



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



In the matter of:	)	
	)	
	)	ISCR Case No. 20-02940
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

03/10/2022

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On January 5, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. The DOD acted 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 answered the SOR on February 15, 2021, and requested a hearing. The case was assigned to me on October 21, 2021. The Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing on November 4, 2021, and the hearing was held as scheduled on December 13, 2021. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. The Government's exhibit list and pre-hearing discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibits (AE) A-I, which were admitted without objection. The record remained open until December 27, 2021, to allow Applicant to submit additional evidence. He submitted AE J-K, which were admitted without objection. DOHA received the hearing transcript (Tr.) on December 22, 2021.

### **Findings of Fact**

Applicant admitted all the SOR allegations. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 32 years old. He has worked for a defense contractor (DC) since January 2014. He holds a master's degree. He is married and has a one-year old child. (Tr. 31, 33; GE1)

Under Guideline H, the SOR alleged Applicant used or misused the following drugs with varying frequency: marijuana from April 2008 to June 2018; cocaine from September 2011 to December 2017; methamphetamines from September 2011 to Summer 2017; Adderall from December 2018 to June 2019; and Trazodone from August 2017 to September 2017. (SOR ¶¶ 1.a-1.e) It alleged that Applicant sold marijuana from September 2009 to Summer 2011. (SOR ¶ 1.f) It alleged that Applicant purchased: marijuana from April 2008 to September 2015; methamphetamines from September 2011 to Summer 2017; and Adderall without a prescription from December 2008 to June 2019. (SOR ¶¶ 1.g-1.i) It also alleged that Applicant used illegal drugs and misused prescription drugs after being granted a security clearance in June 2016. (SOR ¶ 1.j)

Under Guideline E, the SOR cross-alleged the allegations stated above in SOR ¶¶ 1.a-1.j. (SOR ¶ 2.a) The SOR alleged that Applicant was charged with leaving the scene of an accident (alcohol involved) in May 2013 and charged with driving under the influence of alcohol in May 2014. (SOR ¶¶ 2.b-2.c) It alleged that Applicant deliberately gave false information on his September 2015 security clearance application (SCA) when he failed to disclose his illegal drug activity as stated in SOR ¶¶ 1.a-1.d and 1.f-1.i above. (SOR ¶¶ 2.d-2.f) It alleged that Applicant deliberately gave false information on his September 2015 SCA and his July 2019 SCA when he stated that alcohol was not involved with his May 2013 arrest for leaving the scene of an accident. (SOR ¶¶ 2.g-2.h)

Applicant admitted all of his illegal drug use, his prescription drug misuse, his 2013 and 2014 charges, and his deliberate false answers given on his 2015 and 2019 SCAs. (Tr. 25, 30, 34-35; SOR Answer) In Applicant's 2019 SCA, during his February 2020 background interview, and in response to DOHA interrogatories, he set forth his extensive drug history which began in approximately 2008. He began using marijuana as a high school senior in 2008. He continued using marijuana while attending college. He

increased his use frequency from two to three times a month to using it multiple times a day by his sophomore year in college. At that time, he also began selling marijuana. He sold and distributed marijuana during his sophomore and junior years. He made a monetary profit by selling marijuana and obtained it free for his own personal use. During his senior year of college, he was asked to leave his fraternity because of his drug use. His drug supplier was arrested for trafficking, and he lost that source of marijuana for himself. He found a new source and continued to buy marijuana so that he could use it on a daily basis throughout his senior year. Applicant continued his marijuana use through 2016 when he obtained a security clearance. He has used marijuana “several hundred times.” He claims his last use of marijuana was in June 2018. He ate a marijuana-laced chocolate bar. When reporting his use in his July 2019 SCA, he claimed he “accidentally” ate the marijuana-laced chocolate bar. In his later February 2020 background interview, he told the investigator that he intentionally and knowingly ate the chocolate bar. He held a security clearance at the time of this knowing use of marijuana. Without specifying what drug it was, Applicant testified that his last use of illegal drugs was on December 31, 2018. He deliberately failed to list his illegal marijuana use on his September 2015 SCA because he believed that if he answered truthfully he would not receive a security clearance. (Tr. 23, 25, 28, 30, 34; GE 1-3)

Applicant’s other admitted drug involvement included: (1) **cocaine**—first use September 2011—last use December 2017—frequency, twice a year from 2011-2013, once in 2017; (2) **methamphetamines**—first use September 2011—last use summer 2017—frequency, once or twice a year from 2011 to 2017; (3) **Adderall**—first use December 2008—last use January 2019 (Applicant gives conflicting versions of his last use of Adderall in his background interview where he stated his last uses were from January to June 2019)—frequency, monthly to quarterly from 2008-2014, once or twice a year 2014-2019; (4) **Trazodone**—first use August 2017—last use September 2017—frequency, once or twice. He did not have a legal prescription for Adderall and Trazodone at the time he used them. He purchased the drugs from someone who had a prescription. He purchased the methamphetamines he used from an unknown source. The cocaine he used was either given to him by friends or his girlfriend (now wife) purchased it for their use. He deliberately failed to list his pre-2015 drug use and prescription drug abuse on his 2015 SCA. He used all these drugs when he held a security clearance. Applicant believed that even though he held a clearance at the time of his uses, he did not yet have access to any cleared information so he did not think there was a problem. He did not reveal his overall drug history to his current employer until after his security clearance hearing. (Tr. 29; GE 1-3; AE J-K)

Applicant admitted that he deliberately gave false information on both his 2015 and 2019 SCAs when he stated that alcohol was not involved when he was ordered to seek alcohol counseling by the court as a result of his 2013 arrest. (Tr. 34-35; GE 1-2)

Applicant has not participated in any drug counseling. He was court-ordered to attend alcohol counseling related to his 2013 and 2014 arrests. His wife continues to use both marijuana and cocaine, despite having an infant child. (Tr. 32-33)

Applicant is involved in community activities such as Habitat for Humanity and First Robotics. He provided work documentation, which he believes shows that he has matured and become a leader within his company. He reported an employee for not following security procedures. He also presented his work performance appraisals for years 2014, 2015, and 2020. He received overall ratings of “exceeded commitments” (rating of 4 out of 5) for 2014, “exceeded commitments” (rating of 4.1 out of 5) for 2015, and “significantly exceeded” (no numerical value given) for 2020. Applicant also presented a standard operating procedure (SOP) that he developed. He stated in his testimony, and in his answer to interrogatories in November 2020, that he did not intend to use illegal drugs or misuse prescription drugs in the future. He lives in a state where marijuana use and possession is legal under state law. (Tr. 24, 28, 37-39; GE 1, 3; AE A-I)

### **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. 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), the entire process is a careful weighing 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, 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 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 an 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 Abuse**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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.

In addition to the above matters, I note that the Director of National Intelligence (DNI) issued an October 25, 2014 memorandum concerning adherence to federal laws prohibiting marijuana use. In doing so, the DNI emphasized three things. First, no state can authorize violations of federal law, including violations of the Controlled Substances Act, which identifies marijuana as a Schedule I controlled drug. Second, changes to state law (and the laws of the District of Columbia) concerning marijuana use do not alter the national security adjudicative guidelines. And third, a person's disregard of federal law concerning the use, sale, or manufacture of marijuana remains relevant when making eligibility decisions for sensitive national security positions.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable in this case include:

- (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
  
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant's frequent use, possession, and purchase of marijuana, cocaine, methamphetamines, Adderall, and Trazadone between 2008 and 2019 is supported by his admissions and other evidence. He distributed marijuana over a two-year period while attending college. He used all the above drugs after being granted a security clearance in 2016. I find all the above disqualifying conditions apply.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this 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; 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 used multiple illegal drugs and abused prescription drugs on hundreds of occasions between 2008 and 2019. Given his pattern of use, his claimed abstinence beginning in 2019 is not sufficient to overcome his prolonged drug use. Although he stated that he did not intend to use any drugs in the future, he did not provide a signed statement of intent to abstain from all future illegal drug use. He also admitted that his wife still uses marijuana and cocaine, so he has not disassociated himself from other drug users. Applicant's claimed abstinence is insufficient to convince me that recurrence is unlikely. The frequency and recency of his past use, and his uses while holding a security clearance, cast doubt upon his current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) and AG 26(b) do not apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:

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.

16. Conditions that could raise a security concern and may be disqualifying include:

(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 national; 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; security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant admitted that he deliberately provided false information on both his 2015 and 2019 SCAs because he believed that if he told the truth about his drug history and his alcohol use relative to his 2013 arrest, he would be denied a security clearance. AG ¶ 16(a) applies.

Applicant's use of five different drugs after he was granted a security clearance and his failure to disclose to his employer his drug history causes significant concern. Additionally, his most recent false SCA in 2019 shows that he has not learned from his past transgressions. His poor judgment was also apparent when he admitted that his wife still uses cocaine and marijuana despite having an infant child in the home. Cumulatively, all these actions raise questions about his reliability, trustworthiness, and judgment. Based upon the general personal conduct security concern, AG ¶ 15, and AG ¶ 16(e) are raised by the evidence.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following relevant:

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

(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; and

(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.

Applicant did not disclose his drug history until completing his 2019 SCA, four years after he certified his false 2015 SCA. He did not make a prompt, good-faith effort to correct his previous falsifications. His extensive use of multiple illegal drugs, as recently as 2019, while holding a security clearance, and his poor judgment in passively allowing his wife to use illegal drugs while caring for their infant child casts doubt on his reliability, trustworthiness, and judgment. AG ¶17(c) does not apply. Although Applicant claims he will not use illegal drugs or abuse prescription drugs in the future, he has not obtained counseling to help correct his aberrant behavior. AG ¶ 17(d) does not apply.

### **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 the 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 considered Applicant's age, his work appraisals, and his community involvement. However, I also considered Applicant's long history of illegal drug use and his continued use after obtaining a security clearance. He also deliberately falsified his two SCAs in order to obtain and retain a security clearance.



Applicant failed to provide sufficient evidence to mitigate the drug involvement and personal conduct security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guidelines H and E.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.j:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.h:	Against Applicant

### **Conclusion**

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

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Robert E. Coacher  
Administrative Judge