



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00760
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: *Pro se*

11/29/2023

\_\_\_\_\_

**Decision**

\_\_\_\_\_

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline H, drug involvement and substance misuse. He mitigated his conduct under Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On June 12, 2023, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H and Guideline E. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on July 6, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s File of Relevant Material (FORM) on August 1, 2023. The evidence

included in the FORM is identified as Items 3-5. (Items 1 and 2 include pleadings and transmittal information.) The FORM was mailed to Applicant, who received it on August 9, 2023. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not submit any additional evidence. The case was assigned to me on November 9, 2023.

### **Findings of Fact**

In Applicant's answer, he admitted all of the SOR allegations with explanations. (¶¶ 1.a-1.j, and 2.a-2.b) I adopt his admissions as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact. (Item 2)

Applicant is 32 years old. He married in 2021, and has no children. He has worked as a business manager for his current employer, a federal contractor, since December 2021. That contractor is subject to the drug-free workplace provisions of 41 U.S.C. 701 *et seq.* Applicant holds a bachelor's degree obtained in December 2015. This is his first time seeking a security clearance. He completed his first security clearance application (SCA) in October 2022. (Item 3)

The SOR alleged, under Guideline H, that Applicant:

-used and purchased marijuana, at various times, from June 2010 to about April 2022 (SOR ¶¶ 1.a-1.b);

-used the prescription drug, alprazolam, without a prescription to him, at various times from September 2014 to about December 2021 (SOR ¶ 1.c);

-used and purchased cocaine, at various times, from September 2014 to about March 2021 (SOR ¶¶ 1.d-1.e);

-used and purchased ecstasy at various times from June 2010 to about April 2016, concerning his use; and from September 2010 to about April 2016, concerning his purchases (SOR ¶¶ 1.f-1.g); and

-used Xanax, Oxycodone, and Hydrocodone, not prescribed for him, from August 2015 to about September 2015 (SOR ¶¶ 1.h-1.j). (Item 1)

The SOR alleged, under Guideline E, that Applicant:

-in about September 2015, left his employment at a pharmacy by mutual agreement, after having been accused of stealing Xanax, Oxycodone, and Hydrocodone, not prescribed for him, from the pharmacy (SOR ¶ 2.a); and

-in about September 2015, was charged with petty theft of prescription drugs listed in SOR ¶ 2.a, above (SOR ¶ 2.b). (Item 1)

## **Guideline H.**

**Marijuana use and purchase.** Applicant admitted his marijuana use and purchases in his October 2022 SCA, his November 2022 personal subject interview (PSI) with an investigator, and in his July 2023 SOR answer. (Items 2-4)

Applicant stated that he began using marijuana while in college in approximately 2010. He lived in a state where marijuana is legal under state law. He had a medical marijuana license from the state to treat insomnia. He also used marijuana because he enjoyed it. He estimated that he used marijuana approximately 1000 times. He used marijuana by smoking it, vaping it, and ingesting THC-laced gummies. His most frequent use was during his college years. Since 2015 to 2016, he claims to have significantly decreased his use of marijuana. He claims his last use was in April 2022 and he no longer associates with people who use or sell marijuana. He claims his last purchase of marijuana was in October 2021. He claims he no longer associates with individuals involved with this drug. He listed his use and purchases on his SCA. (Items 2-4)

**Use of Alprazolam without a prescription.** Applicant admitted using Alprazolam without a legal prescription on under 20 occasions between September 2014 and December 2021. He claims he primarily used it due to his insomnia and stress during his final year of college in 2015. He claims he no longer uses this drug because he has found other ways to deal with his stress and insomnia. He claims he no longer associates with individuals involved with this drug. He listed his use on his SCA. (Items 2-4)

**Cocaine use.** Applicant admitted using cocaine approximately 12-17 occasions between September 2014 and March 2021. He claims he primarily used it during his college years. He claims he no longer uses this drug and will not use it in the future. He claims he no longer associates with individuals involved with this drug. He listed his use on his SCA. (Items 2-4)

**Cocaine purchase.** Applicant admitted purchasing cocaine approximately 10 times between 2014 and March 2021. He claims his last cocaine purchase was in March 2021, for his bachelor party. He claims he no longer uses this drug. He claims he no longer associates with individuals involved with this drug. He listed his use on his SCA. (Items 2-4)

**Ecstasy use.** Applicant admitted using ecstasy approximately 12-15 times between June 2010 and April 2016. He claims he primarily used it while attending music festivals. He claims he no longer uses this drug and will not use it in the future. He claims he no longer associates with individuals involved with this drug. He listed his use on his SCA. (Items 2-4)

**Ecstasy purchase.** Applicant admitted purchasing ecstasy on approximately five occasions between September 2010 and April 2016. He claims he no longer purchases

this drug. He claims he no longer associates with individuals involved with this drug. He listed his use on his SCA. (Items 2-4)

**Use of Xanax without a prescription.** Applicant admitted using Xanax between August 2015 and September 2015, without a legal prescription. He pointed out that Xanax is the brand name for the drug Alprazolam. This conduct is the same conduct as alleged in SOR ¶ 1.c, is duplicitous, and will be found in favor of Applicant. (Items 2-4)

**Use of Oxycodone without a prescription.** Applicant admitted using Oxycodone between August 2015 and September 2015, without a legal prescription. He gained access to this drug by stealing it from the pharmacy where he worked. He listed his use on his SCA. (Items 2-4)

**Use of Hydrocodone without a prescription.** Applicant admitted using Hydrocodone between August 2015 and September 2015, without a legal prescription. He gained access to this drug by stealing it from the pharmacy where he worked. He claims he has no intention of using this drug in the future. He listed his use on his SCA. (Items 2-4)

#### **Guideline E.**

Applicant admitted the Guideline E allegations. He admitted that he stole the prescription drugs of Xanax, Oxycodone, and Hydrocodone, while employed at a pharmacy in approximately September 2015. He obtained the drugs for his personal use without an authorized prescription. After his actions came to light, he left his employment by mutual agreement because of his theft of the drugs. He listed these circumstances on his SCA. (Items 2-4)

In about September 2015, Applicant was charged by local authorities with petty theft of the drugs described above. His case was disposed of through a deferred entry of judgment. He complied with all the conditions imposed by the court and the charges were then dismissed. The underlying conduct for both SOR ¶¶ 2.a and 2.b is the same and the pleadings are therefore duplicitous. I find in favor of Applicant regarding SOR ¶ 2.b. (Items 2-4)

#### **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 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.

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 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 that an 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.

Section 7 of EO 10865 provides that 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:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Three conditions are potentially applicable in this case:

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

Applicant used and purchased marijuana, cocaine, and ecstasy on multiple occasions from 2010 to 2022. He also used the prescription drugs Hydrocodone and Oxycodone without a legal prescription during 2015; and used Xanax without a prescription from 2014 to 2021. I find that AG ¶¶ 25(a) and 25(c) apply.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

- (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's most recent use and purchase of marijuana was in April 2022, four months after beginning his employment with a defense contractor. His most recent use and purchase of cocaine was in March 2021, and his most recent use and purchase of ecstasy was in 2016. He estimated he used marijuana approximately 1,000 times

through the years. He claims his Xanax misuse was primarily during his last year of college (2015), but he admitted using it as recently as 2021. While he expressed his intent not to use illegal drugs or abuse prescription drugs in the future, he did not provide a signed statement of his intent not to use or misuse drugs in the future. He also claimed to disassociate with persons involved with drugs. Since Applicant chose to have his case decided without a hearing, I am unable to make a credibility finding. Applicant's short abstention involving marijuana, cocaine and Xanax is insufficient to convince me that recurrence is unlikely. AG ¶ 26(a) does not apply, while AG ¶ 26(b)(3) has some application.

Applicant's use of ecstasy, Hydrocodone, and Oxycodone was much more remote and infrequent and is mitigated under AG ¶ 26(a).

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

AG ¶ 15 expresses the personal conduct security concern:

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. They include:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

Applicant's theft of prescription drugs while employed by a pharmacy in 2015 reflects questionable judgment and an unwillingness to comply with rules and regulations. The conduct alleged under SOR ¶ 2.a might also be covered under Guideline J (Criminal Conduct) at AG ¶ 30; however, it would likely be mitigated by the passage of time. Nonetheless, the alleged conduct is sufficient raises the general concerns about questionable judgment and an unwillingness to comply with rules and regulations addressed in AG ¶¶ 15 and 16(c).

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17, and find the following relevant:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Abusing his employer's trust by stealing drugs for his own personal use certainly calls into question whether he is can be trusted to safeguard classified information. However, this one-time incident occurred in 2015, and Applicant no longer works at a pharmacy with availability to prescription drugs. He acknowledged that what he did was wrong and listed this misconduct on his SCA. AG ¶¶ 17(c) and 17(d) substantially apply.

### **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 the 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 guideline 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 considered that he used marijuana as recently as April 2022 and other drugs as recently as 2021. I also considered the circumstances he described surrounding his drug use and his stated intent not to use drugs in the future.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H,



drug involvement and substance misuse. He mitigated the conduct alleged in Guideline E, personal conduct.

### **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.e:	Against Applicant
Subparagraphs 1.f-1.j:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	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.

---

Robert E. Coacher  
Administrative Judge