



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



In the matter of: )  
 )  
 ) ISCR Case No. 21-00976  
 )  
 )  
Applicant for Security Clearance )

**Appearances**

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

03/28/2022

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**Decision**  
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Hyams, Ross D., Administrative Judge:

Applicant used and purchased illegal drugs while granted access to classified information, and failed to clearly and convincingly commit to discontinue future drug involvement. The security concerns under Guideline H (drug involvement and substance misuse) are not mitigated. Applicant's eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on October 5, 2020. On August 20, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017. Applicant's answer to the SOR is undated. In his answer, he requested a

decision based on the administrative (written) record, without a hearing before an administrative judge from the Department of Defense Office of Hearings and Appeals (DOHA).

On November 5, 2021, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 3. Item 1 is the SOR and Answer, which are the pleadings in the case. Item 2 is Applicant's SCA. Item 3 is the December 17, 2020 report of his interview with a government investigator.

The FORM was mailed to Applicant on November 9, 2021. He was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. Applicant signed for his receipt of the FORM on November 17, 2021. No subsequent response from Applicant was received by DOHA, and the case was assigned to me on February 9, 2022. Since Applicant did not respond to the FORM, he did not submit any evidence after submitting the answer to the SOR, nor did he offer any objection to the government's evidence. Items 2 and 3 are admitted without objection.

### **Findings of Fact**

In his Answer, Applicant admitted all of the SOR allegations and provided a brief narrative statement. His admissions and his statement are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 27 years old. He earned a bachelor's degree in 2017, and has been taking post-graduate courses part-time since 2019. He has worked as a software engineer for his current employer, a defense contractor, since 2017. Applicant reported in his SCA that his initial security clearance investigation was completed in December 2017, and he was granted a security clearance in January 2018. (Item 2)

Applicant used and purchased marijuana while in high school and college, over a five-year period. He used marijuana a few times a week during the school year, but used it more often during summers. He purchased enough marijuana to last him about a month at a time. Although Applicant knew it was illegal, he didn't think his marijuana use was causing harm to anyone. He stopped using marijuana in 2016 because he thought that his continued use of it would impact his career and future. (Items 1, 2, 3)

Applicant did not use any illegal drugs between April 2016 to June 2019. During this time period, he graduated from college, started employment with a defense contractor, and was granted a security clearance. Applicant started using illegal drugs again in June 2019. (Items 2, 3)

In his SCA, Applicant disclosed that he used cocaine, hallucinogens, and stimulants while possessing a security clearance. In his Answer, he admitted to using cocaine, ecstasy, LSD, and hallucinogenic mushrooms after being granted access to

classified information. He reported using drugs while possessing a security clearance in his interview with a government investigator. From June 2019 to December 2019, he used and purchased cocaine at least six times, at party and music festival settings. In July 2019, he used and purchased hallucinogenic mushrooms and LSD at a music festival. In August 2019, he used and purchased ecstasy at a music festival. Applicant told a government investigator that his motivation to start using drugs in 2019, after he had stopped his marijuana use three years' prior, was for curiosity. (Items 1, 2, 3)

Applicant stated in his SOR Answer that while he knows that drug use is not condoned with a security clearance, he believes that they were done in safe environments, and did not pose a threat to himself, anyone around him, or national security. He also asserts that he used illegal drugs in small amounts, experimentally, with friends he trusts, who are "upstanding citizens." He argues his illegal drug use was done in controlled environments of his choosing, and that he was not coerced into any of this. He simply wanted to experience new things with friends. He asserts that he is an "upstanding citizen" without a criminal record, and that he raised the issue of his drug use in his SCA. (Item 1)

Applicant argues that his drug use did not have lasting physical or psychological impairment, and had no impact on his life. He did not state in his Answer that his drug use has completely stopped, or that he has no future intent to use illegal drugs. He asserts that he is an outstanding employee, and had received two promotions at work and good performance reviews. He provided no documentation substantiating these assertions. (Item 1)

## **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." 484 U.S. 518, 531 (1988).

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 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 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.

