



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



In the matter of:	)	
	)	
XXXXXXXXXXXXXXXXXXXX	)	
	)	ISCR Case No. 22-00813
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

**Decision**

\_\_\_\_\_  
04/06/2023

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Department of Defense’s intent to deny his eligibility for access to classified information. Applicant has not mitigated the security concern raised by his use of illegal drugs. Eligibility is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on June 8, 2021. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on June 6, 2022, detailing security concerns under Guideline H, Drug Involvement and Substance Misuse. The DOD CAF acted 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an Answer to the SOR on June 7, 2022 (Answer), and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On September 29, 2022, Department Counsel submitted the Government’s file of relevant material (FORM), including documents identified as Item 1 through 4. (Items.) Applicant was sent the FORM on September 30, 2022, and received

it on October 11, 2022. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant responded to the FORM on November 9, 2022 (Response). Department Counsel did not object to Response. The SOR and the Answer (Items 1 and 2, respectively) are the pleadings in this case. Items 3 and 4 are admitted without objection. The case was assigned to me on December 1, 2022.

### **Findings of Fact**

Applicant is 28 years old and a high school graduate (2013). He attended community college for about three months in the fall of 2013. He married in April 2018 and has one child, a daughter age four. He purchased a home in November 2019. From September 2015 to March 2021, he worked as a support engineer for a large cloud computing company. Since March 2021. He has been employed as a data center technician for a defense contractor. He has never held a clearance. (Item 3 and Response.)

The SOR alleged that Applicant: (1) used marijuana with varying frequency from about November 2010 until at least October 2020; and (2) purchased marijuana with varying frequency from about November 2010 until about October 2020. (Item 1.) Applicant admitted the SOR allegations. (Item 2.)

In his July 7, 2021 Personal Subject Interview (PSI), Applicant described his marijuana use from November 2010 to October 2020. His use was experimental and to be sociable. He used with a friend, AA, at another friend's house. The drug was obtained by AA. He only bought marijuana once, and that was from AA. AA still used drugs but Applicant did not know which drugs or in what amounts. The marijuana made him feel relaxed but had no impact on his personality, judgment, reliability, work, or friends. He had no intent to use illegal drugs in the future. He was not dependent on marijuana. (Item 4.)

Applicant described his LSD use from March 2015 to May 2017. He used LSD as an experiment after seeing a movie. He used it twice, with his friend, AA, who obtained it. It made him feel anxious and uncomfortable. The use took place once at a hotel room and once at a college dorm but had no impact on his personality, judgment, reliability, work, or friends. He has no intent to use illegal drugs in the future. He was not dependent on LSD. (Item 4.)

In his PSI, Applicant described his cocaine use in July 2016. He used it once. He used it with a friend, BB, at a bar. BB obtained it. It made him feel hung over but had no impact on his personality, judgment, reliability, work, or friends. He had no intent to use illegal drugs in the future. He is not dependent on cocaine. (Item 4.)

AA is one of Applicant's friends from high school. They now live in different and not adjacent states. They text and play games "every once and a while." He stated: "But we don't see each other every other month. Only when my family and I come visit my

parents in [AA's state] or when [AA] comes to [Applicant's state] to visit. So we only see each other 2-5 times a year." BB was a friend from middle school through high school. They drifted apart. They text or talk to each other perhaps once a year. (Item 4.)

In Applicant's May 24, 2022 response to a DOHA Interrogatory asking the last time he used marijuana, he said: "I genuinely can't remember the last time I used marijuana or a THC product. It's been about 2 years now. 10/2020 would be a rough guess as to the last time." (Item 4.) In his Response, he stated that "it's been almost 3 years since I used any THC/Marijuana product." (Item 4.) In his Response to the FORM, he stated his regret for his past use of marijuana and also emphasized that he is now a husband, a father, and the primary provider for his family.

## **Discussion**

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

Under Adjudicative Guideline (AG) H, suitability of an applicant may be questioned or put into doubt because drug use can both impair judgment and raise questions about a person's ability or willingness to comply with laws, rules, and regulations. AG ¶¶ 24, 25, and 26 set forth the concern and the disqualifying and mitigating conditions.

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.

In analyzing the facts of this case, I considered the following disqualifying conditions:

AG ¶ 25(a) any substance misuse (see above definition); and

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

Applicant admitted to purchasing marijuana (once, from AA) and using marijuana from November 2010 to October 2020. Facts admitted by an applicant in an answer to an SOR require no further proof from the Government. ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) AG ¶¶ 25(a) and (c) apply.

Marijuana is a Schedule I controlled substances, and possession of it is regulated by the federal government under the Controlled Substances Act. 21 U.S.C. § 811 *et seq.* The knowing or intentional possession and use of any such substance is unlawful and punishable by imprisonment, a fine or both. 21 U.S.C. § 844. In an October 25, 2014 memorandum, the Director of National Intelligence affirmed that the use of marijuana is a security concern. James R. Clapper, Director of National Intelligence, Memorandum: *Adherence to Federal Laws Prohibiting Marijuana Use* (October 25, 2014). See also <http://www.dea.gov/druginfo/ds.shtml>.

More recently, on December 21, 2021, the Director of National Intelligence signed the memorandum, *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*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

I have also considered the following mitigating conditions under AG H:

AG ¶ 26(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and 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: and
- (3) providing a signed statement of intent to abstain from all future drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Under AG ¶ 25(a), Applicant’s marijuana use started in November 2010, which is quite long ago. It continued, however until October 2020. So it did recur during that 10-year period and ended quite recently. Therefore, Applicant’s illegal drug usage is not mitigated by AG ¶ 25(a).

The key under mitigating factor AG ¶ 26(b) is the “pattern of abstinence.” Subparts (1) through (3) are simply nonexclusive examples of how such a pattern may be shown. It seems that certain changes in Applicant’s life have operated to disassociate him from his former drug-using friends. In particular, he and AA now live in different, not adjacent, states and see each other only several times a year. Similarly, he is now a homeowner, married, and the father of a four-year old child. So, the former drug-using environment is no more. These are all salutary changes.

Here, the “pattern of abstinence” must be weighed against a lengthy period of marijuana use. Applicant began his marijuana use in high school in 2020, not a particularly unusual time or place for that to happen. He did, however, continue that recreational use until about October 2020, by his own estimate. He claimed he is not dependent on marijuana and has no intent to use it in the future. There is nothing in the record that contradicts his representations. But his 10 years of prior marijuana use outweigh his recent few years of abstinence. This is not to minimize his current track record of abstinence; it is commendable. If he continues on his present path, he could be a worthy candidate for reapplication. At this point, however, it is not sufficient to mitigate his extended history of marijuana use. I must find against him on SOR ¶ 1.

I find that Applicant’s one-time use of cocaine and his twice-use of LSD do not raise national security concerns.

The record raises doubts about Applicant’s reliability, trustworthiness, judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept. AG ¶¶ 2(d)(1) through (9) and 2(f)(1) through (6). Accordingly, I conclude that Applicant has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him 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 SOR allegations:

Paragraph 1, Guideline H:	Against Applicant
Subparagraphs 1.a-1.b:	Against Applicant

## **Conclusion**

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. Clearance is denied.

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Philip J. Katauskas  
Administrative Judge