



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



In the matter of: )  
)  
) ISCR Case No. 21-02238  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Kent, Esquire, Department Counsel  
For Applicant: *Pro se*

03/04/2022

**Decision**

LYNCH, Noreen A., Administrative Judge:

**Statement of the Case**

On December 16, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement and Substance Abuse) .<sup>1</sup> Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on January 19, 2022. Applicant received the FORM on January 27, 2022. The case was assigned to me on February 7, 2022. Applicant did not object to the Government’s evidence, and he provided a response to the FORM (Item 5). The Government’s evidence, included in the FORM and identified as Items 1 through 4, is admitted without objection. Item 5 is also admitted without objection. Based on my review of the documentary evidence, I find that Applicant has not mitigated security concerns under the drug involvement guideline.

<sup>1</sup> 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 June 8, 2017.

## Findings of Fact

Applicant is 41 years old. He is single and has no children. He has not served in the U.S. military. He obtained his undergraduate degree in 2007. Applicant completed two contracts as a command director for a government agency. He is being sponsored for a federal contract position, and this is his first security clearance application (SCA). (Item 3)

The SOR (Item 1) alleged under Guideline H that Applicant used cocaine with varying frequency from about November 1994 to about January 2021 (1.a); used marijuana with varying frequency from about August 1993 to about March 2020 (1.b); used prescription medication Xanax, which was not prescribed to him, with varying frequency from about 2005 to about 2013 (1.c); used Adderall, which was not prescribed to him, from about 2005 to about 2013; (1.d); Vicodin, which was not prescribed to him, in about November 2014.(1.e) In his Answer, Applicant admitted to the SOR allegations with explanations and clarifications on his drug usage. (Item 2)

Applicant completed his SCA on January 26, 2021. (Item 3) He disclosed that his use of any of the illegal drugs or medications did not affect his reliability, trustworthiness, or compliance with rules and regulations. He stated that he could have just lied on the SCA and never listed any illegal use. He also understood that it “was not entirely illegal” and he made poor decisions. He wants to learn from his poor decisions and move forward. (Item 2)

Applicant noted in his Answer that in one state marijuana was legal and noted that his listed usage of illegal drugs may be greater than his actual usage. He added that he does not go looking for controlled substances, “but there were times when he did not say “No. when drugs were offered.” (Item 2) He also talked about peer pressure in terms of socialization. He now knows that it is not good for him and he will not use again. He, however, did not relate any of his illegal drug usage to any federal employers. (Item 2)

In Applicant’s DOHA interrogatories, he stated that he knows the use of use of drugs is illegal under Federal law. He knows “most companies” follow the Federal law. (Item 4) He again stated that he has not reported his drug use to his prospective Federal employer, but he would if asked to do so. (Item 4) He signed a Letter of Intent and stated that he would avoid those people who used drugs.

During his February 12, 2021 subject interview, Applicant provided details regarding his varying use of illegal drugs and substances since 1993. He used with friends in social settings because it was the thing to do. In 2020, he visited his sister and decided to use marijuana. He acknowledged the use of marijuana from 1994 to 2014, and the use of Vicodin, Adderall, and Xanax. He admitted the cocaine use from 1994 to 2021. In 2021, he stated he used illegal drugs because it was New Year’s Eve. (Item 4)

He insisted that he never had a drug problem. “He partied, but did believe he was addicted to drugs.” He insisted that he never needed counseling.

In his response to the FORM, Applicant submitted four letters of recommendation from former employers who all noted that Applicant was a leader, was masterfully trained and had a reputation for excellence. (Item 5)

### **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. 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 access to classified information will be resolved in favor of 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. 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

### Guideline H, Drug Involvement and Substance Misuse

The security concern for this guideline is set forth in AG ¶ 24, where 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. This is 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.

Applicant's admissions establish that he used marijuana and other drugs as alleged in the SOR. The record also establishes that Applicant used illegal drugs after being employed with a Federal contractor. Applicant's use of marijuana after he knew that his position with a federal contractor required him to refrain from drugs shows a disregard for rules and regulations. Applicant's history of substance abuse outweighs the mitigating value of his intent to abstain from drug use. His use goes back to 1993. He has a long track record of substance abuse. This is sufficient to raise AG ¶ 25(a): any substance misuse, AG ¶ 25(c) illegal possession of a controlled substance, including ... or sale; AG ¶ 25(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse. The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. 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; and
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions 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 last use of marijuana, an illegal substance, took place in 2020. He has known that the drug was not legal. Applicant still engaged in illegal behavior and has not yet demonstrated the good judgment or character required for a security clearance. He does regret his poor choices, but it is not yet clear that he has a track record of not succumbing to the peer pressure and engaging in illegal activity. He ultimately signed a Statement of Intent but his history of substance abuse outweighs the mitigating value of his Statement of Intent to abstain from drug use. This casts doubt about his judgment and reliability. I find that none of the mitigating conditions 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 at AG ¶ 2(d). 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.

I have doubts as to Applicant's trustworthiness, judgment, and reliability. Any doubts must be resolved in favor of the Government. Under these circumstances, I find Applicant has not mitigated the security concerns raised under drug involvement and substance misuse. Clearance is denied.

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

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Noreen A. Lynch  
Administrative Judge