



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00857
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: Pro se

12/13/2023

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**Decision**

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Lokey Anderson, Darlene D., Administrative Judge:

On August 3, 2018, and November 8, 2022, Applicant submitted security clearance applications (e-QIPS). (Items 4 and 5.) On June 5, 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. 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on June 20, 2023. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 3.) On July 5, 2023, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing six exhibits, was sent to the Applicant and received on July 19, 2023. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant responded to the FORM

and submitted two documents, referred to as Applicant's Exhibits A and B, which were admitted into evidence. DOHA assigned the case to me on November 15, 2023. Items 1 through 5 are admitted into evidence, and hereinafter referred to as Government Exhibits 1 through 5. Government Exhibit 6 was not admitted into evidence based upon Applicant's valid objection, which is discussed below.

### **Findings of Fact**

Applicant is 27 years old. He is unmarried and has no children. He has a Bachelor's degree. He is employed by a defense contractor as a SW Integration Engineering Intern. He is seeking to obtain a security clearance in connection with his employment. He has no military service.

### **Evidentiary Ruling on Personal Subject Interview**

Applicant objected to Government Exhibit 6, which is the Applicant's personal subject interview based upon the fact that the report has not been authenticated by a Government witness, and therefore cannot be considered. He asserts that the summary mischaracterizes and misquotes his responses, and includes factual misinformation. Based upon Applicant's objection which was sustained, Government Exhibit 6 is not admissible, and was not considered in this determination.

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

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, which can raise questions about an individual's reliability and trustworthiness.

Applicant admits the allegations with explanations set forth in the SOR under this guideline. He admits that he has used hallucinogenic mushrooms in March 2020, while granted access to classified information or while holding a sensitive position. He also admitted that from July 2015 to May 2017, he used marijuana with varying frequency. (Applicant's Answer to SOR)

In his answer to the SOR, Applicant stated that when he used hallucinogenic mushrooms in March 2020, it was a one-time impulsive occurrence where the substance was offered to him by his friends. He stated that he "let his guard down" through a combination of rationalizations, namely a desire to share an experience with his friends, and a genuine curiosity. He further stated that after he experienced it and reflected on his actions, he realized that he had been short-sighted and immature. He stated that he has no intentions to ever use it again. (Government Exhibit 3.)

At the time he used the hallucinogenic mushrooms in March 2020, Applicant was employed with a defense contractor and possessed a security clearance and held a sensitive position. He rationalized his use of the illegal drug with the fact that he had not

been given a need to know or any other direct access to classified information at that point. He also told himself that it was not as much of a liability as it could have been if he had information that could be disclosed in a compromised state. He realizes that he must own up to the mistake, be truthful if asked about it, and reinforce that he will never put himself in the position again. (Government Exhibit 3.)

Applicant also stated that while in college he used marijuana from July 2015 to May 2017. In 2015, the first time he used it, he was 19-years-old. From then to about 2017, he used marijuana occasionally. On these occasions, he received marijuana from his friend or roommate, and normally during academic breaks. He stated that he never had the urge to use it more frequently. In August 2018, Applicant first applied for a security clearance. He was granted a Secret security clearance in November 2018. He stated that by the time he applied for his internship in June 2018, with a defense contractor, he had not used marijuana for about a year, so he comfortably tested marijuana free. He stated that he has not used marijuana since 2017, and has no interest in ever using it again. (Government Exhibit 3.)

## **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. 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 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 knowingly used hallucinogenic mushrooms, an illegal substance, in March 2020, while granted access to classified information or while holding a sensitive position. The evidence is sufficient to raise the above disqualifying conditions.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns.

(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.

None of the mitigating factors are applicable. Following a two-year history of occasional marijuana use which occurred from July 2015 to May 2017, when he was in college, Applicant continued to want to experiment with illegal drugs with his friends regardless of the consequences. In March 2020, Applicant used hallucinogenic mushrooms, (which he describes as impulsive behavior), while employed with a defense contractor, while granted a security clearance, and while holding a sensitive position. He completely disregarded DoD policy, company policy, and Federal law. Applicant clearly has some more growing up to do. Applicant knew at the time he used the mushrooms that the use of any illegal drug is strictly prohibited by the DoD, but he rationalized to himself that it would not be a serious violation. His behavior does not show a high level of maturity, trustworthiness or good judgment. In this case, Applicant has fallen short of meeting the eligibility requirements for access to classified information.

Considered in totality, Applicant's conduct precludes 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. Applicant has chosen to live his life to his convenience and has disregarded the law. Whether Applicant used the hallucinogenic

mushrooms ten times or one time, while granted a security clearance, the number of times he used it is not as relevant to the issue as is the fact that he violated security procedures in the first place. Applicant has not demonstrated the level of maturity, integrity, good judgment, and reliability necessary to access classified information. At this time, Applicant does not meet the qualifications for access to classified information.

### **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 Guideline H in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant has not demonstrated the level of maturity needed for access to classified information. This is not 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 is not qualified for access to classified information.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a through 1.b.	Against Applicant
Subparagraph 1.c.	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge