



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-01207
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Andrew H. Henderson, Esq., Department Counsel  
For Applicant: Todd A. Hull, Esq., Berry and Berry, PLLC

12/14/2023

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**Decision**

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Lokey Anderson, Darlene D., Administrative Judge:

On July 31, 2019, and March 24, 2021, Applicant submitted security clearance applications (e-QIPS). (Government Exhibit 1, and Applicant’s Post-Hearing Exhibit A.) On July 23, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse; and Guideline E, Personal Conduct. The action was taken under Executive Order 10865 (EO), *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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on September 1, 2023, and requested a hearing before an administrative judge. The case was assigned to me on September 27, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on October 2, 2023, and the hearing was convened as scheduled on November 1, 2023. At the

hearing, the Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered eleven exhibits, referred to as Applicant's Exhibits A through K, which were admitted without objection. Applicant testified on his own behalf. He called two witnesses. The record remained open following the hearing to allow Applicant to submit additional supporting documentation. Applicant submitted one Post-Hearing Exhibit, referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 13, 2023.

### **Findings of Fact**

Applicant is 28 years old. He is married with no children. He has Dual Master degrees in Mechanical Engineering, and Engineering Technology and Innovation Management. (Applicant's Exhibit B.) He has taken additional courses relevant to his position and holds several certifications. (Applicant's Exhibit C.) He holds the position of Lead Artificial Intelligence Architect with a defense contractor. He is seeking to obtain a security clearance in connection with his employment.

#### **Guideline H - Drug Involvement and Substance Misuse** **Guideline E – Personal Conduct**

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose; and that he has engaged in conduct involving questionable judgment, which can raise questions about an individual's reliability and trustworthiness.

Applicant has a history of illegal drug use from about June 2012 until June 2019. He admitted that he has used and purchased marijuana and products containing THC on various occasions over this seven or eight year period. While in college, during his undergraduate studies, he used marijuana about once or twice a month. After graduating, he began consuming THC on a weekly basis. His weekly pattern of THC usage continued throughout graduate school and after graduation. During an internship in 2018, Applicant was still using marijuana regularly. (Applicant's Answer to SOR.)

In 2018, Applicant began to seriously consider pursuing a career in the defense industry. Realizing that he would have to qualify for a security clearance, he decided to quit using marijuana. He also stopped associating with his drug using friends. In June 2019, Applicant ingested a THC gummy while visiting his brother in California. Applicant used the THC gummy with the thought that he was using it in a state that legalized the use of marijuana for recreational purposes, and he was not violating the law. Applicant specifically remembers the date of June 2019, as his last use of any illegal drug because at this time of use he was spending time with his brother in California. Applicant submitted a photograph of he and his brother on this occasion. (Applicant's Exhibit G.)

Applicant began working for defense contractor A in June 2019. He applied for and obtained his first security clearance about the same time. Applicant contends that since being hired by defense contractor A, and being granted a security clearance, he has completely abstained from all illegal drug use and has no intentions of ever returning to it. (Applicant's Answer to SOR.)

Applicant also admitted that he used cocaine on two separate occasions between 2016 and 2018. He states that he used cocaine once in the spring of 2016, with some upperclassmen at his university. He also used it once at the beginning of 2018, while at a New Year's Eve party. He stated that he has no intentions of ever using cocaine again. (Applicant's Answer to SOR.)

Applicant completed a security clearance application dated July 31, 2019. (Government Exhibit 2.) In response to questions in Section 23, concerning Illegal Use of Drugs or Drug Activity, Illegal Use of Drugs or Controlled Substances, he was asked, "In the last seven years have you illegally used any drugs or controlled substances?" Applicant answered, "Yes", but failed to disclose the information set forth above, specifically his full use of marijuana as well as his cocaine use. Applicant subsequently underwent a polygraph examination and divulged all of his prior drug use. (Applicant's Answer to SOR.)

