



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 22-02552  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Sakeena Farhath, Esq., Department Counsel  
For Applicant: *Pro se*

09/19/2023

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**Decision**

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MASON, Paul J., Administrative Judge:

Applicant has not mitigated the security concerns raised by the guidelines for drug involvement and personal conduct. Eligibility for a security clearance is denied.

**Statement of Case**

On July 1, 2022, and September 22, 2009, Applicant certified and signed Electronic Questionnaires for Investigations Processing (e-QIPs, Items 3, 4) to obtain or retain a security clearance required for employment with a defense contractor. On October 28, 2022, he provided a personal summary interview (PSI) to an investigator from the Office Personnel Management (OPM). After examining the background investigation, the Defense Counterintelligence Security Agency (DCSA), Consolidated Adjudications Services (CAS) could not make the affirmative findings necessary to issue a security clearance. On December 28, 2022, the DCSA CAS issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guidelines for drug involvement and substance misuse (Guideline H), and personal conduct (Guideline E). The action was taken Defense Industrial Personnel Security Clearance Review Program

(January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), made effective in the DOD on June 8, 2017.

On January 20, 2023, Applicant furnished an answer to the SOR. He decided to have his case evaluated administratively on the written record in lieu of a hearing. On March 29, 2023, the Government sent a copy of its File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant. He received the FORM on April 10, 2023. He was provided 30 days after receipt of the FORM to submit a response. DOHA received no response by the deadline date of May 10, 2023.

### **Rulings on Procedure**

At the top of page 2 of the FORM, Department Counsel advised Applicant that he could either file objections, furnish explanations, or submit additional material to clarify the information contained in the PSI (Item 5) or some other evidence included in the FORM. Also, Applicant was advised that he could object to the PSI because it lacked authentication by a Government witness. As no response was received by DOHA, the PSI and the other four items in the FORM are entered into the record in their entirety. I was assigned the case on July 17, 2023.

### **Findings of Fact**

Applicant admitted all allegations listed in the SOR, with explanations. His primary reasons for using marijuana, cocaine, and Adderall, an unprescribed prescription drug, were immaturity and coping with a deteriorating marriage. He has not used illegal drugs or unprescribed drugs since the one-time use of marijuana in November 2021. He used marijuana, cocaine, and Adderall while holding a security clearance because of immaturity, his belief that his occasional use was not serious, and he was no longer handling classified information regularly after he returned from deployment in 2010. In addition, his security clearance was not active during an unidentified period. (January 2023 response to SOR)

Applicant is 37 years old. He divorced his first wife in October 2018 after a ten-year marriage. He has a son eight years old. (Item 3 at 7-10) He has been living with his fiancé since June 2018. He received a high school diploma in May 2004, a bachelor's degree in December 2006, and a master's degree in December 2010. (Item 3 at 7-17)

He initially worked for his employer as a data analyst, preparing polling projects, conducting internal reviews, and developing updated applications. (Item 4 at 25) He is currently an associate principal of his employer. Applicant has no prior military history. (Item 3 at 12-14)

SOR ¶ 1.a - In his July 2022 e-QIP (item 3), Applicant admitted using marijuana on an occasional and recreational basis. His first use of the drug was in July 2004 and his last use was in November 2021. (Item 3 at 37) Though he claimed in his January 2023 answer to the SOR that there were long periods when he did not use the drug, he indicated in his October 2022 PSI that he used marijuana three or four times a year between 2007 and 2018. He stated that he last used the drug in 2021 at a music concert. He declared that he did not intend to use illegal drugs in the future because he changed his lifestyle to be a better parent. Applicant knew that he was not to use marijuana while holding a security clearance (Item 5 at 4; January 2023 answer to SOR), but used the drug anyway.

SOR ¶ 1.b – In his July 2022 e-QIP, Applicant acknowledged using cocaine a few times from October 2016 to 2017. He characterized the use as short-lived and triggered by a failing marriage. (Item 3 at 38) He and his former wife were at a bar where he tried the drug. He used it about six times in 2017, and did not anticipate future use because the marriage ended and he is afraid of the deleterious effect of the drug on his health. (Item 5 at 4)

SOR ¶ 1.c – In his July 2022 e-QIP, Applicant explained that he used Adderall, a drug that was not prescribed to him, a few times from October 2016 to September 2017. He had no intention of using the drug in the future. (Item 3 at 38-39) he rationalized his use as a way of improving his emotional condition as his marriage was about to end. (Item 5 at 4-5)

SOR ¶ 1.d – While intoxicated from alcohol and hallucinogenic mushrooms at a party on the first day of 2006, Applicant received brief medical attention and was released without further action. (Item 4 at 60, 67)

SOR ¶ 1.e - Applicant received a security clearance in November 2009. (Item 3 at 41) In his January 2023 answer to the SOR, he rationalized his occasional marijuana use while possessing a security clearance as not a serious infraction. Unlike his overseas deployment (November 2009 to June 2010) when he had regular access to classified information and was not using any illegal drugs, after his return from deployment, he had little contact with classified information, and did not view his conduct away from work to be subject to stringent controls.

SOR ¶¶ 1.f (cocaine), 1.g (Adderall) – Applicant used cocaine and unprescribed Adderall to improve his emotional condition at the end a ten-year marriage. Also, his job responsibilities were shifting him away from Government work. (January 2023 answer to SOR)

SOR ¶ 2.a – In response to Section 23 a. of his September 2009 e-QIP, Applicant, 23 years old, falsely claimed that he last used marijuana in January 2006 (Item 4 at 61), even though he continued to use marijuana in 2007, 2008, and 2009, as indicated in ¶ 1.a. See Item 5 at 4. He also claimed in the September 2009 e-QIP that

he turned his life completely around. He severed his association with drug users and renewed his relationships with family and friends that he had been avoiding. (Item 4 at 61, 67)

SOR ¶ 2.b – Applicant’s use of the drugs identified at 1.a, 1.b, 1.c, 1.e, 1.f, and 1.g represents personal conduct as defined above. SOR ¶ 1.d is mitigated by the isolated use, the passage of time since January 2006, and the fact that Applicant had no security clearance when he used the mushrooms in college. See *also* Item 3 at 38-39 and Item 5 at 4.

In the last paragraph of his January 2023 answer to the SOR, Applicant interpreted the voluntary disclosure of his past illegal drug use as redemptive to show that he again qualifies for security clearance eligibility. See January 2023 answer to SOR.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines, which should be applied with common sense and the general factors of the whole-person concept. All available and reliable information about the person, past and present, favorable and unfavorable, should be carefully reviewed before rendering a decision. The protection of the national security is the paramount consideration. AG ¶ 2(d) 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 applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

### **Analysis**

#### **Drug Involvement and Substance Misuse**

The security concern under the Drug Involvement/Substance Abuse Guideline is set forth 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.

In my analysis of this case, I have taken administrative notice of Executive Order (E.O.) 12564 signed by the then-President of the United States on September 15, 1986. The primary positions addressed in the E.O. are: (1) federal employees cannot use illegal drugs; (2) illegal drug use by federal employees, on or off duty, is contrary to the efficiency of the service; and (3) persons who use illegal drugs are not suitable for federal employment.

I have also taken administrative notice of the Director of National Intelligence Memorandum Adherence of Federal Laws Prohibiting Marijuana Use, (October 25, 2014), which clearly stated that state laws do not authorize persons to violate federal law. Including the Controlled Substances Act (21 U.S.C. §§ 801-971 (1970)), which identified marijuana as a Schedule 1 controlled drug.

Changes in state laws or the District of Columbia, pertaining to marijuana use do not change the existing National Security Adjudicative Guidelines (Security Executive Agent Directive 4, effective June 8, 2017). An individual's disregard of the federal law pertaining to marijuana involvement remains adjudicatively relevant in national security determinations.

On December 21, 2021, the Director of National Intelligence signed the memorandum, Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position. Agencies are required to employ the "whole person concept" stated under SEAD 4, to determine if an applicant's behavior raises a security concern that has not been mitigated.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

- (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 began using marijuana in 2004. Following his regular marijuana use in college, he continued to use the drug three or four times a year until 2018. He used it

one additional time in 2021 at a music concert. Even though he may not have purchased the drug, he still had to possess or have control over the drug to use it. If Applicant's isolated use of mushrooms had been the only illegal drug that Applicant used, his drug use could have been mitigated. However, Applicant also used cocaine about six times in 2017. Furthermore, he used the prescription drug Adderall a few times in 2017. His use of all the drugs occurred after he had been granted a security clearance in November 2009. AG ¶¶ 25(a), 25(c), and 25(f) apply.

AG ¶ 26. Conditions that could mitigate security concerns include:

(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.

While the Applicant's marijuana usage apparently stopped in 2021, he used the drug regularly from 2004 to 2006. He used the drug occasionally between 2007 and 2018, and once again in 2021. He used the illegal drugs and the unprescribed drug while holding a security clearance. He knew that illegal drug use was against federal law. His continued use of illegal drugs for nine years after receiving his security clearance raises continuing doubt regarding his judgment and reliability. AG ¶ 26(a) does not apply.

Though Applicant admits his involvement with marijuana and the other listed drugs, he has furnished no independent evidence of action taken to overcome his illegal drug use, with an objective directed at abstinence from all drugs. While he indicated that he has severed all ties with drug users and changed his lifestyle to be a better role model as a parent, he made that same statement in September 2009 when he fervently declared a similar position as he continued to use marijuana for another nine years. AG ¶ 26(b)(1) does not apply. I am unable to conclude one way or the other whether

Applicant has successfully changed his environment. AG ¶ 26(b)(2) does not apply. Lastly, the record contains no signed statement of intent by Applicant that any future drug involvement will constitute grounds for revocation of national security eligibility. AG ¶ 26(b)(3) is inapplicable.

## **Personal Conduct**

The security concern for personal conduct is set forth 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 information. Of special interest is any failure to provide truthful and candid answers during the national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation or further processing for national security eligibility.

The potential disqualifying conditions under AG ¶ 16 are:

(c) credible adverse information in several adjudicative 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 he may not properly safeguard classified or sensitive information; 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 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. This includes, but is not limited to, consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information ...

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

(3) a pattern of dishonesty or rule violations; and

(4) evidence of significant misuse of Government or other employer's time or resources.

Applicant's drug involvement has independent significance under AG ¶¶ 16(c) and 16 (d)(3) because his drug involvement demonstrates questionable judgment and an unwillingness to comply with rules and regulations.

AG ¶ 17. Conditions that could mitigate security concerns include:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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.

AG ¶ 17(a) does not apply. The condition requires a prompt, good-faith effort to correct the omission. While Applicant finally revealed his drug involvement in October 2022, this disclosure occurred after he had intentionally concealed his illegal drug use from 2006 (e-QIP, Item 4) to October 2022. (PSI, Item 5). Considering the evidence in its totality, Applicant's disclosure of his overall drug use was neither prompt nor made in good faith.

Applicant's falsification in November 2009 of his illegal marijuana use was not minor and continues to raise doubts about his trustworthiness, reliability and good judgment. Though he has acknowledged his illegal drug use and misuse of an unprescribed drug, he knew that such drug involvement conflicted with federal law, but used the drugs anyway. AG ¶¶ 17(c) and 17(d) do not apply.

### **Whole-Person Concept**

I have examined the evidence under the guideline for drug involvement/substance misuse in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 37 years old. He has an eight-year-old son. He plans to marry his fiancé. He has been working for his employer since July 2008. He began as a data analyst and is currently and associate principal for his employer.

The favorable evidence supporting security eligibility is insufficient to overcome the countervailing evidence. Applicant illegally used marijuana between 2004 and November 2021. He used cocaine and Adderall in 2016 and 2017. Although his use of these two drugs was infrequent and were triggered by the approaching end of his marriage, the use occurred after he had been awarded a security clearance in November 2009. Holding a security clearance is a 24-hour-responsibility which requires complying with all federal laws at work and after work, even when the clearance is inactive, and regardless of the amount of classified information the holder may handle at a given time. Even though some states have decriminalized marijuana use, it is still illegal at the federal level. After weighing the entire record under the whole person, Applicant's evidence in mitigation does not overcome the drug involvement and personal conduct guidelines.

### **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-c, e-g:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Personal Conduct:	AGAINST APPLICANT

Subparagraphs 2.a, 2.b:  
2.b, Subparagraph 1.d is found for Applicant)

Against Applicant (Under

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security interest of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge