



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



In the matter of: )  
)  
) ISCR Case No. 23-01561  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Andrew Henderson, Department Counsel  
For Applicant: Pro se

02/01/2024

**Decision**

Lokey Anderson, Darlene D., Administrative Judge:

On September 15, 2022, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On September 26, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Abuse. 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 October 1, 2023, and requested a hearing before an administrative judge. The case was assigned to me on November 21, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on December 4, 2023, and the hearing was convened as scheduled on January 9, 2024. At the hearing, the Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant called three witnesses and testified on his own behalf. He also offered three exhibits, referred to as Applicant's Exhibits A

through C, which were admitted without objection. The record remained open until close of business on January 15, 2024, to allow Applicant the opportunity to submit additional supporting documentation. Applicant submitted several documents consisting of 19 pages, collectively marked as Applicant's Post-Hearing A, which was admitted into evidence. DOHA received the transcript of the hearing (Tr.) on January 22, 2024.

### **Findings of Fact**

Applicant is 45 years old. He has a Bachelor's degree in Business. He is employed by a defense contractor as a Personnel Security Officer II. He is seeking to obtain a security clearance in connection with his employment.

#### **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 began working for a defense contractor in October 2022. He completed a security clearance application on September 15, 2022. He has never applied for or held a security clearance before.

Applicant has an extensive history of illegal drug use. He admits each of the allegations set forth in the SOR. He admits that he has used marijuana, with varying frequency, from approximately September 1982 to at least March 2022. He admits that he used ecstasy/MDMA, with varying frequency, from approximately August 1996 to at least September 2019. He admits that he used LSD, with varying frequency, from 1999 to at least August 2019. He admits that he used Psilocybin mushrooms, with varying frequency, from 1999 to at least 2022. He also admits that he used cocaine, with varying frequency, from about 2003 to at least 2018. (Applicant's Exhibit B.)

Applicant stated that he began using marijuana in high school. He typically used it at social gatherings, concerts, or just to relax. He remembers that there would be several months to years between his usage. After high school and in his 30's, he developed migraines, and was having problems sleeping. Between 2013-2015, he obtained a marijuana medical card, and purchased and possessed marijuana through the state approved dispensaries. During this period he would only use marijuana about two to four times per month. Since 2018, he has only used marijuana sporadically. His use has gone from weekly to every other month and then by mid-2020, he stopped using it regularly. From 2020-2022, he used marijuana only a couple of times. His last use of marijuana occurred in March 2022, which was on a birthday camping trip. (Applicant's Exhibit B.)

Applicant has used MDMA on five separate occasions over a period of 23 years, on a purely experimental basis. He used it at social events, music events, and parties. It was provided to him by friends at these events. He last used MDMA at a New Years Eve party on December 31, 2018. (Applicant's Exhibit B.)

Applicant has used LSD on two occasions. He first used it in 1999, and last used it in August 2019. He explained that both occasions, the use was experimental in nature, and occurred at a music concert and house party. He stated that during his last use of LSD in August 2019, he micro-dosed the drug so small that he experienced no high or mind effect at all. (Applicant's Exhibit B.)

Applicant has used Psilocybin mushrooms three times to feel the high effects of this mind-altering drug. He used it in an intimate controlled situation, at a house or while camping with friends. He last used psilocybin mushrooms in June 2022. (Tr. p. 24.)

Applicant has also used cocaine on five occasions. The majority of this use occurred between the ages of 25-35 (3 times) and then in 2016 and 2019. He used cocaine either at house parties or at a New Years Eve party where it was offered to him and not purchased. He did not like the effects of the drug. (Applicant's Exhibit B.)

Applicant explained that in November 2017, he had a major medical problem occur resulting from a chiropractic adjustment. The injury caused recurrent stroke-like symptoms over a period of five days resulting in a life-saving surgery. Post-surgery, Applicant had an actual stroke that left him physically debilitated. He was diagnosed with PTSD and general anxiety due to this traumatic life changing event. The results of the stroke also caused speech issues, an inability to walk and difficulty with fine motor skills. Applicant had to learn these things all over again. He was not sure if he would ever be employable again. (Applicant's Exhibit B, and Post-Hearing Exhibit A.)

During his first year and a half of recovery, he experimented more than he ever had. Applicant researched several drugs to find that Psilocybin is a positive and proven use to treat PTSD and trauma, and traumatic brain injuries. He also discovered that psychedelics have been effective for depression, PTSD, and anxiety. As he began to improve, and with the help of occupational, speech, and physical therapy, he was eventually able to rejoin the work force in 2020. (Applicant's Exhibit B.)

When Applicant applied for a security clearance in September 2022, he listed that his last use of marijuana was in April 2020. He continued to use marijuana and last used it in March 2022. He also used psilocybin mushrooms as recently as June 2022. (Tr. pp. 32-33.)

Applicant submitted a letter of intent dated January 9, 2024, indicating that he has no intent to use any "drug or substance" with the punishment to be automatic revocation of his security clearance. He did not reference the fact that the drug or substance he is referring to in this letter refer to those drugs or substances that are illegal, however, it will be assumed. (Applicant's Post-Hearing Exhibit A.)

Several witnesses from the company testified on Applicant's behalf, including the Director of Security, the Manager of Industrial Security, and a close friend who works for the same company. Collectively, they consider Applicant to be honest and trustworthy and describe him as an upstanding person. They recommend him for a security clearance. (Tr. pp. 16- 50.)

Letters of recommendation from the Director of Security, the Manager of Security, the Deputy Manager of Industrial Security, the Lead Contractor Special Security Officer, the Lead Personnel Security Specialist, his neighbor who is a retired Sheriff Deputy, a retired government Division Chief for a City Attorney's Office, and his best friend since first grade, all attest to Applicant's honesty and trustworthiness. They collectively recognize Applicant as a man of integrity who is dependable and conscientious and an asset to the company. (Applicant's Exhibit A.)

### **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.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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.

Applicant has used a variety of illegal drugs including marijuana, ecstasy/MDMA, psilocybin mushrooms, LSD, and cocaine. He has even used marijuana and psilocybin mushrooms as recently as March 2022, and psilocybin mushrooms as recently as June 2022. Applicant is not a young man right out of college. He is 45 years old. He is expected to show a high level of maturity, trustworthiness, and good judgment that should not include the use of illegal drugs. In this case, Applicant has fallen short of meeting these eligibility requirements. In fact, given his extensive history of drug use that only stopped as recently as June 2022, he does not meet the qualifications 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 for many years chosen to live his life to his convenience. He knew that he was using drugs that were illegal and he disregarded the law and used them anyway. Under the particular facts of this case, Applicant does not show the requisite character or judgment of someone who has the maturity, integrity, good judgment, and reliability to be entrusted with the national interests. 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, and does not meet the qualifications for a security clearance at this time.

Overall, the record evidence leaves me with 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
Subparagraphs 1.a through 1.d.	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge