



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



In the matter of:)	
)	
[REDACTED])	ISCR Case No. 22-00428
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Kent, Esq., Department Counsel
For Applicant: *Pro se*
03/09/2023

Decision

HESS, Stephanie C., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse). Applicant failed to mitigate the security concerns raised by her recent illegal drug use and prescription drug misuse. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (e-QIP) on August 6, 2021. On March 29, 2022, the Department of Defense (DOD) sent her a Statement of Reasons (SOR), alleging security concerns under Guideline H (Drug Involvement and Substance Misuse). The DOD acted under Executive Order (Ex. 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) effective June 8, 2017.

Applicant answered the SOR on April 26, 2022, and requested a decision on the record without a hearing. Department Counsel submitted the Government’s written case on September 15, 2022. On that same day, a complete copy of the file of relevant material (FORM,) which included Government Exhibits (GX) 1 through 4, was sent to Applicant.

The DOHA transmittal letter informed Applicant that she had 30 days after her receipt to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She received the FORM on September 28, 2022, and did not submit a response. The DOHA transmittal letter and receipt are appended to the record as Administrative Exhibit (Admin. Ex.) 1. The case was assigned to me on December 2, 2022. Government Exhibits 1 through 4 are admitted without objection.

Findings of Fact

Under Guideline H, the SOR alleges that Applicant used marijuana with varying frequency from about August 2015 until about June 2020; dimethyltryptamine (DMT) from about October 2019 until about June 2020; lysergic acid diethylamide (LSD) from about March 2017 until about March 2021; methylenedioxymethamphetamine (MDMA), also known as molly, or ecstasy, from about October 2018 until about March 2021; ketamine from about September 2019 until about February 2020; cocaine twice in about October 2017; psilocybin in February 2020; and that Applicant used the prescription medication Adderall that was not prescribed to her from about October 2017 until about December 2019.

The SOR also alleges that Applicant purchased LSD and MDMA at varying times during her periods of usage of each of the substances, that she purchased Adderall in about October 2017, and that she attempted to purchase cocaine in about September 2019. It also alleges that Applicant purchased marijuana from August 2015 until September 2020. Applicant admits each of the SOR allegations. Applicant's admissions are incorporated in my findings of fact.

Applicant, 25, is a quantum sciences researcher employed by a defense contractor since July 2021. She received her bachelor's degree in 2019. This is her first application for security clearance. (GX 3.)

The information in the record regarding Applicant's drug abuse is derived from her August 2021 e-QIP. Applicant also discussed her drug use with the investigator during her personal subject interview (PSI) in September 2021, and in her answer to the SOR.

In response to the questions under Section 21 – Illegal Use of Drugs or Drug Activity on her August 2021 e-QIP, Applicant set forth her use of illegal drugs and misuse of prescription drugs. In response to the "provide explanation" sections of the drug-use related questions, Applicant described her drug use in a narrative format. She also provided estimated dates of first use and last use. In response to the section where she was required to "provide nature of use, frequency, and number of times used" Applicant listed the dates of use, her characterization of the frequency of use, and the drug used. Applicant also discussed her drug use during her September 2021 PSI.

Applicant first smoked marijuana in the summer of 2015. She characterizes this use as "experimental." She smoked with a former friend from high school with whom she has not associated since that time.

From the fall of 2015 until 2017, Applicant was a university student and smoked marijuana occasionally. Applicant does not state her definition of “occasionally.” Applicant transferred out of this university in 2017, and only maintained a relationship with one of her friends. She disassociated herself from all her other drug-using associates at this university.

In March 2017, while Applicant was visiting her remaining friend at the university Applicant previously attended, she used LSD on a single occasion. Applicant characterizes this use as experimental.

Applicant stated on her e-QIP that she used cocaine twice in October 2017 while hanging out with some friends from her sorority. However, she told the investigator during her PSI that she used cocaine on another occasion while hanging out with the same friends. She disassociated herself from the people with whom she used cocaine.

