



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



In the matter of: )  
)  
) ISCR Case No. 22-00074  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kelly M. Folks, Esq., Department Counsel  
For Applicant: *Pro se*

03/02/2023

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**Decision**

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Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns stemming from his illegal use of controlled substances. There is insufficient evidence to establish that Applicant falsified his 2018 application for a public trust position. Clearance is denied.

**Statement of the Case**

On April 18, 2022, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, drug involvement, and Guideline E, personal conduct, and explaining why it was unable to find it clearly consistent with the national security to grant him security clearance eligibility. The DOD CAF took the action 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On October 31, 2019, Applicant answered the SOR allegations. He admitted all the allegations in Paragraph 1 and did not answer Paragraph 2. In addition, he requested a decision on the written record instead of a hearing. On September 27, 2022, the Government prepared a File of Relevant Material (FORM), consisting of a brief, together with five attachments (Items 1 – 5) in support of its position. Applicant received a copy of the form on October 19, 2022, and was given 30 days to file a response. Applicant did not file a response, and on December 3, 2022, the case was assigned to me.

### **Preliminary Ruling**

I hereby take administrative notice, at Department Counsel's request, of the following:

- I. 21 U.S.C. §§ 802, 812, 813;
- II. *Adherence to Federal Laws Prohibiting Marijuana Use*, Director of National Intelligence, dated October 25, 2014; and
- III. *Security Executive Agent Clarifying Guidance Concerning marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*, Director of National Intelligence, dated December 21, 2021.

### **Findings of Fact**

Applicant is a 27-year-old, single man. He attended college from 2013 to 2017, earning a bachelor's degree in computer science. Since graduating, he has worked as a software developer. (Item 4 at 8)

Applicant has a history of using several different types of illegal drugs, including marijuana, LSD, and hallucinogenic mushrooms. (Items 2-4) He used marijuana approximately four to five times per week from October 2013 to June 2019. (Item 3 at 33-34) Marijuana helped him manage his anxiety. While in college, Applicant financed the purchase of his marijuana by selling old trinkets and used video games. (Item 5 at 3) Applicant stopped using marijuana because he felt that it no longer added any value to his life. (Item 5 at 3) Between January 2018 and March 2019, Applicant used LSD once and hallucinogenic mushrooms approximately three times. (Item 3 at 2) Applicant has no intentions of using illegal drugs in the future.

In March 2018, Applicant failed to disclose his illegal drug use in response to a question on a public trust position application. There is no record evidence as to whether he was confronted about this omission. Applicant disclosed his illegal drug use and discussed it at length on his 2021 security clearance application. (Item 3 at 32-34)

## **Policies**

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

## **Analysis**

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

The security concerns about drug involvement and substance abuse are set forth 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.

Applicant’s use of marijuana, LSD, and hallucinogenic mushrooms between 2013 and 2019, triggers the application of AG ¶¶ 25(a), “any substance abuse.” The following mitigating conditions are potentially applicable under AG ¶ 26:

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstance 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 action 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.

The majority of Applicant's substance misuse occurred while he was in college. Although he has not used any illegal drugs in more than three years, the passage of time alone is not enough to mitigate the security concern. He has provided no evidence of maturity, such as good job performance, positive character reference, or disassociation from drug-using associates that could alleviate doubt about reform and rehabilitation, nor has he provided a signed statement explicitly expressing an intent to discontinue marijuana. Nor has he established that he has developed an alternative method for dealing with his anxiety. Under these circumstances, none of the mitigating conditions apply. I conclude Applicant has not mitigated the substance misuse security concern.

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

Under this guideline, "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" (AG ¶ 15) Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The SOR alleges that Applicant intentionally falsified his 2018 application for a position of trust. The omission of information from a security questionnaire, on its own, does not establish an intentional falsification. The record must contain evidence of intent to mislead the Government. In this case, Applicant did not answer this allegation. I am therefore unable to ascertain whether he admitted it, denied it, or whether the omission was an oversight. Moreover, there is no evidence on file that Applicant was ever confronted about the omission on the public trust application. While the Government had a good-faith basis for the allegation, it failed to carry its burden of production to establish an intentional falsification. These facts, together with Applicant's full disclosure of his past drug use on a 2021 security clearance application, lead me to conclude that there are no personal conduct security concerns.

## **Whole-Person Concept**

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

(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.

I considered the whole-person concept in my application of the disqualifying and mitigating conditions of the guidelines, and they do not warrant a favorable conclusion.

### **Formal Findings**

Formal findings for 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.f:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Marc E. Curry  
Administrative Judge