## **Analysis**

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

AG ¶ 24 expresses the security concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

- (a) any substance misuse (see above definition);

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

(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

The Controlled Substances Act (“CSA”) makes it illegal under Federal law to manufacture, possess, or distribute certain drugs (Controlled Substances Act, 21 U.S.C. § 801, et seq. See § 844). All controlled substances are classified into five schedules, based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. §§811, 812. Marijuana, LSD, ecstasy, and hallucinogenic mushrooms (Psilocybin) are classified as Schedule I controlled substances, §812(c), based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment. §812(b)(1). Cocaine is classified as a Schedule II controlled substance based on its high potential for abuse, with use potentially leading to severe psychological or physical dependence. §812(b)(2).

Applicant admitted in his Answer that he used and purchased cocaine, ecstasy, LSD, and hallucinogenic mushrooms after being granted access to classified information. He also admitted that he used and purchased marijuana over a five-year period. Applicant failed to clearly and convincingly commit to discontinue drug use. AG ¶¶ 25(a), 25(f), and 25(g) apply.

I have considered the mitigating conditions under AG ¶ 26. 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 is grounds for revocation of national security eligibility.

Applicant used and purchased cocaine, ecstasy, LSD, and hallucinogenic mushrooms as recently as 2019. This drug involvement is recent, and is part of a larger pattern of illegal drug use going back eleven years. He did not state in his Answer that his drug use has completely stopped, or that he has no future intent to use illegal drugs. Instead he provided excuses and justifications for his drug involvement. While Applicant's last marijuana use was in 2016, his recent use of additional illegal drugs

casts doubts on his intent and ability to refrain from future drug use. There is no evidence in the record that shows that this drug use occurred under circumstances that are unlikely to recur. Applicant's use and purchase of illegal drugs continues to cast doubt on his current reliability, trustworthiness, and good judgment with respect to his eligibility for a security clearance. AG ¶ 25(a) does not apply.

Applicant provided insufficient evidence to find that he has overcome his use of illegal drugs, or established a pattern of abstinence from his most recent illegal drug use starting in 2019. While Applicant abstained from any illegal drug use for about three years, he resumed using illegal drugs, and expanded his drug use beyond marijuana. Applicant started using drugs again while possessing a security clearance. Applicant admitted to using these drugs with friends at parties and music festivals. He provided no evidence that he has disassociated from his drug-using friends, and no longer attends events where illegal drugs are present. Furthermore, he provided no signed statement agreeing to abstain from future illegal drug use. AG ¶ 25(b) does not apply.

Applicant stated in his SCA that he stopped using marijuana in 2016 because his continued use would impact his career and future. He stated in his Answer that he knew illegal drug use is "not condoned" with a security clearance. He made a commitment to the government and his employer not to use illegal drugs when he applied for a security clearance. There is an entire section of the SCA that asks about "Illegal Use of Drugs or Drug Activity". Similarly, Applicant was asked by a government investigator about illegal drug use during his background interview. His admitted desire to experience new drugs with friends at parties and music festivals, clearly outweighed his professional commitments and responsibilities. Applicant's drug use is recent and it occurred while he held a security clearance. He cannot be trusted to follow the rules and regulations required to handle and protect classified information.

The Appeal Board has held that "a person who broke a promise to abide by drug laws after having been placed on notice that drug use is not compatible with access to classified information has not demonstrated the quantum of reliability expected of those with access to classified information." ISCR Case No. 16-03460 at 4 (App. Bd. May 24, 2018).

### **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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis.

In this case, Applicant offered little whole-person evidence to consider. He provided no documentary evidence in his answer to support his claims that he is an “outstanding employee” or an “upstanding citizen”. In fact, the record clearly shows otherwise. Applicant broke his commitment to the government and to his employer, to abstain from illegal drug use while possessing a security clearance. He repeatedly violated federal and state laws every time he used and purchased illegal drugs. Applicant’s Answer shows that he has no regard for the law, and he doesn’t think that he has to follow it.

Applicant puts his social life before his professional responsibilities, and does not possess the judgment, trustworthiness, or reliability to handle or protect classified information.

Applicant did not provide sufficient evidence to mitigate the security concerns of illegal drug use and purchase while granted access to classified information, or his earlier five-year involvement with marijuana. Applicant failed to clearly and convincingly commit to discontinue future drug involvement. All of this continues to cast doubt on his reliability, trustworthiness, and good judgment with respect to his eligibility for a security clearance. Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility for a security clearance.

### **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**

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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Ross D. Hyams  
Administrative Judge