



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



In the matter of: )  
)  
) ISCR Case No. 21-01752  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin Thompson, Esq., Department Counsel  
For Applicant: *Pro se*  
07/01/2022

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**Decision**

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HEINTZELMAN, Caroline E., Administrative Judge:

Applicant did not mitigate the drug involvement while holding a security clearance security concerns. National security eligibility for access to classified information is denied.

**History of the Case**

Applicant submitted a security clearance application (SCA) on December 14, 2020. On August 6, 2021, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) alleging security concerns under Guideline H (drug involvement and substance misuse). Applicant answered the SOR on August 14, 2021, and requested a hearing before an administrative judge (Answer). The case was assigned to me on February 23, 2022. On March 8, 2022, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled for March 31, 2022. I convened the hearing as scheduled via video teleconference on Microsoft Teams.

I marked the March 3, 2022 case management order as Hearing Exhibit (HE) I; Department Counsel’s February 15, 2022 discovery letter as HE II; and Department Counsel’s exhibit list as HE III. Government Exhibits (GE) 1 and 2 and Applicant Exhibit (AE) A were admitted without objection. I received the complete transcript (Tr.) on April 11, 2021, and the record closed.

## Findings of Fact

Applicant is 38 years old and has been married to his wife since 2012. They have three children between the ages of seven and ten. In 2007, he received a Bachelor of Science in construction management, and he has worked as a construction engineer for his current employer, a defense contractor, since 2008. He was granted a top secret (TS) security clearance in 2010, and in September 2015, he was granted a TS security clearance with Sensitive Compartmented Information (SCI) access. (GE 1-2; Tr. 11, 17-18, 26)

Applicant admitted using hallucinogenic mushrooms on two occasions in about October 2018 and November 2020, after having been granted access to classified information, as alleged in the SOR. Applicant does not consider himself to be a drug user, rather he made a bad decision while he was grieving the death of his friend's father. He then repeated this mistake with the same friend "under the belief that the damage ... was already done ... ." (Answer; GE 1-2; Tr. 13, 21, 23)

In October 2018, Applicant's college friend's father passed away. The man had been a mentor to him. Applicant agreed leave his home that night and drive to another state, where his friend's family owns a ranch, to help them. Two nights after he arrived, Applicant's friend offered him hallucinogenic mushrooms after dinner. His friend was aware that Applicant had a security clearance. At the hearing, Applicant was unable to explain why he chose to ingest the mushrooms other than to relieve the grief that he was experiencing. They produced an overall helpful or pleasurable effect on him. He returned to his home a day or two later. (Answer; Tr. 20-22, 27-28)

When Applicant returned to work, he did not disclose his illegal drug use to his supervisor, facility security officer (FSO), or anyone else. He did not disclose his drug use to his wife. He continued to communicate with his friend during the subsequent two years almost exclusively via text messages. (Tr. 22)

In November 2020, Applicant's friend traveled to visit him, and they went to Applicant's mother's cabin to hunt elk together. While at the cabin, according to Applicant:

The night that I consumed the psilocybe again, he made it obvious that he had some and applied, I guess, a little bit of peer pressure that he, you know, he didn't want to do it alone and all of that kind of silly stuff.

Initially, Applicant resisted consuming the mushrooms, but he eventually did and had a negative experience. After returning home, he told his wife and mother what he had done, but he did not notify his FSO when he returned to work. (Tr. 13, 22-24)

In December 2020, Applicant disclosed his drug use in his SCA during the course of his periodic reinvestigation. He also disclosed it when he was interviewed in February 2021 by a Government investigator. Applicant's employer has never drug tested him, but his employer could test him at any time. He understands that his company's policy is that employees are not to use drugs. Applicant testified that in February 2021, he told a co-

worker and his director about his use of hallucinogenic mushrooms. (GE 1- 2; Tr. 24-26, 32-33)

