



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



In the matter of: )  
)  
) ISCR Case No. 22-02612  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tara R. Karoian, Esq., Department Counsel  
For Applicant: Jason R. Wareham, Esq.

12/19/2023

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guideline H (drug involvement and substance misuse). Eligibility for access to classified information is granted.

**Statement of the Case**

On March 29, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. Applicant responded to the SOR on April 6, 2023, and requested a hearing before an administrative judge. The case was assigned to me on October 24, 2023. The hearing convened as scheduled on November 14, 2023.

**Procedural and Evidentiary Rulings**

**Evidence**

Government Exhibits (GE) 1 and 3 were admitted in evidence without objection. The objection to GE 2 was overruled, and it was admitted. Applicant testified, called a

witness, and submitted Applicant Exhibits (AE) A through D (AE A through C were attached to the SOR), which were admitted without objection.

### **SOR Amendment**

Department Counsel amended the SOR by withdrawing SOR ¶ 1.b because it is duplicative of SOR ¶ 1.a. (Transcript (Tr.) at 47)

### **Findings of Fact**

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since 2016. He is applying for a security clearance for the first time. He earned a bachelor's degree in 2015 and a master's degree in 2020. He is married without children. (Tr. at 27, 32, 40; GE 1, 3)

Applicant started using marijuana in 2015, when he was in his last year of college. It increased until it was essentially daily. He used cocaine on about 10 to 15 occasions in 2015. He stopped using illegal drugs for about a year after he graduated college. (Tr. at 15-16, 22-24; Applicant's response to SOR; GE 1, 3; AE A)

Applicant resumed using marijuana in 2016 after he was hired by his current employer, which has a drug-free workplace policy. He lives in a state where marijuana possession and use do not violate any state laws. He used ecstasy (3, 4-methylenedioxy-methamphetamine or MDMA) on three occasions in 2019, and he used cocaine and LSD in 2021. He justified his drug use to himself by never using it at work or when it could affect his work. (Tr. at 16-19, 24-32; Applicant's response to SOR; GE 1, 3; AE A)

Applicant started using marijuana less frequently until he ended all illegal drug use in about February 2022. He regrets his past drug use. He became engaged, and he and his wife married in August 2022. They plan to have children in the near future, and he does not want drugs to be a part of their lives. He feels he has "matured away from that lifestyle." He admits that his application for a security clearance played some part in his decision to stop using illegal drugs, but he stated that he would have stopped even if he had never applied for a clearance. He is happy with his family life and his job, and he does not intend to let drugs jeopardize either. He no longer associates outside of work with the coworkers with whom he used drugs. He provided 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. (Tr. at 20-22, 26, 29-33, 40-42; Applicant's response to SOR; GE 1, 3; AE A, C)

Applicant received a substance abuse evaluation from a certified addiction specialist in April 2023. The evaluator reported that she "did not find any indicators or evidence that met the criteria for a current misuse, abuse, or dependence issue of substances at this time." (Tr. at 33-36; AE B, D)

Applicant submitted a Questionnaire for National Security Positions (SF-86) in April 2022. He meticulously reported his use of marijuana, cocaine, MDMA and LSD. He fully discussed his illegal drug use during his background interview in May 2022. (Tr. at 25-26, 38; GE 1, 3; AE A)

Applicant called a witness, and he submitted documents and letters attesting to his excellent job performance and strong moral character. He is praised for his work ethic, reliability, and trustworthiness. He is recommended for a security clearance. (Tr. at 42-47; AE B)

## **Policies**

This case is adjudicated 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), which became effective on June 8, 2017.

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**

The security concern for drug involvement and substance misuse is set out in 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 notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (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.

Applicant possessed and used marijuana, cocaine, MDMA, and LSD. AG ¶¶ 25(a) and 25(c) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially 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.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, "*Adherence to Federal Laws Prohibiting Marijuana Use*," which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines . . . . An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that requires them to use a "whole-person concept." This requires adjudicators to carefully weigh a number of variables in an individual's life to determine whether that individual's behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether

the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

All of Applicant's illegal drug use ended before he applied for a security clearance. He has not used MDMA since about April 2019 (more than four and a half years ago), cocaine or LSD since about January 2021 (almost three years ago), and marijuana since about February 2022 (almost two years ago). His marijuana use since 2016 occurred in a state that did not criminalize its use.

Applicant credibly testified that he does not intend to use illegal drugs in the future. He fully disclosed his drug involvement on his SF-86 and throughout the security clearance proceedings, which bolsters his credibility. He signed a 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. Having considered the SecEA clarifying guidance, the mitigating conditions, the whole person, and the Appeal Board's decisions (see, e.g., ISCR Case 22-02132 (App. Bd. Oct. 27, 2023)), I conclude that Applicant's conduct no longer casts doubt on his reliability, trustworthiness, and good judgment. I find that he has abstained from illegal drug use for an appropriate period, and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

### **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 have incorporated my

comments under Guideline H in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under Guideline H.

### **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:	For Applicant
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Withdrawn
Subparagraphs 1.c-1.f:	For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge