



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



In the matter of: )  
)  
) ISCR Case No. 21-01370  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Karen Moreno-Sayles, Esq. & Allison Marie, Esq.,  
Department Counsel,  
For Applicant: Troy Nussbaum, Esq.

09/27/2022

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**Decision**

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GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the security concerns involving drug involvement and substance misuse. Eligibility for access to classified information is denied.

**Statement of the Case**

On August 31, 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 action was taken 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 adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on November 18, 2021 (Answer), and requested a hearing before an administrative judge. The case was assigned to me on March 1, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March

22, 2022, scheduling the matter for a virtual hearing on Microsoft Teams, for April 26, 2022. I convened the virtual hearing as scheduled.

At the hearing, I admitted in evidence, without objection, Government's Exhibits (GE) 1 and 3, and Applicant's Exhibits (AE) A through G. GE 2 consists of Applicant's June 2021 response to DOHA interrogatories, in which she adopted, subject to the corrections, additions, or deletions she made therein, three reports of investigation (ROI) that summarized her January 2020, May 2020, and September 2020 interviews with a background investigator, as accurate representations of the information she told the investigator during the interviews. Applicant objected to GE 2, on the basis that it was prejudicial due to the inaccuracy of the three ROIs. I overruled Applicant's objection to GE 2 and admitted GE 2 in evidence. Applicant testified and called one witness. DOHA received the hearing transcript (Tr.) on May 5, 2022. (Tr. at 6, 14-20; 108)

### **Findings of Fact**

In her Answer, Applicant admitted SOR ¶¶ 1.a through 1.e; she admitted, in part, and denied, in part, SOR ¶¶ 1.f and 1.g. At the hearing and without objection, Applicant amended her Answer to SOR ¶¶ 1.f and 1.g, admitting both allegations. She is 29 years old. As of the date of the hearing and since November 2021, she was separated from her spouse, whom she married in 2011, at age 18. She has a child from a previous relationship, a minor, who has special needs. (Answer; Tr. at 7, 21-29, 46-47, 57, 80-81; GE 1, 3)

Applicant graduated from high school in 2011. She earned an associate's degree in 2015 and a bachelor's degree in aerospace engineering in 2017. As of the date of the hearing, she was working towards her master's degree in aerospace engineering and mechanics. She worked for her employer, a DOD contractor, since March 2019. She initially worked 12-hour rotating shifts as a satellite controller, but she was promoted in approximately November 2020 to a satellite engineer. She was granted a security clearance in approximately 2019. (Answer; Tr. at 7, 21-29, 75, 79-81, 89; GE 1-3; AE A, F)

The SOR alleged that Applicant used: marijuana from approximately August 2008 to September 2019 (SOR ¶ 1.a); illegal stimulants (primarily ecstasy) from approximately August 2011 to August 2019 (SOR ¶ 1.b); hallucinogens (including mushrooms, LSD, and lab/synthetic hallucinogens) from August 2011 to August 2019 (SOR ¶ 1.c); cocaine from March 2015 to August 2019 (SOR ¶ 1.d); and prescription medication Adderall, not prescribed to her, from September 2010 to March 2015 (SOR ¶ 1.e). It also alleged that Applicant purchased hallucinogens on the dark web and then resold them between September 2011 and August 2019 (SOR ¶ 1.f); and purchased illegal stimulants on the dark web and then resold them between September 2011 and March 2017 (SOR ¶ 1.g).

Applicant acknowledged that curiosity would likely have led her to try drugs, but she attributed the extent of her drug involvement to her spouse's influence. She described him as an "incredibly chronic" marijuana user. When she met him, he was already supplying and selling drugs. He supplied her with a number of drugs, to include her first

experiences with MDMA (ecstasy), cocaine, LSD, hallucinogenic mushrooms, and lab-created hallucinogens. He encouraged her to continue to sell drugs in 2019 when she decided to stop, as further discussed below. He suffered from depressive episodes. During an episode, he consumed large quantities of alcohol “and other things,” and he abused her. She endured his abuse throughout their relationship, and his abuse worsened during the COVID-19 pandemic. After an abusive incident that left her “really scared” and felt different than before, she left him and took her son with her. Her fear of her spouse affected her ability to function, both while she was with him and since leaving him. Since leaving him, she attended weekly individual and group therapy, through which she learned coping mechanisms. She had no future intent to have any contact with him and she intended to seek a divorce. She had anxiety, difficulty concentrating, and memory loss, especially concerning anything related to him. She stated:

[I]t’s hard for me to remember anything that’s like associated with my husband. And the [drug] use, I don’t know if why, like the drug use for me is like very intertwined with him.

(Tr. at 29-30, 32, 35-36, 48, 48-53, 56-77, 80-81, 87-88, 93-94, 96-98; GE 1-3)

Applicant disclosed her drug involvement on her security clearance applications (SCA) from October 2019 (SCA 1) and August 2020 (SCA 2). After SCA 1, she was interviewed by a background investigator in January 2020 and May 2020. After SCA 2, she was interviewed by the same background investigator in September 2020. Applicant did not have a copy of SCA 1 or SCA 2 to reference during the interviews. She received and responded to GE 2, in which she adopted the ROIs that summarized her interviews with the background investigator, during the COVID-19 pandemic and the height of her spouse’s abuse. She did not review GE 2 as closely as she could have, she remembered things incorrectly, and she did not reference SCA 1 or SCA 2 when reviewing GE 2. She stated that her drug disclosures on SCA 1 most accurately reflected her drug involvement, since it was the closest in time to the period in which she was using, buying, and selling drugs. (Tr. at 53-56, 81-83, 89, 92-96, 98; GE 1-3)

Applicant used marijuana approximately monthly, from 2008 to 2015; she did not use marijuana between 2015 and September 2019; and she exercised bad judgment in September 2019 when she used marijuana with her spouse at a week-long music festival between the end of August and into September 2019. She used marijuana with her spouse and in social settings. She has not used marijuana since September 2019. (Tr. at 29-31, 33, 84-86, 88-89, 93-94, 98; GE 1-3)

Applicant used illegal stimulants between 2011 and 2019. She primarily used ecstasy and MDA, but she also used cocaine, amphetamines, methamphetamine, and prescription ADHD medication not prescribed to her, primarily Adderall. She used the illegal stimulants in social settings. She estimated that she used ecstasy “a couple of times a month,” from 2011 to 2015. She did not use ecstasy between 2015 and August 2019. In August 2019, she exercised bad judgment and used ecstasy with her spouse at the same music festival where she last used marijuana. She estimated that she used cocaine every three to six months, on around 10 occasions, from March 2015 to August

2019. In August 2019, she exercised bad judgment and used cocaine with her spouse at the same music festival where she last used marijuana and ecstasy. She has not used illegal stimulants since August 2019. (Tr. at 31-35, 38-40, 84-86, 88-89, 93-94, 98; GE 1-3)

Applicant used prescription ADHD medication, not prescribed to her, from approximately September 2010 to March 2015. She occasionally used amphetamines and prescription medication not prescribed to her, in college. She used methamphetamine once, in 2011, when she was in college. She used amphetamines and prescription medication not prescribed to her, in college “to focus or study for tests,” and she also used the latter once or twice to stay up to party. (Tr. at 31-35, 38-40, 84-86, 88-89; GE 1-3)

Applicant used LSD, hallucinogenic mushrooms, and lab-created hallucinogens from 2011 to 2016. She estimated that she used these hallucinogens “a couple of times a month” during this period. She did not use hallucinogens between 2016 and August 2019. In August 2019, she exercised bad judgment and used hallucinogens with her spouse at the same music festival where she last used marijuana, ecstasy, and cocaine. She has not used hallucinogens since August 2019. (Tr. at 35-36, 84-86, 88-89, 93-94, 98; GE 1-3)

Applicant used narcotics from approximately February 2012 to June 2014. She used heroin once, orally, out of curiosity. She also used prescription narcotic medication, as prescribed to her, for pain relief. She has not illegally used a narcotic since June 2014. (Tr. at 36-38; GE 1-3)

Applicant purchased and sold stimulants from approximately September 2011 to March 2017, and she purchased and sold hallucinogens from approximately September 2011 to August 2019. She did so with her spouse, who was already supplying and selling drugs when she met him. She stated, “Well, I literally didn’t have any time to myself, like we did everything together.” They purchased stimulants and hallucinogens from people they knew primarily through her spouse who were associated with drugs, and also on the dark web from an online black market that she learned of after reading about it. She could not recall the amount of stimulants and hallucinogens they purchased on the dark web; how often they purchased stimulants and hallucinogens on the dark web; or how much they spent on stimulants and hallucinogens on the dark web. She estimated that they purchased stimulants and hallucinogens from people they knew approximately twice monthly, and from the dark web approximately “a couple times a year.” She estimated that they spent in “the low hundreds” when they purchased stimulants and hallucinogens from the dark web. They purchased stimulants and hallucinogens for their personal use and to sell, out of their apartment, to people they knew from social events who were “heavy drug users.” (Tr. at 41-45, 61-75, 88-91, 94-95; GE 1-3)

Applicant stated that she was young, and she sold stimulants and hallucinogens, with her spouse, “mostly to buy groceries,” as she was in school full-time, her spouse was earning approximately \$30,000 annually, and they were “really struggling.” She was unsure how much they earned selling stimulants and hallucinogens, and estimated that it

was between approximately \$200 to \$500 per month. In approximately 2015, when the online black market through which they purchased stimulants and hallucinogens was shut down, their purchases of stimulants and hallucinogens from the dark web ceased. After graduating from college in 2017, she wanted to take her professional career seriously and be a good role model for her child, so she mostly stopped purchasing and selling stimulants and hallucinogens. On rare occasions between 2017 and 2019, she purchased and resold stimulants and hallucinogens to friends who wanted them, but not to generate income. The last time she distributed drugs to friends was at the 2019 music festival, where she last used marijuana, ecstasy, cocaine, and hallucinogens. When her husband pushed for her to continue to purchase and sell drugs, she told him “no.” (Tr. at 41-45, 61-75, 88-91, 96-97; GE 1-3)

Applicant has no future intentions to use illegal drugs or prescription drugs not legally prescribed to her. She stated that she has matured since her last period of drug involvement in 2019; she no longer socializes with individuals who used or sold drugs; and she no longer frequents places where drugs are used or sold. If she were to find herself in an environment where drugs are being used, she would say “no.” She signed a statement of intent in August 2021 not to use illegal drugs in the future, and agreed that any such violation is grounds for revocation of her security clearance. She wants to be a role model for her child. She had friends who battled narcotic addiction and died from overdoses. She also stated, “At my job I want to be seen as a leader. Someone who can mentor folks. I want to be respected in my field.” She described her responsibilities at work as:

I am the satellite buslead for two of our geosynchronous satellites. So I focus on . . . making sure the satellite is healthy . . . sitting in space correctly. I’m also the [payload operations development lead for] the satellite we’re about to launch . . . telling folks how to code everything . . . interfacing with a lot of different groups inside the company and outside the company. I also still do ops because I love ops. I love the interaction between folks. We have a lot of interns, I like mentoring them a lot.

(Tr. at 27-28, 30-31, 33-36, 38, 40, 45-46, 56-57, 86-87, 91-92, 96-97; GE 3; AE B)

Applicant completed an online drug and alcohol awareness class in August 2021. She was subject to random drug tests by her employer. She tested negative for drugs when she voluntarily submitted to a drug test in March 2022. She has never been diagnosed with a drug dependency. The director of the satellite control center in which she worked, while not privy to Applicant’s past drug involvement, described her as “one of the most dedicated, industrious, and trustworthy employees that I have worked with in over 35 years in the field.” She provided numerous other references from individuals attesting to her character, to include colleagues, former colleagues, peers, and friends, many of whom were aware of Applicant’s past drug involvement. All of them vouched for her maturity, reliability, and willingness to follow rules and regulations. She stated that while her immediate and second line supervisors were unaware of her past drug involvement, she was an “open book,” and would not be concerned if anyone were to find out. Her employer awarded her bonuses in 2020 and 2021 for her performance, and she

received a favorable performance review by her former employer in 2017. (Tr. at 75, 77, 91-92, 97; AE C-G)

A co-worker of three years who worked with Applicant on a weekly basis, and who was also a friend, testified. This individual held a security clearance. She stated that Applicant's superiors sought to recently increase Applicant's work responsibility, which was a testament to Applicant's favorable work performance. This individual stated that she was aware of Applicant's past drug involvement, and noted that Applicant was working hard to improve her life situation. She described Applicant as "a bright character and has a very strong intent to be a positive influence on her son . . . and is exceedingly passionate about her career path remaining in a positive trajectory." (Tr. at 99-107)

### **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 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(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."

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 Exec. Or. 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*

Exec. Or. 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 the following applicable conditions that could raise security concerns under AG ¶ 25:

- (a) any substance misuse . . . ; and,
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana from 2008 to 2015, and in 2019. She used illegal stimulants between 2011 and 2019. She used ecstasy from 2011 to 2015, and in 2019. She used cocaine from 2015 to 2019. She used prescription medication Adderall, not prescribed to her, from 2010 to 2015. She used hallucinogenic drugs from 2011 to 2016, and in 2019. She purchased illegal stimulants and hallucinogenic drugs on the dark web and then resold them between 2011 and 2015. AG ¶¶ 25(a) and 25(c) are established.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided 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 or misuse is grounds for revocation of national security eligibility.

Applicant testified that she had no intention to use, purchase, or sell illegal drugs in the future. She submitted a signed statement of intent in August 2021 that she would abstain from any drug involvement and substance misuse, and that violation of such would be grounds for revocation of her national security eligibility. She no longer socializes with individuals who use, buy, or sell drugs, to include her spouse from whom she separated in November 2021 with an intent to divorce. She also no longer frequents places where drugs are used or sold.

However, Applicant's drug involvement spanned a period of 11 years. As recently as 2019, when she was working for her current employer, she used marijuana, ecstasy, cocaine, and hallucinogens. She also purchased and sold illegal stimulants and hallucinogenic drugs on the dark web and then resold them between 2011 and 2015. Given her lengthy past drug involvement, the record evidence continues to raise doubts about Applicant's reliability, trustworthiness, and judgment. I find that AG ¶¶ 26(a), 26(b)(1), 26(b)(2), and 26(b)(3) are not established.

### **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. Overall, the record evidence leaves me with questions and doubts as to



Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns involving drug involvement and substance misuse.

### **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.g:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Candace Le'i Garcia  
Administrative Judge