While they were in college, Applicant used marijuana a few times with his previously mentioned friend. He used marijuana a total of approximately ten times, and he did not use it after he graduated from college in 2007. At the hearing, he admitted to using cocaine two times the summer after he graduated from high school. He also used hallucinogenic mushrooms two to three times late in college. This behavior was not alleged and will not be considered as disqualifying conduct. He testified that he disclosed all of this illegal conduct in the first SCA he completed in 2010. (Tr. 28-32)

Since Applicant's last use of illegal drugs in November 2020, he has avoided all contact with his friend and ignored his calls, text messages, and emails. He has not given his friend a reason for his lack of contact or for his behavior. Applicant's wife does not use drugs, and they do not keep drugs in their home. (Tr. 25, 28-29, 33-34)

Applicant provided documentation that on March 30, 2022, he received an email with the contact information to make an appointment with a provider within his employee assistance's program. When he is able to make an appointment, he intends to "talk with a counselor about [his] past errors in judgment after consulting with a friend about his experience ... ." (AE A; Tr. 34-35)

## **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**

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.

Applicant admitted he used hallucinogenic mushrooms once in October 2008 and again in November 2020. He held a TS/SCI security clearance both times he chose to use illegal drugs. Applicant’s admissions and the record evidence established the following disqualifying conditions under AG ¶ 25:

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

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

The burden shifted to Applicant to prove mitigation of the resulting security concerns. AG ¶ 26 provides conditions that could mitigate security concerns 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.

Appellant's decision to use hallucinogenic mushrooms, an illegal drug, twice, while holding a TS/SCI security clearance, cannot be considered a minor lapse in judgment, but rather a pattern of behavior that reflects his unwillingness to follow rules and regulations. Security clearance decisions are not limited to conduct during duty hours. Off-duty conduct, especially where it reflects poor judgment, provides a rational basis for the government to question an appellant's security worthiness. (*See, e.g., Cole v. Young*, 351 U.S. 536, 550 n.13 (1956); *Croft v. Department of Air Force*, 40 M.S.P.R. 320, 321 n.1 (1989)). Applicant's behavior showed a disregard for the law, regulations, and the fiduciary relationship he voluntarily entered into with the Government.

Applicant used marijuana, cocaine, and hallucinogenic mushrooms approximately fifteen to nineteen years ago. Once he started working for his current employer in 2008, he discontinued all drug use, until he visited his college friend's family after the friend's father died in October 2018. He used hallucinogenic mushrooms again with his friend in November 2020. He acknowledged that his employer has a policy against illegal drug use, and he was subject to drug testing.

Applicant credibly testified that he intends to no longer use illegal drugs; however, he was in his mid-thirties, married, and had children when he resumed his use of illegal drugs. All of his drug involvement occurred while he was working for his current employer and had held a security clearance for eight to ten years. Therefore, Applicant's assertions that he has stopped using illegal drugs were insufficient to overcome the concerns with respect to his past drug involvement. At this time, he did not demonstrate a lengthy enough pattern of abstinence, given the circumstances under which he chose to use illegal drugs. Applicant failed to establish mitigation under AG ¶¶ 26(a) and 26(b).

## **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. I also considered Applicant's favorable character evidence, including his intent to seek counseling, his 2020 disclosure of his illegal use in his SCA and to the Government investigator, and his 2021 disclosure of his illegal drug use to his director.

Applicant chose to use hallucinogenic mushrooms while working for his current employer and holding a TS/SCI security clearance. He used illegal drugs while he was in his mid-thirties, during marriage, and while he was a father. There has not been a sufficient passage of time to overcome the concerns with his drug involvement. I conclude Applicant has not met his burden of proof and persuasion. He did not mitigate the drug involvement or substance misuse security concerns or establish his eligibility to maintain a security clearance.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

## **Conclusion**

I conclude that it is not clearly consistent with the interests of national security of the United States to grant or continue Applicant's national security eligibility for access to classified information. Eligibility for access to classified information is denied.

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CAROLINE E. HEINTZELMAN  
Administrative Judge