



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



In the matter of:	)	
	)	
[Name Redacted]	)	ISCR Case No. 22-01467
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nicholas Temple, Esq., Department Counsel  
For Applicant: Paul Vadeikis, Esq.

01/25/2024

**Decision**

HOGAN, Erin C., Administrative Judge:

On November 18, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under Guideline H, Drug Involvement; Guideline E, Personal Conduct; and Guideline J, Criminal Conduct. The action was taken under Executive Order (EO) 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 (AG) implemented within the Department of Defense on June 8, 2017.

On December 3, 2022, Applicant answered the SOR and requested a hearing before an administrative judge. The case was assigned to me on August 11, 2023. On August 29, 2023, a Notice of Hearing was issued, scheduling the hearing on October 24, 2023. The hearing was held as scheduled. During the hearing, the Government offered five exhibits, which were admitted without objection as Government (GE) Exhibits 1 - 5. Applicant testified and offered five exhibits, which were admitted without objection as Applicant Exhibits (AE) A - E. The transcript was received on November 1, 2023. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

In his answer to the SOR, Applicant admits to all allegations in the SOR.

Applicant is a 29-year-old employee of a DOD contractor who seeks a security clearance. He has been employed with his current employer since January 2022. He served on active duty in the United States Air Force from July 2015 to May 2021. He previously held a security clearance while on active duty. He was separated with an Under Honorable Conditions (General) discharge. He has some college credit but no degree. He is single and has no children. (Tr. 17-18, 33-35; GE 1; GE 3)

(Note: Some details were excluded to protect the privacy of Applicant and other individuals named in the record. Specific information is available in the cited exhibits and transcript.)

On September 20, 2021, Applicant completed an electronic questionnaire for investigations processing (e-QIP) in order to apply for a security clearance. (GE 1) A subsequent background investigation raised the security concerns listed in the SOR.

Under the Guideline H - Drug Involvement security concern, the SOR alleged Applicant: used the prescription drug Xanax on or around June 2020, even though it was not prescribed to him. (SOR ¶ 1.a: Gov 2 at 5, 8); from about January 2016 to about December 2017, used cocaine with varying frequency (SOR ¶ 1.b: Gov 2 at 6-7); and from about January 2016 to December 2016, used marijuana with varying frequency. (SOR ¶ 1.c: Gov 2 at 6) All three allegations allege Applicant's drug use occurred after being granted access to classified information.

Under the personal conduct security concern, the SOR alleged: Applicant obstructed justice in about June 2020, by purposefully removing trash from the dormitory room of an Airman who died of an accidental drug overdose with the intent to conceal evidence of his illegal drug use. (SOR ¶ 2.a: Gov 2 at 5-6); and he was discharged from the United States Air Force in May 2021 for misconduct: drug abuse and obstruction of justice, receiving an Under Honorable Conditions (General) Discharge. (SOR ¶ 2.b: Gov 2 at 4; Gov 3)

The criminal conduct concern alleged in April 2021, Applicant was convicted by Summary Courts-Martial for violations of Article 112a, Uniform Code of Military Justice (UCMJ), wrongful use of controlled substances, specifically, Xanax, cocaine, and marijuana and a violation of Article 131b of the UCMJ, obstruction of justice. He was sentenced to 30 days confinement, reduction to the rate of E-1, and issued a formal written reprimand. (SOR ¶ 3.a: Gov 4)

### Guideline H - Drug Involvement

In November 2016, while Applicant was on active duty in the United States Air Force, he and another airman went on leave to Amsterdam, Netherlands. Applicant purchased marijuana from a shop for his personal use and smoked the marijuana during this trip. His friend did not use the marijuana with him. Later that evening,

Applicant was approached by a stranger who offered to sell him cocaine. He paid the stranger 70 Euros for cocaine and took the cocaine back to his hotel room where he used the cocaine by himself. He was drunk when he purchased the cocaine. (Tr. 19-21; GE 2 at 7; GE 5 at 14)

In July 2017, Applicant traveled to Spain with three friends who were also in the Air Force. When they were at the airport, someone offered to give them a ride to their hotel. During the ride, Applicant was offered cocaine. He purchased some cocaine for 70 Euros. He used the cocaine by himself in his hotel room. (Tr. 19-20; GE 1; GE 2 at 7-8; GE 5 at 14)

On May 31, 2020, Applicant and Airman X used illegally purchased Xanax together. Amn X offered him a Xanax pill and he took one. This is the only time he used Xanax. He did not have a prescription for Xanax. He was drinking at the time and considers it a poor judgment call. (Tr. 20-21; GE 2 at 5-6, 8; GE 5 at 4, 14-15)

Applicant admits he was on active duty in the Air Force when he used the above illegal drugs. He admits to holding a security clearance while serving on active duty in the Air Force. He admits he served in national security sensitive position while on active duty in the Air Force and that his illegal drug use described above occurred while he held a security clearance and served in a national security sensitive position. (Tr. 19-21)

Applicant testified that the last time he used illegal drugs was on May 31, 2020. (Tr. 20-21, 35) He listed his illegal drug use on his e-QIP application dated September 20, 2021, in response to Section 23 – Illegal Use of Drugs or Drug Activity. He also listed he used marijuana on approximately ten occasions during high school and discussed his high school marijuana use during his December 2021 background investigation interview. (GE 1 at 35-38; GE 2 at 7-8)

Applicant never attended drug counseling or treatment. He has never been diagnosed as being dependent on drugs. He has no future intentions of using illegal drugs. (GE 2 at 8) He did not offer a signed, sworn 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.

## **Personal Conduct**

On June 2, 2020, around 11:30 pm Applicant went to Amn X's dorm room. When he arrived, he observed Amn X sitting in a recliner with several lines of a white powdery substance on his iPad. Amn X used his CAC card to cut the powdery substance. Amn X then sniffed several lines of the white powdery substance. Applicant claims he confronted Amn X saying: "Are you serious right now, you told me you were done with that." Amn X replied, "I'm going to finish it up." They started watching a television show. Amn X fell asleep and began snoring. Approximately 20 minutes later, he began to wheeze loudly and sounded like he could not breathe. Applicant approached him and attempted to wake him by tapping his chest and smacking his face. At one point, he rubbed an ice cube on Amn X's face. He still did not wake up. Applicant saw Amn X's lips turn blue, purple and black. He placed his fingers on Amn X's neck and noticed that

his heart was racing and foam began to come out of his mouth. Applicant considered calling 911 or his mother, but panicked and chose to leave. (Tr. 25-32; GE 5 at 4, 14-16)

Before Applicant left, he noticed Amn X's iPad had a line of the white powdery substance on it and Amn X's CAC card was near the iPad. He picked up the iPad and dumped the white powdery substance into a sink and washed it down the drain. He wiped the iPad and the CAC card with a towel in order to remove his fingerprints. He also removed his garbage from the room to include a water bottle and tobacco in an attempt to eliminate his presence in Amn X's room. He left and drove home. While driving home, he called Amn X and left a message stating that he had fallen asleep and to call him. He later deleted all content from his phone before the OSI confiscated it. (Tr. 21; GE 5 at 16)

The next day, June 3, 2020, Applicant attempted to call Amn X around 1130. He did not answer his phone. Applicant felt terrible because he did not help Amn X when he overdosed. He was selfish and was scared he could get into trouble for letting Amn X use narcotics. Applicant called another friend, Amn Z, who went to check on Amn X. He saw that Amn X was sitting still in his recliner in the window and looked pale. He contacted his chain of command. They obtained a master key and went into Amn X's room. They discovered Amn X sitting on his recliner. He was deceased. (GE 5 at 16)

Later that day, special agents from the Air Force Office of Special Investigations (AFOSI) interviewed Applicant about Amn X. They were told during their initial investigation that Applicant and Amn X were good friends and co-workers. Applicant was initially evasive during the interview. He mentioned that he went to Amn X's room the evening of June 2, 2020. Amn X appeared fine. They were watching a television show. Amn X fell asleep and then Applicant went home. The next day he tried to call Amn X and he would not answer. He called his friend Amn Z and asked him to check on Amn X. Amn Z observed Amn X through the window and observed that he appeared dead. (AE 5 at 13)

Applicant told AFOSI that he usually communicated with Amn X via text messages, but would not consent to AFOSI's request to search his cell phone. After being confronted about the importance of getting detailed information about Amn X's death for his family. Applicant admitted he and deceased used illegally purchased Xanax together on May 31, 2020. Applicant was then read his rights under Article 31, UCMJ. He waived his right to legal counsel and elected to answer questions. He admitted to his illegal purchase and use of marijuana and cocaine while on active duty in the military and provided the full details of what occurred on the night of June 2, 2020. (GE 5 at 14-16)

A search of the Amn X's iPhone revealed texts from Applicant. On June 3, 2020, Applicant was escorted by AFOSI to have his blood and urine tested pursuant to a search warrant. While driving to the hospital, Applicant stated, "I watched [Amn X] overdose and I ran away like a coward." An autopsy was performed on Amn X. His cause of death was accidental mixed drug intoxication. He had cocaine, fentanyl and Xanax in his body at the time of his death. (GE 2 at 6; GE 5 at 46) Applicant's urine tested negative for illegal drugs. (GE 5 at 42)

The SOR also alleged Applicant was discharged in May 2021 from the U.S. Air Force with a discharge characterized as General Discharge (Under Honorable Conditions) for misconduct involving drug abuse and obstruction of justice. The SOR allegation cross – referenced SOR ¶¶ 1.a -1c, and 2.a. Applicant’s DD Form 214 indicated he was discharged for Misconduct – Drug Abuse. The discharge characterization was Under Honorable Conditions – (General).(Tr. 33-34; GE 2 at 5; GE 3)

### **Criminal Conduct**

On April 13, 2021, Applicant pled and was found guilty by Summary Courts-Martial of the following criminal offenses under the Uniform Code of Military Justice (UCMJ) Charge 1: Violation of Article 112a, wrongfully using controlled substances including cocaine, and marijuana on divers occasions between January 1, 2016, to December 31, 2017; and wrongful use of alprazolam (Xanax), a Schedule IV drug, on May 31, 2021. Charge II: violation of UCMJ, Article 131b: on or about June 3, 2020, Applicant removed trash from [Amn X’s] dormitory room with the intent to obstruct the due administration of justice in his case because he believed criminal charges were pending against him. He was sentenced to 30 days confinement, reduction to the grade of Airman Basic and a reprimand. (Tr. 18-21; GE 4)

In response to the SOR, Applicant states that he was honest, truthful and cooperative when interviewed by special agents. He owned up to his mistakes. He was released five days early from confinement for good behavior. He says his integrity and core values are still intact. He would just like to put this behind him and “overcome the weight that’s been on my back for 2 years now.” His supervisors can attest to his work ethic and honesty. He is responsible for his past mistakes and states they will never happen again. He has been through trials and tribulations and has made it out alive. (Answer to SOR)

### **Whole-Person Factors**

Master Sergeant S.L. prepared a character statement of behalf of Applicant in April 2021. He first met Applicant in 2017, when he was assigned to his unit. Applicant was ahead of his peer group. He describes Applicant as the hardest working airman in the flight. He won a monthly performance award ten times in a row. He describes his performance as great. He is aware of the charges against Applicant. He believes he should be given the most leniency possible. He believes he will learn from this and will continue his great work performance and has a lot of potential for rehabilitation to become a productive member of society. (AE B at 2)

Mr. S., the Operations Supervisor, where Applicant currently works describes Applicant as “hard-working, dedicated and well-mannered.” He is a role-model and team-player. He has relied on him to be the driving force to motivate the crew to accomplish their daily goals. (AE B at 3)

Another current supervisor, Mr. S2, states Applicant has an amazing work ethic and dedication to doing his best. He is a model employee and team leader. He is willing

to help others with their tasks as well completing his own. He describes Applicant as “a respected, genuine and honest person who puts others before himself.” (AE B at 4)

Since his discharge from active duty, Applicant has been able to purchase a house and a new car. (AE C). On February 20, 2023, he took a drug test. The drug test was negative for illegal substances. (AE D)

### **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, these guidelines are applied 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 as to obtaining 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 that 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 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).

## **DOD and Federal Government Policy on Marijuana Use**

On October 25, 2014, the Director for National Intelligence, issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use,” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use, but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, The Director of National Intelligence (DNI) issued clarifying guidance concerning marijuana use. Specifically, prior recreational marijuana use by an individual may be relevant to adjudications, but it is not determinative. Relevant factors in mitigation include the frequency of use and if 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 work-force 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 (SF 86), Questionnaire for National Security Positions.

## **Guideline H, Drug Involvement**

The security concern relating to the guideline for Drug Involvement is set out in AG & 24:

The illegal use of controlled substances, to include the misuse of prescription drug 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 disqualifying conditions that could raise security concerns. I find the following drug involvement disqualifying conditions apply to Applicant's case.

AG ¶ 25(a) any substance misuse;

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant admits to using marijuana in approximately January 2016 while on vacation in Amsterdam. While marijuana is legal in Amsterdam, Applicant was on active duty in the Air Force. The use of marijuana by an active duty member is strictly forbidden and is a criminal violation under the Uniform Code of Military Justice (UCMJ), Article 112a, wrongful use of controlled substances. He admits he used and purchased cocaine on two occasions between January 2016 to December 2017 and that he wrongfully used Xanax on or about June 1, 2020. The actual date of use was May 31, 2020. Each of these uses occurred when Applicant was on active duty in the United States Air Force while he possessed a security clearance and held a sensitive position. AG ¶ 25(a), AG ¶ 25(c) and AG ¶ 25(f) apply.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline H, Drug Involvement. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions potentially apply to the Applicant's case:

AG ¶ 26(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

AG ¶ 26(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; and

AG ¶ 26(c) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) does not apply. Applicant chose to purchase and use marijuana and cocaine on several occasions in 2016 and 2017. On May 31, 2020, he illegally used Xanax without a prescription. He was on active duty in the United States Air Force when he used and purchased the illegal drugs. He was also entrusted with a security clearance and held a sensitive position. While more than three and half years have passed since his last known illegal use of a drug, questions remain about Applicant's reliability, trustworthiness and good judgment. The military has strict standards about illegal drug use. Applicant's deliberate violation of those standards raise questions about his trustworthiness and judgment.

AG ¶ 26(b) does not apply. While Applicant provided proof of a negative urine sample taken in February 2023, it was not recent. While Applicant indicated he no longer intended to use illegal drugs, he did not provide "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.

AG ¶ 26(c) does not apply. Applicant did not attend any drug counseling. His illegal drug abuse while on active duty in the Air Force was more than experimental use. He purchased the marijuana and cocaine while in a foreign country. On both occasions when he purchased cocaine, it was from a stranger who approached him. Even his use of Xanax in May 2020 was questionable. I am not certain that Applicant fully disclosed the extent of his drug abuse. A favorable prognosis on his drug abuse from a duly qualified medical personnel would have been helpful to make that assessment.

Overall, Applicant did not mitigate the security concerns raised under Guideline H, Drug Involvement.

### **Guideline E, Personal Conduct**

The security concern relating to the guideline 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 the national security or adjudicative processes. . . .

The following disqualifying conditions under AG ¶ 16 potentially apply to Applicant's case:

AG ¶ 16(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group, such conduct includes:

1. engaging in activities which if known could affect the person's personal, professional, or community standing; and
3. while in another country, engaging in any activity that, while legal there, is illegal in the United States.

AG ¶ 16(e) applies. Applicant's illegal drug use while on active duty in the Air Force and while possessing a security clearance and/or holding a sensitive position made him vulnerable to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. His illegal purchase and use of marijuana in 2016 and cocaine on two occasions between 2016 and 2017 is aggravated by the fact that he was in a foreign country at the time.

When Applicant observed his friend Amn X begin to overdose, he made a choice to protect himself rather than calling for help which potentially could have saved Amn X's life. Instead, he chose to clean all evidence of the illegal drugs in the room and remove all of his personal trash in the room before leaving, because he did not want to get in trouble for not reporting Amn X's illegal drug use. As of result of these actions, he was tried by Summary Courts-Martial in 2021 and pled guilty to criminal offenses under the UCMJ in violation of Article 112a, wrongfully using controlled substances and Article 131b, obstruction of justice. He was subsequently discharged with an Under Honorable Conditions (General) discharge. His actions, if known, could affect his personal, professional or community standing.

Under Guideline E, the following mitigating conditions potentially apply in Applicant's case:

AG ¶ 17(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 is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c) does not apply. Applicant's illegal drug use while on active duty in the military and holding a sensitive position is not considered minor. His failure to seek

help for a fellow Airman who started to overdose in his presence is not a minor offense. He had the potential to save a person's life, instead he chose to cover up his presence in Amn X's dormitory room out of concern for himself and his potential to be punished. His conduct raises questions about his reliability, trustworthiness and good judgment.

AG ¶ 17(d) partially applies. Applicant disclosed the extent of his illegal drug use to AFOSI during the investigation after Amn X's death. He reduced his vulnerability to exploitation, manipulation or duress.

While Applicant has reduced his vulnerability to exploitation, manipulation, or duress, the concerns in this case are more about Applicant's judgment, reliability and trustworthiness. Applicant's illegal drug use while on active duty and more importantly, his actions on the night Amn X began to overdose continue to raise doubts about his trustworthiness. Personal Conduct security concerns are not mitigated.

### **Guideline J, Criminal Conduct**

The security concern for Guideline J, Criminal Conduct, is set out in AG & 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

AG ¶ 31 lists disqualifying conditions that could raise a security concern. The following apply to Applicant's case:

AG ¶ 31(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted

AG ¶ 31(b) applies to Applicant's illegal drug use and his obstruction of justice on the night Amn X began to overdose. In April 2021, he pled and was found guilty of Article 112a, wrongful use of controlled substances, and Article 131b, obstruction of justice at a Summary Courts-Martial.

AG ¶ 32 lists the conditions that could mitigate security concerns under criminal conduct. The following mitigating conditions apply to Applicant's case:

AG ¶ 32(a): so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 32(d): There is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or

probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶ 32(a) does not apply. Questions about Applicant's reliability and trustworthiness remain despite the passage of time. Individuals entrusted with a security clearance are expected to follow rules and obey laws. Applicant violated those rules on several occasions while he was on active duty in the Air Force and while he held a security clearance. Clearance holders are also required to self-report adverse information, even when it may be harmful to themselves. Applicant's decision to leave Amn X's room while Amn X was overdosing and before leaving, to remove any items that would place him in Amn X's room continues to raise questions about his judgment, reliability and trustworthiness.

AG ¶ 32(d) applies because Applicant is well-regarded in his current position. However, it does not fully mitigate the concerns regarding Applicant's criminal conduct while on active duty. Rather than call for medical assistance, Applicant took action to cover up the fact that he was in Amn X's room. Questions remain under criminal conduct.

### **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(a):

- (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 Applicant's favorable character references from his supervisors. However, security concerns remain due to Applicant's questionable trustworthiness and reliability while on active duty in the United State Air Force. His illegal drug use in 2016, 2017 and May 2020 and his obstruction of justice on the night Amn X overdosed raise significant concerns.

I considered the potentially disqualifying and mitigating conditions as well as the facts and circumstances surrounding this case. The security concerns under Drug Involvement, Personal Conduct, and Criminal Conduct are not mitigated.

### **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 – 1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.b:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	Against 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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ERIN C. HOGAN  
Administrative Judge