



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 20-01435

Applicant for Security Clearance

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: John V. Berry, Esq.

05/17/2021

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**Decision**

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MASON, Paul J., Administrative Judge:

Between 2005 and September 2018, Applicant used several drugs at varying frequencies. Though he stopped marijuana use in May 2018, he used cocaine one additional time in September 2018. His use of marijuana, which was regular through high school and the first two years of college, substantially diminished between 2012 and 2017. However, he resumed using the drug in vapor form until May 2018, when he stopped altogether. Except for cocaine, his use of the more serious drugs was experimental to sporadic and ended by 2012. In light of his decision to begin to take charge of his career, his health, and his marital responsibilities in 2018, Applicant has overcome the security concerns engendered by his past drug use and substance misuse... Eligibility for classified information is granted.

**Statement of Case**

On September 9, 2019, Applicant certified and signed an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. On October 30, 2019, Applicant

provided a personal summary interview (PSI) to an investigator from the Office Personnel Management (OPM). After examining the background investigation, the Defense Counterintelligence Security Agency (DCSA) could not make the affirmative findings necessary to issue a security clearance. On September 1, 2020, DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under drug involvement and substance misuse (Guideline H). The action was taken under Executive Order (E.O.) 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 Security Executive Agent Directive 4, establishing in Appendix A the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), made effective in the DOD on June 8, 2017.

Applicant provided an undated answer to the SOR. I was assigned the case on November 16, 2020. On January 29, 2021, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing for February 26, 2021. The Government's two exhibits and Applicant's nine exhibits were admitted into evidence without objection. On March 8, 2021, DOHA received a copy of the transcript (Tr.); the record closed the same day.

### **Findings of Fact**

The SOR contains four drug involvement allegations. The origin of these allegations is the September 2019 e-QIP in which Applicant voluntarily disclosed his use of illegal drugs and misuse of prescription drugs. (Tr. 35-38) Applicant admitted all allegations with brief explanations.

Applicant is 31 years old. In September 2010, he received an associate's degree, and in August 2012, he was awarded a Bachelor of Arts degree. He married in September 2018. (GE 1 at 13-22) He began working as a technical consultant for a company in June 2019. That company was purchased by his present employer where Applicant works as a robotic process automation (RPA) developer. The purpose of his job is to digitize and automate paper-based systems. Applicant is seeking his first security clearance. (Tr. 23-27, 41; AE B)

Applicant's drug involvement began in 2005 when he was 15 years old. He occasionally used marijuana (SOR 1.a) supplied by classmates. At age 17, his use increased to daily or weekly. He smoked the drug in pipes. Applicant's regular use continued at a community college because he remained in contact with some of the same drug using individuals from high school. After receiving his associate's degree in 2010, he moved to another state to attend college and his marijuana use decreased. Following his graduation from college in 2012, his marijuana use was almost nonexistent until late 2017 when he purchased and used some marijuana in vapor form and for about two or three months when he regularly ingested small quantities of the

drug before going to sleep. His last use of marijuana occurred at age 28 in May 2018. In his September 2019 e-QIP, he indicated that he would use marijuana at rare times in the future. However, in October 2019, he declared he would not use marijuana under any circumstances because it is against federal law. (GE 2 at 3-4; Tr. 28-31)

Applicant used cocaine between one and four times a year from August 2008 to September 2018. (SOR 1.b) The amounts were small and the locations for use were house parties or social gatherings. He recalled the drug had little effect on him. His last use of the drug, which was at a bachelor's party in September 2018, was memorable in that he used a larger amount of the drug than he had used in the past. The drug increased his heart rate and kept him awake until five a.m. the following morning. (GE 1 at 37-38, 46; GE 2 at 4-5)

In high school and college, Applicant misused the prescription drugs Ritalin and Adderall. (SOR 1.c) His purpose for misusing the medications was to increase his concentration on schoolwork. The drugs helped him stay awake at night three or four times between 2007 and 2012 to prepare for school assignments or examinations. He recalled purchasing both medications at \$5.00 a pill. (GE 2 at 4)

Applicant estimated that he and his friends from high school used LSD and mushrooms about 10 to 12 times between 2007 and 2010. LSD had a euphoric effect on Applicant. The influence of the mushrooms lasted much longer, but the effects were not as intense. (GE 2 at 4)

Applicant attributed his drug use to youth, peer pressure, and to enhance his prospects for socialization. Even though he mingles with some of the same high school friends who have continued to use drugs, they do not offer drugs to him since they know he no longer uses them. He has no future intentions to purchase or use drugs because his career is more important. He fully understands that continued drug use is against federal law. On February 16, 2021, Applicant signed a statement of intent to forego all illegal drug use in the future, recognizing that a violation of the statement would constitute grounds for revocation of his national security clearance eligibility. (GE 2 at 5; Tr. 39; Answer to SOR, 1.a; AE C)

Applicant's wife, who also submitted a written character reference, has been a nurse for ten years. After dating Applicant for about eight years, she married him in September 2018. In the same month, he informed her that he had used cocaine at a bachelor's party in another state. In her view, he appeared disappointed by his use and informed her that continued drug use would not be a part of his lifestyle in the future. Based on her concern for Applicant's long-term health to help her expand their family, she admonished him about using drugs with his high blood pressure that he has been treating since age 23. Subsequently, she observed Applicant focus more on his long-term career aspirations, which motivated him to put his self-taught professional skills to work. Since March 2020, he has provided critical support in helping his wife stay healthy as she carries out her frontline-nursing responsibilities during the pandemic. In that

period, because she and Applicant have spent a lot of time together in their apartment, she would know if he was using drugs. She does not believe that Applicant has used any drugs. She believes Applicant shows good judgment. (Tr. 14-23; AE H)

### **Character Evidence**

A mechanical engineer testified telephonically. He also provided a written character reference. His friendship with Applicant takes them back about 16 years to high school. The engineer believes that Applicant stopped using drugs in the fall of 2018 to focus on his certifications in order to advance his career and elevate his reliability as a husband intent on purchasing a home. Based on his weekly contact by phone or in person, the engineer believes Applicant's honesty and good judgment support a favorable decision to grant him security clearance eligibility. (Tr. 8-14; AE E)

In a written character reference, Applicant's senior director stated that he hired him two years ago. The director has found Applicant to be an outstanding employee who was the only person in the 250 employee-work force to reach advanced RPA status. Applicant's trustworthiness and team-player attitude convinces the director that he merits a security clearance. (AE D)

By written character reference, Applicant's former coworker and friend noted that he has known Applicant for about eight years. As a security clearance holder, the former coworker recommends Applicant for security clearance suitability based on his honesty and trustworthiness. (AE F) Applicant's friend, who met him eight years ago, considers Applicant a trustworthy person whose honest supports his security clearance application. (AE G)

By written character reference, another friend stated that he has known Applicant for about 18 years. They attended high school and junior college together, and eventually became coworkers. In the time they have known each other, Applicant developed a reputation of being a diligent and dependable person both at work and in his personal life. Applicant's trustworthiness is equaled by his loyalty as a friend. (AE I)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines, which should be applied with common sense and the general factors of the whole-person concept. All available, reliable information about the person, past and present, favorable and unfavorable, should be carefully reviewed before rendering a decision. The protection of the national security is the paramount consideration. AG ¶ 2(d) 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 applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

## **Analysis**

### **Drug Involvement and Substance Misuse**

The security concern under the Drug Involvement/Substance Abuse Guideline 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.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant began using marijuana in 2005. He regularly used the drug with high school classmates, and he continued to use the drug with some of those individuals in junior college. Though he dramatically reduced his use after 2012, he purchased and used the drug in vapor form during a two to three-month period before he stopped in May 2018. Applicant's use falls within the scope of AG ¶ 25(a). His use of the drug involves illegal possession of a controlled substance as defined by AG ¶ 25(c).

Applicant's use of LSD, mushrooms, Ritalin, Adderall, and cocaine constitutes possession and use of illegal drugs and misuse of prescription drugs within AG ¶¶ 25(a) and 25(c).

AG ¶ 26. Conditions that could mitigate security concerns include:

(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 use of LSD, mushrooms, and Adderall was infrequent and ended by 2012. His purchase of Ritalin and Adderall is also mitigated by the passage of more than eight years, as well as the miniscule number of times he purchased the medications. More than three and one-half years have passed since Applicant purchased and used marijuana. A rapid increase in his heart rate in September 2018, caused by ingesting a much larger amount of cocaine than he had used in the past, was all Applicant needed to recognize that even sporadic drug use was placing his health at serious risk. The major steps Applicant has taken to solidify his career since September 2018, as confirmed by his wife, the character references, and the awards, justify complete confidence in Applicant's current reliability, trustworthiness, and good judgment. AG ¶ 26(a) applies.

When Applicant submitted his e-QIP in September 2019, he acknowledged his past illegal drug involvement and misuse of prescription drugs. In his October 2019 PSI, after describing all his past illegal use and misuse as he had done in his e-QIP, he stated unequivocally that he would use no drugs in the future as he understood that drug use was against federal law. He repeated those sentiments at the hearing in February 2021. Though he continues to associate with some of his friends that he used drugs with in high school and junior college, Applicant credibly testified that he has not used illegal drugs since September 2018, and that he will abstain in the future. The mechanical engineer corroborated Applicant's testimony. Based on the favorable testimony from Applicant's wife describing his efforts to keep her healthy as she executes her frontline-nursing responsibilities during the pandemic, and his decision to take greater care of his own health, Applicant receives some mitigation under AG ¶¶

26(1) and 26(2). His voluntary disclosure of his illegal drug involvement and substance misuse, combined with his written statement of intent to abstain from future drug involvement and substance misuse, entitles Applicant to full mitigation under AG ¶ 26(3).

### **Whole-Person Concept**

I have examined the evidence under the guideline for drug involvement/substance misuse in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Though Applicant's September 2019 conditional statement of intention to use marijuana in the future occurred subsequent to his September 2018 promise to his wife to forego all drug use in the future, his statement in his October 2019 PSI that he did not intend to use any illegal drugs in the future under any circumstances, is both credible and persuasive. He acknowledged that drug use was against federal law. Judging by the totality of the evidence, particularly the favorable character evidence from his job and his wife, Applicant has overcome the security concerns raised by the guideline for drug involvement and substance misuse.

### **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.d:

For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is granted.

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Paul J. Mason  
Administrative Judge