



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 21-00341  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*  
04/06/2022

**Decision**

DORSEY, Benjamin R., Administrative Judge:

Applicant failed to mitigate the drug involvement and substance misuse and the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 21, 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 and Guideline E, personal conduct. Applicant responded on November 12, 2021, and requested a decision based on the written record in lieu of a hearing.

The Government’s written case was submitted on December 19, 2021. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on January 14, 2022. As of March 16, 2022, he had not responded. The case was assigned to me on March 17, 2022. The Government exhibits included in the FORM are admitted into evidence without objection. Applicant submitted no documents with his response to the SOR.

## Findings of Fact

Applicant is a 33-year-old employee of a defense contractor. He has worked for his current employer since October 2017. He earned a bachelor's degree in June 2010 and a master's degree in December 2012. Applicant has never been married and has no children. This is Applicant's first clearance application. (Items 2, 3, 4)

Applicant has a lengthy and consistent history of involvement with illegal drugs. Applicant used and purchased marijuana from September 2005 until December 2020. For at least some period within this timeframe, he used marijuana daily. He estimated that he has used marijuana at least a thousand times over the last decade. For several years starting in 2017, he illegally provided his own prescription medication to others. He used and purchased cocaine from 2011 until February 2020. Starting while he was in college and until 2016 or 2017, Applicant used psilocybin mushrooms with friends. He used prescription medications that were not prescribed to him, sold illegal drugs in 2011, and stated during the investigative process that he intended to continue to use marijuana. He alleged that unless he earned more money with a clearance than without one, his desire to use marijuana outweighed his desire to obtain a clearance. Applicant continues to associate with individuals with whom he has used illegal drugs. (Items 2, 3, 4)

Applicant justified his illegal marijuana involvement by comparing it favorably to other legal drugs such as alcohol, and maintained that he has never allowed his illegal drug involvement to impact his professional career. He stated that he intends to only use and possess marijuana going forward and that he will discontinue involvement with all other illegal drugs. (Items 2, 3, 4)

Applicant reported some, but not all of the illegal drug involvement he was required to on the Questionnaire for National Security Positions (SF 86) he submitted in November 2019. He discussed the remaining instances of his drug involvement during his March 2020 interview and in his interrogatory responses. He admitted that he was not fully candid when he filled out his SF 86 because he was trying to "save face" and protect his long-term job security because he was concerned his employer might review his completed SF 86. He did not want his employer to know about his drug involvement other than with marijuana and asserted that his employer does not need to know about it. He opined that if there were no legal repercussions for lying about his illegal drug use, he would probably lie about the use to a prospective employer. (Items 2, 3, 4)

Under Guideline H, the SOR alleged Applicant's aforementioned illegal drug involvement, his use of marijuana after completing his SF 86, and his stated intent to continue to use marijuana. Under Guideline E, the SOR alleged Applicant's failure to divulge his non-marijuana illegal drug involvement in his SF 86 despite being required to do so. In his response to the SOR, Applicant admitted all the SOR allegations without comment. All of the SOR allegations are established. (Item 1)

## Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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 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 the applicant or proven by Department Counsel." The applicant 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.

Section 7 of EO 10865 provides that adverse 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 Misuse

The security concern for drug involvement and substance misuse is set out 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in 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
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

From 2005 to December 2020 Applicant consistently possessed, sold, distributed, and used several different illegal drugs. He illegally used and distributed prescription drugs. He asserted in unequivocal terms that he plans to continue to use marijuana and made good on this assertion by using marijuana after completing his SF 86 and after his March 2020 interview. The above disqualifying conditions are applicable.

SOR ¶ 1.j. alleges that Applicant used and purchased marijuana after completing his SF 86 in November 2019. The underlying conduct is already alleged in SOR ¶¶ 1.a and 1.b. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. See ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). SOR ¶ 1.j is concluded for Applicant.

AG ¶ 26 provides conditions that could mitigate security concerns. 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;

(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; and

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed and abuse has since ended.

Applicant's illegal drug involvement from 2005 to 2020 was frequent and has continued into adulthood. His assertion that he will continue to use marijuana combined with the evidence that he continued to do so after submitting his SF 86 and after his interview show that the use is ongoing and is likely to recur. This continued marijuana use also precludes a finding that Applicant has established a sufficient pattern of abstinence. There is no evidence that he suffered from a severe or prolonged illness for which he was prescribed the prescription drugs he misused. Instead, Applicant misused drugs that he had never been prescribed.

None of the above referenced mitigating conditions are applicable, and Applicant's illegal drug use is not mitigated.

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

The security concern for personal conduct is set out in AG ¶ 15:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant deliberately failed to divulge his illegal drug involvement other than with marijuana on his certified SF 86 in several separate sections despite it being required. He admitted that he was not being candid and was worried that his employer would find out the full extent of his illegal drug involvement if he included it. The above disqualifying conditions are applicable.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. The following mitigating conditions potentially apply in Applicant's case:

(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 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.

AG ¶ 17(a) partially applies. Applicant divulged the full extent of his illegal drug involvement to the Government during his interview before being confronted with those facts. Applicant provided no evidence that he has divulged this information to his employer.

Falsification of an SCA is not "minor" because it "strikes at the heart of the security clearance process." ISCR Case No. 09-01652 (App. Bd. Aug. 8, 2011). As Applicant opined that he would likely lie about his drug use to a prospective employer in the future, there is insufficient evidence that Applicant has taken steps that make the behavior unlikely to recur.

"The application of disqualifying and mitigating conditions and whole person factors does not turn simply on a finding that one or more of them apply to the particular facts of a case. Rather, their application requires the exercise of sound discretion in light of the record evidence as a whole." See, e.g., ISCR Case No. 05-03635 at 3 (App. Bd. Dec. 20, 2006). Despite Applicant having partially met one of the mitigating conditions, none of the mitigating conditions fully apply, and personal conduct security concerns remain.

## **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 and Guideline E in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the drug involvement and substance misuse and personal conduct security concerns.

## **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
Subparagraph 1.a-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Subparagraph 1.k:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.c:	Against Applicant

## **Conclusion**

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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Benjamin Dorsey  
Administrative Judge