On March 24, 2021, Applicant completed another security clearance application. (Government Exhibit 1.) In response to the same questions in his previous application in Section 23, concerning Illegal Use of Drugs or Drug Activity, Illegal Use of Drugs or Controlled Substances, he was again asked, "In the last seven years, have you illegally used any drugs or controlled substances?" Applicant answered, "Yes," but failed to disclose the information set forth above, specifically his full use of marijuana as well as his cocaine use. Again, he failed to disclose his full use of marijuana as well as his cocaine use.

Applicant denied that he deliberately attempted to conceal his illegal drug use on his security clearance applications. He stated that he was attempting to update his e-QIP with the information he provided during a polygraph examination when he put down the wrong date that he last used an illegal drug. He stated that he made an error and accidentally listed that July 2020, was his last use of an illegal drug when in actuality, his last use of any illegal drug was in June 2019. He stated that he now realizes that his rush through the e-QIP was not wise, as he did not check or double check his answers before submitting them. (Applicant's Answer to SOR)

Applicant also stated that in 2021, when he completed his second security clearance application for a clearance upgrade, he thought the investigators would use the previous information from his 2019 security clearance investigation to supplement the current investigation. He later found his assumption to be wrong. Applicant now realizes that each time he completes the application or is interviewed for any purpose during his security clearance investigation, he must give full and complete answers, and not just a "Yes" or "No" answer, if the question requires more. He now knows that he should have disclosed all relevant information in response to all questions on his e-QIP

and be as detailed as possible. Applicant contends that he did not deliberately attempt to hide any material information from the Government in response to questions on either of his security clearance applications. (Applicant's Answer to SOR)

Applicant has submitted a signed Statement of Intent to abstain from all illegal drug involvement and substance misuse. (Applicant's Exhibit F.) He has also undergone a voluntary drug test to show his continued commitment to a drug free lifestyle. (Applicant's Exhibit I.) Applicant deeply regrets his past behavior and acknowledges that his past illegal drug use was an error in judgment that will not be repeated. (Applicant's Answer to SOR.)

In January 2023, Applicant was hired by his current employer as a Lead Data Scientist. Since then, based upon his strong work ethic and excellent performance, he has been promoted twice. His most recent performance evaluation from his supervisor dated August 22, 2023, reflects that Applicant has exceeded all expectation of his position. He is effective, providing technical expertise, and helping the team stay on track to meet critical milestones. Overall he has made a significant impact in his short time at the firm. (Applicant's Exhibit D.)

Applicant's Manager nominated Applicant for the "Black Engineer of the Year Award" representing the entire company. (Applicant's Exhibit E.)

Applicant's wife, a medical student, testified that she has been married to the Applicant since June 8, 2023. She and her husband do not use illegal drugs of any sort and never have. Furthermore, they do not associate with anyone who uses illegal drugs. She describes her husband as very ambitious, passionate about his career, and sobriety is naturally a part of their lifestyle. She stated that he is remorseful for not being as thorough as he could have been when he filled out the security clearance applications. (Tr. pp. 29-32.)

Applicant's brother testified that he gave the Applicant the THC gummy that he ingested in June 2019. Applicant was visiting his brother in the state at the time. This was the same month he either started or was interviewed for the job with defense contractor A. (Tr. pp. 40, and 44-46.)

Letters of recommendation from professional associates, including former supervisors, and from family members, including his brother, mother, and wife, collectively attest to Applicant's overall outstanding character. He is known for his trustworthiness, integrity, honesty, transparency, and supportive nature. He is also described as being responsible, loyal, and helpful. He is said to be a natural leader with excellent technical skills, who is ambitious, well liked, and respected by those who know him. (Applicant's Exhibits J and K.)

## 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 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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, 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 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 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 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

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 three conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used and purchased marijuana and products containing THC with varying frequency from about June 2011 until June 2019. He has also used cocaine on two occasions in 2015, and December 2018. The evidence is sufficient to raise the above disqualifying conditions.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. Two are potentially applicable 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 used marijuana and cocaine over a seven or eight-year period, mainly while in college, from 2011 to about 2019. Applicant quit using illegal drugs altogether in June 2019, and has been drug free for the past four years, which he intends to continue. Applicant understands the consequences if he uses or has any illegal drug involvement. He has signed a statement of intent which indicates that he must abstain from any drug involvement or substance misuse or his security clearance will be immediately revoked. His misconduct of the past is mitigated.

#### **Guideline E- Personal Conduct**

The security concern for Personal Conduct is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Three are potentially applicable in this case:

- (a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities;
- (b) deliberately providing false or misleading information; or concealing investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and
- (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information,

supports a while-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. This includes, but is not limited to, consideration of;

(2) any disruptive, violent or other inappropriate behavior; and

(3) a pattern of dishonesty or rule violations.

Applicant failed to provide thorough and complete information concerning his illegal drug use in response to questions on his security clearance applications dated July 31, 2019, and March 24, 2021. The evidence is sufficient to raise the above disqualifying conditions.

The guideline at AG ¶ 17 contains conditions that could mitigate security concerns. One of the conditions is potentially applicable:

(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.

From 2011 to 2019, Applicant used marijuana and products containing THC on various occasions over a period of eight years. He also used cocaine on two occasions in 2015 and in December 2018. He admitted to his illegal drug use on his security clearance applications, but failed to give a full and complete history of his drug use. For example, he failed to list his cocaine use on his July 2019 security clearance application, as he stated he forgot about it because he used it so minimally. Although he did reveal it during his polygraph examination, he should have amended his 2019 application to be most accurate. Applicant should also have reported any illegal drug use to his security department. In fact, any security violation he commits, he must report to his security department. He did not report his illegal drug use to his security department in June 2019, when he should have. On the surface, it appears that he was attempting to conceal the true extent of his illegal drug history.

It is noted that Applicant is a fairly young man, with little defense industry experience. He is highly educated, a company standout with remarkable potential, and now a member of the defense contracting industry. He was not as familiar with the security rules and regulations as he should have been. He admits his wrong doing and is extremely remorseful. Since then, he has made drastic changes to improve his life, and to meet the eligibility requirements to access classified information. There is no room for error now. He has quit using any illegal drugs and no longer associates with drug users. He also understands what is required of him and how to properly complete his security clearance applications. As he noted, in the future, he will hire counsel if he needs to.



There is still some question as to whether he used the THC gummy before or after he was hired or interviewed for employment by defense contractor A. In either case, he was wrong for using it. He knew or should have known that its use was in violation of security policies. He now understands the security rules and regulations that he is expected to follow, and his mistakes of the past are highly unlikely to recur. He understands the consequences of his actions and the importance of protecting classified information. Illegal drug use is also against Federal law. It is against DoD policies, rules, and regulations, and is not tolerated under any circumstances by a defense contractor. Applicant now clearly understands that illegal drug use is prohibited in any form while holding a security clearance or while in a sensitive position. He also understands that he must be honest and truthful throughout the entire security clearance investigation process and be extremely thorough. He must do everything to avoid any mistakes or errors. He knows that he is held to a high standard and he must consistently demonstrate this understanding.

Considered in totality, Applicant's conduct supports a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations and policies that apply to them. Under the particular facts of this case, Applicant shows the requisite character or judgment of someone who has the maturity, integrity, and reliability necessary to access classified information. Applicant meets the eligibility qualifications for a security clearance.

### **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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant has demonstrated

the level of maturity needed for access to classified information. Applicant understands the requirements associated with holding a security clearance and knows that illegal drug use is not tolerated. Applicant is an individual in whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. Applicant does meet the qualifications for a security clearance.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Drug Involvement and Substance Misuse, and Personal Conduct security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a through 1.c	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a and 2.b	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson  
Administrative Judge