On her e-QIP, Applicant stated that she also used MDMA one time and misused Adderall one time in October 2017. She characterizes the use of these two drugs as experimental.

Between June and December 2018, Applicant characterizes her marijuana use as frequent, smoking marijuana on a weekly basis, primarily with her two housemates. One of her housemates was her remaining friend from the university Applicant previously attended. In June 2018, Applicant used LSD with her housemates. She characterizes this use as experimental. Her friend from Applicant’s former university moved out of their shared house in January 2019 and Applicant has not had any contact with this friend since that time.

Applicant misused Adderall occasionally between June 2018 and June 2019 with her housemate(s). She stated in her PSI that she misused Adderall a total of six to eight times total. Between January and June 2019, Applicant used marijuana on an occasional basis with her remaining housemate. In March 2019, Applicant used LSD with her housemate. She also used MDMA one time in March 2019. Applicant characterizes the use as of these two drugs as experimental. Applicant has not associated with her former housemate since December 2019.

Between June and August 2019, Applicant did not use any illegal drugs or misuse any prescription drugs because she was living in a “drug-free environment.” Applicant was living with her father.

Applicant stated on her e-QIP that in August 2019, she moved into a new house where she had not met most of the people who also lived there. Applicant was unaware that her housemates were drug users until after she had moved in. While living there until March 2020, Applicant describes her marijuana use as “very occasional.” She also “occasionally used LSD and experimented with DMT and psilocybin mushrooms.” She stated that she used DMT one time and MDMA one time in October 2019 and psilocybin mushrooms one time in February 2020. She also misused Adderall between September

and December 2019 with her housemates. Applicant misused Ketamine three or four times between August 2019 and March 2020 with her housemates who provided it.

During her PSI, Applicant stated that from 2019 until March 2020, she used LSD monthly. Applicant stated that after March 2020, she used LSD on a more infrequent basis. She also stated that she used mushrooms two times between March 2017 and March 2021 but was not able to recall the exact dates. She stated that she used the mushrooms with friends, however she felt nauseous and vomited both times she used them.

On her e-QIP, Applicant stated that she purchased marijuana from August 2015 until September 2020 “from former drug-using associates on a small scale, for myself to use, occasionally during this time period.”

Between September 2018 and September 2019, Applicant purchased a small amount of MDMA from a former associate. She also attempted to purchase MDMA online on the “dark web.”

The dark web is the set of webpages on the World Wide Web that cannot be indexed by search engines, are not viewable in the standard web browser, require specific means (such as specialized software or network configuration) in order to access, and use encryption to provide anonymity and privacy for users. <https://www.merriam-webster.com>

In March 2017, Applicant purchased LSD one time from a friend. On her e-QIP, she explained that in September 2019 she purchased LSD through the “dark web” while a friend guided her through the transaction. She stated she “was hesitant to use this method ever again and so did not.” She also stated that she “may have exchanged cash on other occasions as well but I do not remember exact dates or times.” During her PSI, Applicant stated that she would purchase LSD on the “dark web” and it would then be mailed directly to her home.

Between October 2017 and December 2019, Applicant purchased Adderall from a friend who had it. On her e-QIP, Applicant stated that she did not ever purchase cocaine. In September 2019, she attempted to purchase cocaine on the “dark web,” however, she was not successful. She submitted her payment and after the transaction was complete, “it was clear that I would not receive this product.”

Throughout her responses to the drug-related questions on the e-QIP, Applicant repeatedly listed the mitigating factors regarding her past drug use. Specifically, Applicant noted her disassociation from her drug-using associates and her move in March 2020 out of an environment where drugs were used.

In March 2020, Applicant moved out of the house she had been living in with housemates since August 2019 and moved in with her mother. In her e-QIP, she states,

I moved out in March 2020 to avoid the environment where drugs were used, and have not kept in close contact with these people (outside of seeing two of these people for lunch on two separate occasions, where there was no alcohol or drug use involved). This demonstrates my disassociation from these drug-using associates, as well as my changing or avoiding this environment where drugs were used.”

Applicant continued to use illegal drugs from March 2020 until March 2021. Her last stated marijuana use was in June 2020. She describes her other drug use as follows:

Occasional LSD use. One MDMA experimental use. Two of the LSD use cases were with two other people, one of whom is a friend I made in college, and the other was someone she went to high school with that I am not close with. Since then, the friend I made in college has also, like me, made the decision to lead a drug-free lifestyle. Another LSD use case was a situation where I was the only user, and was with a friend who is not a drug user. This friend is very encouraging of me leading a healthy, drug-free lifestyle. The final LSD and MDMA use case was with a friend who did not use LSD, but used MDMA. This incident was potentially a contributing factor to this friend’s subsequent hospitalization. Since this incident, this friend and I have both resolved to commit to a healthy, drug-free lifestyle.

It is unclear from Applicant’s statements in her e-QIP and during her PSI if she purchased the marijuana, MDMA, and LSD that she used between March 2020 and March 2021, or how she otherwise obtained these drugs.

On her e-QIP, Applicant concluded her comments with the following statement:

Overall, I acknowledge my former drug involvement and substance misuse . . . I have provided [evidence] of my actions that I have taken to mitigate concern. I have disassociated from drug-using associates and contacts, and have changed and avoided the environment where drugs were used in the past. I have an excellent support system of substance-free friends and family members, and am committed to and look forward to continuing to lead a healthy, happy, and drug-free life.

Applicant stated during her PSI that she went through an experimental phase of drug use while attending college and feels she has passed that period. She further stated that she no longer associates with the same crowd of people and she is focused on her career and future. With her answer, Applicant provided a statement of intent to abstain from all drug involvement and substance misuse wherein she acknowledged that future involvement or misuse is grounds for revocation of national security eligibility. Applicant stated her answer to the SOR that she disclosed her prior drug use to her employer. However, there is nothing in the record that suggests that Applicant’s employer or any other entity with the power to revoke Applicant’s national security eligibility is screening her for illegal drug use or substance misuse.

In her April 2022 answer to the SOR Applicant stated:

I acknowledge my drug involvement and substance misuse. I have since changed my environment and group of associates, and have full support for my family to continue in my drug and substance misuse-free lifestyle. I have not use substances since March 2021, and am demonstrating this continued sobriety by submitting to voluntary monthly drug tests with my doctor since April 2022.

In the college environment I was a part of, drug use was normalized. This consistent normalization in such an adolescent environment led to my drug substance misuse. Because of this normalization and, quite frankly, my stupidity at the time, I did not fully realize the impact of my actions, both on my internal health and on my future career prospects. It was not until a friend of mine was hospitalized in March 2021, in part due to the substance use we both partook in, that I really had a wake-up call and realized how poorly I had been treating my health. That realization, combined with the realization that many of the serious career aspirations I had would require a drug-free lifestyle, is what led me to making the decision to halt all substance misuse for good. I have not used drugs or misused substances since March 2021.

Additionally, I have begun the process of seeking counseling with a licensed clinical therapist not only discuss how my past misjudgments have affected me, but also take a drug evaluation assessment to demonstrate an applicable prognosis by a duly qualified medical professional.

Applicant did not respond to the FORM. There is no record evidence of the results of Applicant's monthly drug tests that began in April 2022, nor is there any information regarding counseling.

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant's meeting the criteria contained in the AG. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative

judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. "Substantial evidence" is "more than a scintilla but less than a preponderance." See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant's security suitability. See ISCR Case No. 92-1106 at 3, 1993 WL 545051 at *3 (App. Bd. Oct. 7, 1993).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline is set out in AG ¶ 24:

The illegal use of controlled substances . . . 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 admissions, corroborated by the record evidence, establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse; and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution

The following mitigating conditions may also apply:

AG ¶ 26(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

AG ¶ 26(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;
- (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 first used marijuana in high school in 2015 and continued to use marijuana with varying frequency, at times weekly, until June 2020. In 2017 while in college, she used LSD, cocaine, and misused Adderall. In 2018 she continued to use marijuana and used MDMA and LSD. In 2019 to 2020 she continued to use marijuana. She also used DMT, MDMA, ketamine, psilocybin mushrooms twice and misused Adderall. Between 2015 and June 2020, she illegally purchased marijuana, LSD, MDMA, and Adderall. She purchased LSD and also attempted to illegally purchase MDMA and cocaine on the "dark web."

Applicant stated in PSI and in her answer to the SOR that her drug use was due to the normalization of drug use in her college environment. On her e-QIP, Applicant also stated that she transferred colleges in 2017 to leave the environment where drugs were used. However, Applicant graduated from college in 2019. In August 2019, Applicant

moved into a house with drug users and Applicant began using more types of illegal drugs that she had used while she was in college.

Throughout her e-QIP, Applicant states that she disassociated herself from her drug-using associates each time she moved. However, from 2015 through March 2020, she continued to make friends with and live with drug-using associates. Applicant also minimizes magnitude of her drug use on her e-QIP by referring to each of multiple uses of the same drugs as “experimental.” Additionally, she refers to having purchased LSD on multiple occasions as having possibly “exchanged cash” for the drugs. Further, on her e-QIP, Applicant stated that she used cocaine twice and psilocybin mushrooms once. However, during her PSI, she admitted that she used cocaine three times and psilocybin mushrooms two times.

Applicant emphasizes that in March 2020 she moved out of the house where her housemates were drug users with whom she regularly used various drugs, “to avoid the environment where drugs were used.” She moved in with her mother where she currently resides. Yet, between March 2020 in March 2021, Applicant continued to use illegal drugs. Specifically, at various points during this time period, Applicant used marijuana, DMT, MDMA, and LSD. She also continued to illegally purchase drugs.

Applicant asserted that beginning in April 2022, she voluntarily underwent monthly drug testing. She did not provide the results of any of those tests. Additionally, Applicant stated that she was actively seeking counseling to address her issues related to her prior illegal drug use and prescription drug misuse. There is no supporting documentary evidence that she is or was participating in counseling. Applicant did submit a statement of intent to abstain from future drug use, however, there is no evidence that shows that Applicant is subjected to any type of drug screening through her employment.

There are no bright line rules for determining when conduct is recent. The determination must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

In considering the totality of the evidence, particularly Applicant’s long period of illegal drug use from 2015 until 2021, to include purchasing illegal drugs and prescription drugs not prescribed to her, her minimizing of her drug-using conduct, and her repeated disassociation with drug-using associates followed by Association with different drug-using associates, I conclude that Applicant’s illegal use was recent and casts doubt on her current reliability, trustworthiness, and good judgment. Further, the record does not contain any corroborating evidence of Applicant’s assertions that she no longer uses illegal drugs. AG ¶¶ 25(a) and 25(c). None of the mitigating conditions apply.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a).

I have incorporated my comments under Guidelines H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but I have also considered the following:

Applicant reported her illegal drug use and purchases and her prescription drug abuse and purchases on her e-QIP, discussed her drug-related conduct during her PSI, and admitted each of the SOR allegations and discussed her drug-related conduct in her answer to the SOR. However, she is dismissive about her extensive illegal drug use and drug-related conduct, stating that the normalization of drug-use in her college environments was the catalyst of her behavior. Yet, after she graduated from college in December 2019, she continued to use and purchase illegal drugs until March 2021.

After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her conduct. Accordingly, I conclude she has not carried her burden of showing that it is clearly consistent with the national interest to grant her eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H (Drug Involvement):	AGAINST APPLICANT
Subparagraphs 1.a – 1.m:	Against Applicant

Conclusion

I conclude that 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.

Stephanie C. Hess
Administrative Judge