



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



In the matter of: )  
)  
) ISCR Case No. 23-00590  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Adrienne Driskill, Esq., Department Counsel  
For Applicant: *Pro se*

03/25/2024

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**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, Drug Involvement and Substance Misuse, and Guideline E, Personal Conduct. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on May 18, 2022. The Defense Counterintelligence & Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) on June 26, 2023, detailing security concerns under Guidelines H and E. DCSA CAS acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant timely answered the SOR and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On December 1, 2023, Department Counsel submitted the Government’s file of relevant

material (FORM), including documents identified as Items 1 through 7. Applicant received the FORM on December 11, 2023. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any information within the prescribed time period. The case was assigned to me on March 21, 2024.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

### **Findings of Fact**

In Applicant's SOR response, he admitted all SOR allegations. Applicant's admissions are accepted as findings of fact. (Item 2)

Applicant is 27 years old. He has been employed by a DOD contractor since November 2021 and is applying for a security clearance. He served on active duty in the United States (U.S.) Navy from November 2019 to September 2021. He received a general discharge, under honorable conditions. He has a high school diploma. He is single and has no children. (Item 3)

The SOR alleges under Guideline H that Applicant used marijuana with varying frequency from January 2015 to January 2018 (SOR ¶ 1.a: Item 3, Section 23, at 33-34); that he was charged with possession of marijuana in August 2015 (SOR ¶ 1.b: Item 3, Section 22, at 31-32; Item 4 at 8-9); and that he used cocaine and failed a urinalysis while serving in the U.S. Navy and granted access to classified information. He was found guilty of violating Uniform Code of Military Justice (UCMJ) Article 112a - wrongful use of a controlled substance - and received a general discharge. (SOR ¶ 1.c: Item 3, section 23, at 18, 34; Item 4 at 14-15; Item 5); and the allegations in SOR ¶¶ 1.a -1.c were cross-alleged under Guideline E, Personal Conduct. (SOR ¶ 2.d)

In his SOR response, dated October 26, 2023, Applicant stated that his marijuana use between 2015 and 2018 occurred when he was very young and ignorant about what he wanted out of life. He admitted being charged with marijuana possession in August 2015. He admitted that he used cocaine and failed a urinalysis in May 2021 while serving in the U.S. Navy. He admitted that he was granted access to classified information during this time. He admitted he made a poor choice when he used cocaine. He has had to face the consequences of that choice and is still dealing with the consequences today. He pushes himself everyday to learn and be the best he can be. (Item 3)

In response to DOHA Interrogatories, dated June 12, 2023, Applicant indicated he used marijuana approximately 22 times from 2015 and 2018. He describes his frequency of use as on a quarterly basis. His father or a family friend either gave or sold him marijuana about four or five times. Applicant said he used marijuana because many people he knew used marijuana and he wanted to fit in. He stopped using marijuana because he wants to be better than his father. He began to notice that his father would often ask him for money. He was working many hours while his father was hardly working. (Item 4 at 9)

In 2021, Applicant served on a ship while he was on active duty in the U.S. Navy. In May 2021, he went to a local bar on a Saturday night. He admitted to consuming four beers, two shots of tequila, and two shots of whiskey over a three to four hour period. Needless to say, he was intoxicated. A friend and co-worker offered him cocaine. His friend told him that cocaine would help sober him up. Applicant snorted three or four lines in the bathroom. He did not purchase the cocaine. His friend gave it to him. It was the only time he used cocaine. He had a secret clearance at the time he used cocaine. He was aware the use of illegal drugs or controlled substances was prohibited while possessing a security clearance. (Item 4 at 15)

The following Monday, he was called for a random urinalysis. His urine sample tested positive for cocaine. He was called to Captain's Mast for violating Article 112a of the UCMJ. He received a punishment of 60 days restriction, reduction from the paygrade E-4 to E-3, and was ordered to forfeit half of his pay for one month (suspended). He was then discharged from the U.S. Navy with a discharge characterized as general, under honorable conditions. (Item 4 at 15)

Applicant has not used illegal drugs since this incident. He no longer associates with the friend who gave him the cocaine. He does not associate with anyone who uses illegal drugs. He admits to drinking too much alcohol in the past. In May 2022, he reduced his drinking to one to two beers about two times a month at home or at a bar. (Item 4 at 15) While security concerns about Applicant's alcohol consumption were not alleged in the SOR, his alcohol use was a significant factor in his decision to use cocaine. I consider his reduced alcohol use as a matter of extenuation and mitigation.

Applicant has no intention of using illegal drugs in the future. He said that drugs have done nothing but make his life more difficult. He lost several opportunities as a result of the consequences of his illegal drug use. He made a poor decision to use illegal drugs. He learned from his mistakes and wants a better life for himself. (Item 4 at 2-3)

## **Policies**

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

The adjudicative 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(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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 an applicant may deliberately or inadvertently fail to 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.

### **Analysis**

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

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement and substance misuse under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse;

AG ¶ 25(b) testing positive for an illegal drug; and

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

The record evidence shows Applicant has a history of marijuana use from 2015 to 2018. He used marijuana at least 22 times during this time. He was charged with possession of marijuana in August 2015. He also used cocaine on one occasion while he was on active duty in the U.S. Navy at a bar after drinking heavily. He was called for

urinalysis the following Monday and tested positive for cocaine. AG ¶¶ 25(a), 25(b), and 25(c) apply.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. 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. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

AG ¶ 26(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

AG ¶ 26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence on 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.

AG ¶ 26(a) applies. Applicant's last use of illegal drugs occurred in May 2021, more than three years ago. The evidence indicates he stopped marijuana use in 2018 before enlisting in the U.S. Navy and he used cocaine on one occasion while on active duty. Since his discharge from the U.S. Navy, he has found steady employment with a DOD contractor and has turned his life around.

AG ¶ 26(b) applies. Applicant was forthcoming about his past illegal drug use. He no longer associates with anyone who uses illegal drugs. It is noted that his decision to use cocaine occurred when he was intoxicated. Applicant has reduced his drinking significantly since 2022. While Applicant did not sign an independent formal statement of intent to refrain from illegal drug use, he expressed his intent to not use drugs in the future in his response to interrogatories. He signed the interrogatories swearing that his statements were "true, complete, and correct to the best of my knowledge and belief and are made in good faith." He faced serious consequences as a result of his illegal drug use while in the U.S. Navy. He is aware of the consequences of any future illegal drug use. He mitigated the concerns under Drug Involvement and Substance Misuse.

## Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 national security investigative or adjudicative processes. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition applies:

(c) credible adverse information in several adjudicative issue 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 the individual may not properly safeguard classified or sensitive information.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

(c) the offense is so minor or so much time has passed, or the behavior is so infrequent, or 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 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.

Both AG ¶ 17(c) and AG ¶ 17(d) apply for the same reasons the security concerns under Guideline H were mitigated. While Applicant's illegal drug use in the U.S. Navy was serious, more than three years have passed since he used cocaine. There is no evidence that he has used illegal drugs since that time. Applicant accepted responsibility for his behavior. While he had not sought counseling, he has taken steps to change his behavior. Since his discharge from active duty, he has worked full-time for a DOD contractor since November 2021; he has reduced his alcohol use; and he has matured. He has taken steps to improve his life-style. He has demonstrated that he is reliable and trustworthy. The personal conduct security concerns are mitigated.

## Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E, and the AG ¶ 2(d) factors in this whole-person analysis.

Applicant's past illegal drug use raised serious security concerns. His decision to use cocaine while serving on active duty in the U.S. Navy was a violation of good order and discipline. He suffered the consequences by punishment at Captain's Mast and being discharged from the U.S. Navy. I have also considered his conduct after being discharged from active duty. He has been an employee with a DOD contractor since November 2021. He has no intention of using illegal drugs in the future. His last use of illegal drugs occurred in May 2021, more than three years ago. I considered alcohol played a significant factor in his decision to use cocaine on the occasion. He has reduced his drinking to a more responsible level. He has matured and wants more from his life. Applicant is aware that any future illegal drug use may result in the loss of his security clearance. Concerns under Drug Involvement and Substance Misuse and Personal Conduct are 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:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant

Paragraph 2, Guideline E: For Applicant

Subparagraph 2.a: For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

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Erin C. Hogan  
Administrative Judge