



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



In the matter of: )  
)  
) ISCR Case No. 21-01229  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

February 11, 2022

**Decision**

GLENDON, John Bayard, Administrative Judge:

Applicant mitigated security concerns regarding drug involvement. Based upon a review of the pleadings, the documentary evidence, and Applicant’s testimony, national security eligibility for access to classified information is granted.

**Statement of the Case**

On May 30, 2020, Applicant submitted a security clearance application (SCA). On July 30, 2021, the Defense Counterintelligence and Security Agency, Consolidated Adjudications Facility (CAF), issued a Statement of Reasons (SOR) to Applicant stating that it was unable to find that it was clearly consistent with the national interest to grant Applicant access to classified information. The SOR detailed security concerns under Guideline H (Drug Involvement and Substance Misuse). The CAF acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (Feb. 20, 1960), as amended (Exec. Or.); Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Jan. 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on and after June 8, 2017.

On August 11, 2021, Applicant responded to the SOR in writing (Answer), attached five documents marked as Applicant Exhibits (AE) A through E, and requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). The case was initially assigned to another Administrative Judge, and on September 29, 2021, the case was reassigned to me. DOHA issued a hearing notice on October 29, 2021, scheduling the hearing for December 2, 2021.

I convened the hearing as scheduled. Department Counsel presented two exhibits marked as Government Exhibits (GE) 1 and 2. Before the hearing, Applicant's counsel submitted 11 exhibits marked as AE F through P. At the hearing, his attorney presented two additional documents marked as AE Q and R. All exhibits were admitted without objection. Applicant testified on his own behalf. DOHA received the hearing transcript (Tr.) on December 8, 2021. (Tr. at 11-13.)

### **Findings of Fact**

Applicant's personal information is extracted from his SCA unless otherwise indicated by a parenthetical citation to the record. After a thorough and careful review of the pleadings, Applicant's testimony, and the documentary evidence in the record, I make the following findings of fact.

Applicant is 27 years old. Since January 2020, he has been employed by a U.S. Government contractor as an engineer. In June 2017 he earned a bachelor's degree in aerospace engineering and has taken some post-graduate courses. After graduating from college, he worked for a different U.S. Government contractor. His prior employer sponsored him for a security clearance, which was granted in October 2017. He is unmarried, but has cohabitated with his long-time girlfriend since January 2020. He has no children. (Tr. at 14-15, 23; AE G.)

### **SOR Allegations and Answer**

**Paragraph 1, Guideline H** - The SOR sets forth three allegations regarding Applicant's past uses of marijuana. They were in 2010 and 2011, a one-time use of cocaine in May 2019, and a one-time use of marijuana in August 2019 after having been granted a DoD security clearance.

In his Answer, Applicant admitted experimenting with marijuana seven-to-ten times when he was in high school. He admitted the other two SOR allegations with clarifications. He wrote that he "accidentally inhaled a very small amount of cocaine" in May 2019 at a friend's graduation party where cocaine was being used. He was curious about the smell of cocaine, which he had never seen or smelled before. He understood from a documentary he had seen that cocaine smelled like kerosene. He was offered the opportunity to inhale some cocaine, but he declined. Out of curiosity, he tried to smell it and inadvertently inhaled a small amount. He felt no effect from this brief exposure to cocaine. He disclosed the exposure in his SCA. Applicant also disclosed in his SCA his accidental exposure to marijuana in August 2019. He explained in his Answer how that

occurred. He was in Las Vegas for a friend's birthday when a woman in the group attending the celebration offered him the use of her vape pen. He took a couple of puffs. He later learned that the pen contained THC. (Answer at 2; SCA at 65-68.)

At the hearing, Applicant testified that he used marijuana a few times in his sophomore and junior years in high school. He stopped using marijuana before his senior year in high school. He was focused then on his academic work and his applications for college. He also changed the circle of friends with whom he spent time. He confirmed that he has no intention to use illegal drugs in the future. (Tr. at 15-16, 24.)

Applicant again denied the SOR allegation 1.b that he used cocaine in May 2019. He testified that he has never used cocaine in his life. He explained that this incident occurred when he was attending a friend's graduation party at someone's house. He entered a bedroom to pick up his phone charger, which he had left in the room earlier in the day. He found three individuals he did not know using cocaine in the room. The cocaine users offered Applicant the opportunity to inhale some of their cocaine, but he declined. He was curious, however, about the smell of cocaine because he had seen in a documentary that cocaine was made using kerosene and had a heavy smell of kerosene. He testified:

I inadvertently got an extremely small amount on me while inhaling to sniff to see if it smelled of kerosene. I never ingested any of it. I quickly got it off [me] and left the room.

(Tr. at 17.) He testified that a small amount of cocaine got on the tip of his nose and he "instantly got it off" using his shirt sleeve. He insisted that no cocaine ever entered his nose or body. (Tr. at 15-30, 39.)

