



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01171
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Adrienne Driskill, Esquire, Department Counsel  
For Applicant: *Pro se*

November 29, 2023

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

CEFOLA, Richard A., Administrative Judge:

On January 16, 2023, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On June 13, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective June 8, 2017.

Applicant answered the SOR in writing on July 31, 2023, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on September 6, 2023. DOHA issued a Notice of Hearing on September 13, 2023, and I convened the hearing as scheduled on October 20, 2023. The Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified and

offered Exhibits (AppXs) A through M, which were admitted without objection. DOHA received the transcript of the hearing (TR) on October 31, 2023. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations. Paragraph 2 of the SOR was withdrawn by Department Counsel. (TR at page 7 lines 1~7.) He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 30 years old, unmarried, and has no children. He is pursuing both a bachelor's degree and master's degree in electrical engineering. He has worked for a defense contractor since January of 2023.

### **Guideline H – Drug Involvement**

1.a. Applicant admits using Ketamine about six times from April of 2017 until his last usage in May of 2022, at a music festival. His use of Ketamine was exclusively at music festivals with a group of former friends. Applicant has moved away from those friends, and no longer associates with them. (TR at page 16 line 18 to page 20 line 14, and at page 21 line 17 to page 22 line 22.) Applicant has signed a Statement of Intent eschewing future drug involvement, and has tested negative as the result of a July 2023 drug screening. (AppXs A and B.)

1.b and 1.c. Applicant admits using psychedelic mushrooms about six times from April of 2017 until his last usage in May of 2022, at a music festival. Except for one occasion, when he mourned the loss of a pet dog, Applicant's use of psychedelic mushrooms was exclusively at music festivals with a group of former friends. Applicant has moved away from those friends, and no longer associates with them. He purchased psychedelic mushrooms twice, the last time in 2022, mourning the death of his pet dog. (TR at page 22 line 23 to page 28 line 1, and at page 28 lines 13~22.) Applicant has signed a Statement of Intent eschewing future drug involvement, and has tested negative as the result of a July 2023 drug screening. (AppXs A and B.)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2 describing 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 avoided drawing 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 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**

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at AG ¶ 24:

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.

The guideline at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions are established:

- (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.

Appellant used both Ketamine and psychedelic mushrooms. He also purchased psychedelic mushrooms, twice. Therefore, AG ¶¶ 25 (a) and (c) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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; 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 last drug involvement was about 19 months ago. His usage was about once a year, over a period of six years. Applicant no longer associates with those people with whom he used drugs. He has signed a Statement of Intent eschewing any future drug involvement. Drug Involvement and Substance Misuse is found for Applicant.

### **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 an 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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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. Applicant is well respected at work and in his community. (AppXs C~F and J.) Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his drug involvement and substance misuse.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a.~1.c:	For Applicant

## **Conclusion**

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

---

Richard A. Cefola  
Administrative Judge