



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



In the matter of:	)	
	)	
	)	ISCR Case No. 22-01984
	)	
Applicant for Security Clearance	)	

**Appearances**

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

07/11/2023

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**Decision**  
\_\_\_\_\_

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the personal conduct security concern, but he did not mitigate the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 14, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement) and Guideline E (personal conduct). The action was taken 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 adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on January 8, 2023, and he elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on February 27, 2023. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity

to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on March 14, 2023. He responded to the FORM (FORM Response) on April 17, 2023, and I have marked his response as Applicant's exhibit (AE) A. The case was assigned to me on June 1, 2023. The Government's documents, identified as Items 1 through 4, and AE A, are admitted in evidence without objection.

### **Findings of Fact**

Applicant admitted all the SOR allegations in his Answer. He is 25 years old. As of his May 2022 security clearance application (SCA), he was not married, and he did not have any children. He graduated from high school in 2016 and earned a bachelor's degree in December 2021. He worked part time as a self-employed freelance web developer from December 2020 to December 2021. He was unemployed and financially supported by his parents from December 2021 to June 2022, at which time he moved from state A to state B and began working as a software engineer for his employer, a DOD contractor. He has never held a security clearance. (Items 1-4)

Applicant used and purchased marijuana with varying frequency from approximately May 2015 to March 2022. (SOR ¶¶ 1.a, 1.b, 2.a) He first used marijuana out of curiosity during his junior year of high school in state A. He continued to use it socially with friends, at his or a friend's residence, between five times daily and five times weekly. He also ate edible marijuana brownies once every three to six months. He also purchased it for his personal use. After it was legalized in state A in approximately late 2018, he purchased it from licensed marijuana dispensaries in state A. He also purchased it from such dispensaries when he visited state B. (Items 1-4)

In March 2022, Applicant stopped using marijuana. He wanted to focus on his job search and reduce his feelings of anxiety and lack of motivation that he associated with his marijuana use. He stated in his SCA that he saw the negatives of continued marijuana use once he was no longer in college or around the people with whom he used marijuana, and he had also become comfortable with the idea of using marijuana upon its legalization in state A. He realized it would have been beneficial for him to stop using marijuana earlier. In his FORM Response, he stated that he highly values progressing in his chosen profession, which is in contradiction with using drugs, and he reiterated his intention to abstain from marijuana use. He underwent pre-employment drug screening by his employer in May 2022, and he has never been informed that he tested positive for drugs in a drug test. (Items 1-4; AE A)

Applicant continues to associate with two friends with whom he previously used and purchased marijuana, and one of these friends has been his roommate since October 2022. Both friends continue to use marijuana. Although he requested that both friends not use marijuana in his presence, he was aware, in November 2022 when he responded to DOHA interrogatories, that his roommate used and stored marijuana-related paraphernalia somewhere in their residence and he had been around his roommate two to four times monthly while his roommate was under the influence of marijuana. Despite his request, his other friend had also used marijuana in his presence

approximately once monthly. In his FORM Response, he stated that he made it clear to his roommate that there is to be no marijuana use in their residence, and if his roommate kept marijuana in their residence, it must be concealed from him. He stated that his other friend follows these conditions when he visits Applicant. He stated that both friends respect his decision to focus on progressing in his career and abstaining from marijuana. His parents and sibling are aware of his marijuana involvement. (Items 1-4)

Applicant also used and purchased hallucinogens, including lysergic acid diethylamide (LSD) and psilocybin mushrooms, with varying frequency and on various occasions, from approximately December 2015 to September 2016. (SOR ¶¶ 1.c, 1.d, 2.a) He was introduced to hallucinogens in high school by friends with whom he no longer associates. He used LSD approximately three times and psilocybin mushrooms once, out of curiosity and social pressure. He contributed money so that his friends could purchase these hallucinogens from dealers. He found that the hallucinogens made him anxious, which he did not enjoy, so he decided to never use them again. He stated in his FORM Response that he has removed himself from the individuals with whom he used hallucinogens, and that he remained in contact with one individual, who “is rarely in my life, with only occasional text messages.” (Items 1-4; AE A)

### **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(c), 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 EO 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* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## **Analysis**

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

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse as:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant: “(a) any substance misuse . . . ;” “(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;” and “(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.”

Applicant used and purchased marijuana between 2015 and 2022. He also used and purchased hallucinogens between 2015 and 2016. He continues to associate with two friends with whom he previously used marijuana, one of whom is his roommate, and he knows that his roommate keeps marijuana or marijuana-related paraphernalia in their residence. AG ¶¶ 25(a), 25(c), and 25(g) are established.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

(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 used and purchased hallucinogens four times between December 2015 and September 2016, nearly seven years ago. He removed himself from the individuals with whom he used hallucinogens and has only rare text message contact with one such individual. AG ¶¶ 26(a), 26(b)(1) and 26(b)(2) are established for SOR ¶¶ 1.c and 1.d, and I find those allegations in Applicant's favor.

Applicant used and purchased marijuana more extensively, between May 2015 and March 2022. His last use is recent enough that I cannot find that it is unlikely to recur. He continues to associate with the individuals with whom he used marijuana, one of whom is his roommate. While he expressed his intent to continue to abstain from marijuana, he did not provide a signed statement of intent to abstain from all drug involvement and substance misuse. I also have concerns about his willing awareness that his roommate continues to use and store marijuana in their residence, despite him telling his roommate to not do so. I find that none of the above mitigating conditions are established for SOR ¶¶ 1.a and 1.b.

### **Guideline E: Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

- (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing; . . .

Applicant's parents and sibling are aware of his marijuana involvement, and his use and purchase of hallucinogens happened nearly seven years ago. AG ¶ 16(e)(1) is not established and I find SOR ¶ 2.a in Applicant's favor.

### **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 and Guideline E in this 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 mitigated the personal conduct security concern, but he failed to mitigate the drug involvement and substance misuse security concerns.

### **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.b:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant

Paragraph 2, Guideline E:  
Subparagraph 2.a:

FOR APPLICANT  
For 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