Applicant also testified about the marijuana incident. He said that he mistakenly assumed that the vape pen he was offered in August 2019 was a "normal nicotine-flavored pen." He took two puffs. He learned later that the pen contained marijuana. Before using the vape pen, he only sensed a fruity smell. He did not feel any effects of the marijuana after using the pen. He does not smoke cigarettes, but he has tried vape pens used by his friends. Applicant did not know the person who offered him the vape pen. It was the first time he met her. Applicant was in Las Vegas to celebrate his friend's birthday with a larger group and the woman with the vape pen was part of that group. Neither Applicant's friend nor his girlfriend use marijuana. He had no reason to suspect that the vape pen contained illegal drugs. (Tr. at 15-20, 30-39.)

Applicant formally self-reported both the cocaine and the marijuana incidents after talking to his security officer. They had that discussion in May 2019 when Applicant was preparing the SCA to apply for a higher-level security clearance. He did not report the incidents earlier because he did not believe either one met the threshold requirements for self-reporting because both incidents were unintentional and he did not actually inhale any cocaine. (Tr. at 17, 19-20, 24-25, 36, 38.)

Applicant testified that he lives a “very ethical and honest life.” He is committed to fulfilling his responsibilities to remain eligible to hold a security clearance. I found Applicant’s testimony generally to be credible. I further found Applicant’s testimony credibly supported his accounts regarding the two 2019 drug incidents as well as his statement of his values. At the hearing, he impressed me as a young man with maturity and candor well beyond his years. (Tr. at 23.)

## **Mitigation**

Applicant’s whole-person evidence describes him as a person of character. During his college years, he volunteered to contribute his free time to a program called Great Minds in STEM. This program served middle school and high school students from lower income neighborhoods. The volunteers taught engineering principles and encouraged the students’ interests in engineering and careers in engineering. He is also actively involved in his church. He provided five character reference letters from friends and co-workers who know him well. They all praise his intelligence, trustworthiness, honesty, and outstanding work ethic. One reference noted that he obtained scholarships and became the first in his family to earn a bachelor’s degree. His work performance evaluations in the record also describe Applicant as a person who is passionate about his work and who has high ethical standards. (AE J; AE K; AE O; AE Q; AE R.)

Applicant also submitted a signed statement of his intent to abstain from all drug involvement and substance misuse. His statement also contains an acknowledgment that any violation of his pledge not to use illegal drugs in the future would be grounds for the revocation of national security eligibility. (AE D.)

## **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to “control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and

endures throughout off-duty hours. 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.

Adverse clearance determinations must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

## **Analysis**

### **Paragraph 1, Guideline H**

The security concern under this guideline is set out in AG ¶ 24 as follows:

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 following potentially disqualifying conditions under AG ¶ 25 could apply to the facts of 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's admitted past involvement with illegal drugs establishes at least AG ¶ 25(a). AG ¶ 26 sets forth four mitigating conditions under Guideline H. The following two mitigating conditions have possible application to the facts 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;
- (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; and
  - (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.

AG ¶ 26(a) has been established. Applicant's use of marijuana in high school happened long ago and is unlikely to recur. His unintentional exposure to cocaine and marijuana after he had been granted a DoD security clearance occurred under such unique circumstances that it is unlikely that he would ever put himself in a position again where he might accidentally be exposed to illegal drugs. Both of the more recent incidents were the result of questionable judgments, as Applicant has readily admitted, but this behavior happened more than two years ago. Applicant expressed sincere regret for his actions and has learned from these experiences. His career as an engineer, which requires holding a security clearance, is very important to him. He has provided

convincing testimony that these past incidents will not be repeated. Significantly, he enhanced his credibility by reporting his recent experiences with illegal drugs to his security officer and formally submitting his disclosure in writing. Applicant's behavior does not cast doubt on his current reliability, trustworthiness, or good judgment.

Applicant has also established mitigation under AG ¶ 26(b). He has been completely transparent about the two incidents of unintended exposure to illegal drugs in 2019. He has provided credible testimony that he will never put himself in the position again in which he unintentionally or intentionally exposes himself to illegal drugs. He no longer associates with his drug-using friends from high school. No similar instances have occurred in over two years. He has also provided a signed statement of his intent to abstain from all drug involvement and substance misuse.

### **Whole-Person Analysis**

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. In applying the whole-person concept, an 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 and applying the adjudicative factors in AG ¶ 2(d), specifically:

- (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.

I have incorporated my comments under Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Overall, the record evidence as described above leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. After weighing the applicable disqualifying and mitigating conditions and evaluating all of the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his past drug involvement.

### **Formal Findings**

Paragraph 1, Guideline H:

FOR APPLICANT

Subparagraphs 1.a through 1.c:

For Applicant

## **Conclusion**

I conclude that it is clearly consistent with the national interests of the United States to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

John Bayard Glendon  
Administrative Judge