal conduct).

**Statement of the Case**

On August 28, 2020, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines D, E, H, and J. Applicant submitted an undated response to the SOR and requested a decision on the written record in lieu of a hearing. On December 4, 2020, Applicant changed his request to a hearing before an administrative judge. The case was assigned to me on June 14, 2021.

The hearing was convened as scheduled on July 27, 2021. Government Exhibits (GE) 1 through 5 were admitted in evidence without objection. The Government's motion to add "psilocybin" before "mushrooms" in SOR ¶ 1.b was granted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through M, which were admitted without objection.

## Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since 2015. He earned a bachelor's degree in 2015. He has never married, but he resides with his fiancée. He does not have children. (Transcript (Tr.) at 13-14, 23-24; GE 1, 2; AE F, G)

Applicant used marijuana a number of times between about 2007 and 2009. He did not use marijuana again until 2014. He smoked marijuana once or twice from about October 2014 to June 2015. (Tr. at 14; Applicant's response to SOR; GE 2, 4, 5)

Applicant submitted a Questionnaire for National Security Positions (SF 86) in May 2015 in conjunction with his job offer. He intentionally failed to report his marijuana use. He explained that he filled out the SF 86 on his parents' computer with their assistance. His parents are very religious, and he did not want them to know about his marijuana use. He also admitted that it was the only job offer he received, and he thought that it could affect the job offer if he revealed his marijuana use. (Tr. at 19-20, 28-30; Applicant's response to SOR; GE 1, 5)

Applicant received his security clearance in 2015. He continued to use marijuana on an irregular basis. He used psilocybin mushrooms in October 2016. He used marijuana at the same time, which was the last time he used any illegal controlled substances. (Tr. at 14-17, 30; Applicant's response to SOR; GE 2-5)

Applicant interviewed for a position with another company in July 2017. The position required a top secret clearance and eligibility for access to sensitive compartmented information (SCI). It was at that time that Applicant realized the gravity of his actions. He looked at brochures from his company, and he discovered he had an affirmative duty to self-report his marijuana and mushroom use. He held off until October 2017 in order to complete a program, and he then self-reported his illegal drug use to his facility security officer (FSO), who reported it to the DOD. He also indicated that he delayed his self-reporting because he was afraid of losing his job and going to jail. (Tr. at 30-31, 34; Applicant's response to SOR; GE 3, 5)

Applicant submitted another SF 86 at his FSO's request in November 2017. He fully reported his illegal drug use. He reported that he used marijuana in total less than 20 times. His description of his drug use has been consistent when he was interviewed for his background investigation in 2018, in his reply to DOD interrogatories, in his response to the SOR, and at his hearing. Applicant also told the background investigator that he paid for the services of prostitutes in Mexico in 2015 and 2016. (Tr. at 14-15, 17-18, 31-33; Applicant's response to SOR; GE 2, 4, 5)

Applicant's security clearance was suspended in about December 2017. In his July 2019 reply to DOD interrogatories, he admitted that he engaged the services of a prostitute in Amsterdam in June 2019. (Tr. at 17-19, 31-34; Applicant's response to SOR; GE 4, 5)

Applicant was evaluated in December 2020 by a licensed clinical social worker (LCSW), who is also a certified substance abuse counselor, among other qualifications. She tested Applicant and interviewed him. She also had access to the SOR. They discussed his substance abuse and interactions with prostitutes. She concluded that there was no diagnosis, and that “[b]ased upon all information available to [her],” it was her opinion that “[Applicant] is not at risk of relapse or return to his previous behavior.” (AE A, B)

There are inconsistencies between Applicant’s statements about his drug use and involvement with prostitutes before and during his hearing and his statements to the LCSW about those events. She reported that Applicant told her that he used marijuana twice in 2007 and in the fall of 2008. He did not use marijuana again for about six years until 2014, when he used it once. He told her that he used it again with psilocybin mushrooms in 2016 while visiting a friend in a state that had made marijuana legal under state law. She stated in her report: “[Applicant] reported that after the trip to [State] he made the conscious decision that he was never going to use substances again. He returned home and self-reported to his security officer at work.” Regarding his involvement with prostitutes, she wrote: “[Applicant] received a manual stimulation after a legitimate massage. However, the two subsequent engagements with paid sexual activities were not consum[matt]ed.” This is inconsistent with his testimony that two of the encounters involved masturbation and the third involved “oral sex.” (Tr. At 35-37; AE A)

Applicant stated that he does not intend to use illegal drugs or solicit prostitutes in the future. He passed drug tests in December 2020 and July 2021. He provided 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. He has minimal contact with individuals who use drugs, and he will leave if he finds himself in a place where drugs are present. He informed his fiancée of his drug use and involvement with prostitutes. (Tr. at 15-17, 19, 23-24, 27; Applicant’s response to SOR; AE C-E)

Applicant volunteers in his community. He submitted documents and letters attesting to his excellent job performance and moral character. He is praised for his reliability, trustworthiness, loyalty, dependability, responsibility, and honesty. (AE H-J, L)

### **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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 D, Sexual Behavior**

The security concern for sexual behavior is set out in AG ¶ 12:

Sexual behavior that involves a criminal offense; reflects a lack of judgment or discretion; or may subject the individual to undue influence of coercion, exploitation, or duress. These issues, together or individually,

may raise questions about an individual's judgment, reliability, trustworthiness, and ability to protect classified or sensitive information. Sexual behavior includes conduct occurring in person or via audio, visual, electronic, or written transmission. No adverse inference concerning the standards in this Guideline may be raised solely on the basis of the sexual orientation of the individual.

AG ¶ 13 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (a) sexual behavior of a criminal nature, whether or not the individual has been prosecuted;
- (c) sexual behavior that causes an individual to be vulnerable to coercion, exploitation, or duress; and
- (d) sexual behavior of a public nature and/or that reflects lack of discretion or judgment.

Applicant paid for the services of prostitutes in Mexico and Amsterdam. AG ¶¶ 13(c) and 13(d) are applicable. It was not established at the hearing that prostitution was illegal in those locations. AG ¶ 13(a) is not applicable.

Conditions that could mitigate sexual behavior security concerns are provided under AG ¶ 14. The following are potentially applicable:

- (b) the sexual behavior happened so long ago, so infrequently, or under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and
- (c) the behavior no longer serves as a basis for coercion, exploitation, or duress.

There is no evidence that Applicant has been involved with prostitutes since 2019. He is now engaged and living with his fiancée, who is aware of his transgressions. I do not believe the conduct will be repeated. The above mitigating conditions are sufficiently applicable to overcome sexual behavior security concerns. The poor judgment aspects of the behavior will be addressed further under personal conduct.

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

The security concern for drug involvement and substance misuse is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position

Applicant possessed and used marijuana and psilocybin mushrooms, including while holding a security clearance. The above disqualifying conditions are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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.

There is no evidence of any illegal drug use after October 2016. The analysis here is similar to the sexual behavior analysis. I do not believe Applicant will use illegal drugs again. I find that Applicant has abstained from illegal drug use for an appropriate period, and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable. The aspects of the behavior reflecting questionable judgment will be addressed further under personal conduct.

### **Guideline J, Criminal Conduct**

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant's solicitation of prostitutes and drug involvement were cross-alleged under criminal conduct. It was not established at the hearing that prostitution was illegal in the locations where Applicant solicited prostitutes, but his drug possession was in violation of federal law. The above disqualifying condition is applicable to the drug involvement, but not the solicitation of prostitutes.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

The discussion above under drug involvement and substance misuse applies equally here. I find the conduct is unlikely to recur. AG ¶¶ 32(a) and 32(d) are

applicable. Similar to the sexual behavior and drug involvement discussions, the poor judgment aspects of the criminal behavior will be addressed further under personal conduct.

## **Guideline E, Personal Conduct**

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

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;

(3) a pattern of dishonesty or rule violations; and



(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;

(2) while in another country, engaging in any activity that is illegal in that country; and

(3) while in another country, engaging in any activity that, while legal there, is illegal in the United States.

Applicant's drug involvement and involvement with prostitutes are cross-alleged under Guideline E. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

Applicant intentionally provided false information about his marijuana use on the 2015 SF 86. AG ¶ 16(a) is applicable.

SOR ¶ 4.c alleges that Applicant intentionally concealed his 2016 use of marijuana and psilocybin mushrooms from his FSO from no later than July 2017 through October 2017, knowing that the National Industrial Security Program Operating Manual (NIS POM), Chapter 1, Section 3, paragraph 1-300, required him to disclose the information. Applicant admitted that he knew by reading brochures from his company that he had an affirmative duty to self-report his marijuana and mushroom use. He did not admit that he knew that the NIS POM paragraph required him to self-report. That is likely because the cited paragraph does not have a requirement that security clearance holders (employees) self-report; it requires contractors (employers) to report. The part of SOR ¶ 4.c that references the NIS POM is concluded for Applicant. That does not detract from Applicant's disregard of his admitted requirement to self-report his illegal drug use. AG ¶¶ 16(d) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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.

There is a common thread running through Applicant's misconduct: poor judgment and dishonesty. He lied about his drug use on his SF 86, and then continued to use illegal drugs while holding a security clearance. He discussed his involvement with prostitutes during his June 2018 background interview, and then he engaged the services of a prostitute in Amsterdam in June 2019. He was less than candid in how he reported his conduct to the LCSW during his evaluation, and I have good reason to question his credibility. While I believe that specific conduct (drugs, prostitutes) is unlikely to recur, I am unable to conclude that other problematic conduct is unlikely to recur. The above mitigating conditions are insufficient to overcome ongoing concerns about Applicant's judgment, reliability, trustworthiness, and honesty.

### **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 have incorporated my comments under Guidelines D, E, H, and J in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under Guidelines D (sexual behavior), H (drug involvement and substance misuse), and J (criminal conduct), but he did not mitigate the security concerns under Guideline E (personal conduct).

### **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.b:	For Applicant
Paragraph 2, Guideline D:	For Applicant
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline J:	For Applicant
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline E:	Against Applicant
Subparagraphs 4.a-4.c:	Against Applicant

### **Conclusion**

It is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge