



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01993
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Erin P. Thompson, Esq., Department Counsel  
For Applicant: *Pro se*

06/14/2023

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**Decision**  
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BLAZEWICK, Robert B., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, drug involvement and substance misuse, raised by his past use of marijuana, hallucinogenic mushrooms, and cocaine. Applicant admitted his infrequent use of drugs while in high school and college, no longer associates with friends who continue to use drugs, has abstained from use of any illegal drugs for over a year, admits it was immature, regrets his prior use, and pledges to abstain from any future use. Applicant’s eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 18, 2022. On November 9, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). DOD issued the SOR 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

When Applicant answered the SOR on December 8, 2022, he admitted all three allegations and requested a decision based on the administrative (written) record, without a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

On February 14, 2023, Department Counsel submitted the Government's File of Relevant Material (FORM Items 1 and 2 are the pleadings in the case - the SOR and the Answer). Items 3 and 4 were offered as substantive evidence.

The FORM was mailed to Applicant on February 14, 2023. He was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation. He was given 30 days from receipt of the FORM to do so. He received the FORM on February 28, 2023. He responded on March 1, 2023, and submitted comments. He did not note any objections to the Government's proposed evidence. FORM Items 3 and 4 are admitted into evidence.

### **Findings of Fact**

Applicant admitted SOR ¶¶ 1.a - 1.c and provided some comments. He answered DOHA's interrogatories on October 12, 2022, without further comment. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is a 23-year-old contractor. (Item 3 at 3) He has never been married and has no children. (Item 3 at 18-19) He earned his associate degree in May 2020 and bachelor's degree in May 2022. (Item 3 at 9-10) He has been employed as a contractor since June 2021. (Item 3 at 11) He has not served in the military. (Item 3 at 16)

The allegations in the SOR concern Applicant's sporadic use of marijuana from about June 2016 to about March 2022 (SOR ¶ 1.a); his use of hallucinogenic mushrooms on approximately three occasions between June 2020 and November 2021 (SOR ¶ 1.b); and his use of cocaine on approximately two occasions between July 2020 and June 2021 (SOR ¶ 1.c).

Applicant used marijuana recreationally with varying frequency while in high school and college, from about June 2016 to March 2022. Applicant believes he used marijuana on no more than 40 occasions over that six-year period. While in college, he used hallucinogenic mushrooms on approximately three occasions between June 2020 and November 2021 and he used cocaine on approximately two occasions between July 2020 and June 2021. (Items 2-4 and Applicant's Response to the FORM)

Applicant admitted his use of drugs in his SCA, in his adopted subject interview of July 5, 2022, in his answer to the SOR, and in his response to the FORM. (Items 2-4 and

Applicant's Response to the FORM). His statements have remained consistent. He stated he has not used hallucinogenic mushrooms for over 18 months, cocaine for almost two years, and marijuana for over a year. He further stated he no longer associates with friends who continue to use drugs. In his subject interview, he provided the names those with whom he used drugs and contact information for the friends he still associated with but whom, he said, also no longer use illegal drugs. He stated he regrets his former drug use, it was foolish and immature, and he pledges to abstain from any future use. (Items 3-4 and Applicant's Response to the FORM)

### **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." 484 U.S. 518, 531 (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 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision."

A person who seeks access to classified information enters 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.

## Analysis

### Guideline H, Drug Involvement and Substance Misuse

AG ¶ 24 articulates the security concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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 his drug use in his May 2022 SCA, his July 2022 interview with a government investigator, his answer to the SOR, and his March 2023 response to the FORM. His drug use has been relatively recent.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

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

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

AG ¶ 25(a) applies because the illegal use of marijuana, hallucinogenic mushrooms, and cocaine, all Schedule I controlled substances under 21 U.S.C. § 812(c), constitute substance misuse. AG ¶ 25(c) also applies.

I have considered the mitigating conditions 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;

(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 is grounds for revocation of national security eligibility.

Considering all the evidence, mitigating conditions AG ¶ 26(a) and AG ¶ 26(b)(1)-(3) are satisfied. Applicant acknowledged his prior drug use in his SCA. He states he has disassociated himself from his prior drug-using friends. His last drug use was in college, and he graduated in May 2022. He stated in his SCA and in his response to the FORM that he intends to abstain from all drug involvement and understands any such involvement could affect his eligibility. He has established a pattern of abstinence and though the time period has been relatively short, his statements appear to be sincere.

### **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.

The use of illegal substances is incompatible with eligibility for a security clearance and can raise questions about an individual's reliability and trustworthiness. Applicant is cautioned that any future use of an illegal substance could render him ineligible to hold a security clearance.

I conclude Applicant provided sufficient evidence to mitigate the security concerns about his drug involvement and substance misuse. Overall, the record evidence leaves me satisfied as to Applicant's eligibility for a security clearance.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant

### **Conclusion**

In light of all the circumstances presented, it is clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

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Robert B. Blazewick  
Administrative Judge