



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-00269
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey De Angelis, Esq., Department Counsel  
For Applicant: Melissa L. Watkins, Esq.

05/10/2024

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, drug involvement and substance misuse, but he failed to mitigate the Guideline E, personal conduct concerns. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On March 28, 2023, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. The DOD acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR, through counsel on June 5, 2023. He requested a hearing. The case was assigned to me on December 5, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 13, 2023, and

the hearing was held on January 23, 2024. The Government offered exhibits (GE) 1 and 2, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified, offered the testimony of three witnesses, and offered exhibits (AE) A and B (pages 1-106; note also these exhibits are substantially the same as Enclosures 1-15 attached to his SOR answer). These exhibits were admitted without objection. The record closed at the completion of the hearing. DOHA received the hearing transcript (Tr.) on February 1, 2024.

### **Findings of Fact**

Applicant admitted all the SOR allegations, with explanations. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 29 years old. In 2017, he graduated from college with a degree in aerospace engineering. He is currently pursuing a master's degree in computer science. While attending college, starting in 2013, he was in an Army ROTC program. Additionally, he drilled with an Army Reserve (USAR) unit on a monthly basis where random drug testing occurred. Upon his graduation in 2017, he was also commissioned as a second lieutenant in the USAR. He currently holds the rank of captain (CPT) in the USAR. He has been employed with defense contractors since 2017. He has worked for his current employer since July 2022. He has held a security clearance since 2017. He married in October 2022, and has no children. (Tr. 55-56, 60-63, 90, 100; GE 1-2; AE B (pp. 28, 32-35))

Under Guideline H, the SOR alleged Applicant used marijuana/THC, with varying frequency, from about August 2020 until at least January 2021, while granted access to classified information (SOR ¶ 1.a); that he used psilocybin mushrooms twice in about July 2020, while granted eligibility for access to classified information (SOR ¶ 1.b); and that he used MDMA (ecstasy) in about August 2019, while granted access to classified information (SOR ¶ 1.c). All three allegations were cross-alleged under Guideline E (SOR ¶ 2.a).

Applicant denied using any illegal drugs while in high school or college. While he attended college, he drilled with his USAR unit about eight times a year. He participated in drug testing on several occasions when he was randomly selected on drill weekends. He never tested positive. His USAR unit randomly tests 100 percent of its assigned Soldiers at least once a year. He estimated that he has been tested two to three times a year by his USAR unit over the years. He took pre-employment drug tests before he was hired by his first two defense contractor-employers. He believes he was informed of their zero tolerance drug policies when hired. (Tr. 34-35, 66, 88, 90-92)

Applicant admitted using marijuana from about August 2020 to January 2021, which was his last use. He moved to his current state of residence in 2019. This state has legalized marijuana use, while still prohibited under federal law. He found it difficult meeting people when he first moved and then COVID-19 hit in 2020 making it even more

difficult to do so. He was exploring his community one day and came across a legal marijuana dispensary and entered out of curiosity. He ended up buying a package of marijuana gummies. He believed there were about 10 gummies in the package. Over the course of the next several months he ingested the gummies when he was bored or it was the weekend and he had nothing better to do. He only purchased this one package of marijuana gummies and he used the last one sometime in January 2021. He has not purchased or used marijuana gummies since then. While he held a security clearance during these uses, he did not have access to classified information because at that time he was working on a commercial program, not a DOD program. He acknowledged the concern about his marijuana use by stating, "I understand that it shows a lack of good judgment." (Tr. 68-70, 101; SOR answer; AE A, B (pp. 32-35))

Applicant admitted using illegal mushrooms twice in about July 2020, while on a camping trip. He went on the trip with a friend of a friend whom he really did not know that well. He also did not know the rest of the campers. He was sitting around the campfire one night and was offered a dose of the mushrooms. He accepted and ingested the dose. Later during the trip, he took a second dose while they were kayaking. Before he went on the trip, he was unaware there would be illegal drugs present. He did not enjoy this experience. He no longer associates with the friend. He characterized this experience as a "one off" where he was offered drugs by a group of people he did not know and he made a bad decision by using the substance twice. Similar to his marijuana use, he possessed a security clearance at the time of his mushroom use, but he did not have access to classified information at the time because he was working on a commercial project. (Tr. 72-73, 101-102; AE B (pp. 32-35))

Applicant admitted using ecstasy one time in August 2019. He went on a cruise with his sister and her boyfriend (now husband). One night the boyfriend brought out some ecstasy and Applicant ingested it. He has never used it since that time. As far as he knows, his sister's husband has not used or possessed it since that time. At the time of his use, he had access to classified information. During that time he accessed classified information on a daily basis. (Tr. 74-78; 102; AE B (pp.32-35))

Applicant disclosed all his illegal drug abuse on his September 2022 security clearance application (SCA). Earlier, in the spring or summer of 2021, he had an informal discussion with his facility security officer (FSO) about his marijuana use in the context of whether Applicant should seek a top secret clearance. After this discussion, he was advised that he should not proceed with completing a top secret SCA. The record is silent as to the reason for his completion of the September 2022 SCA. (Tr. 95; GE 1)

Applicant admitted that when he used ecstasy and mushrooms, he allowed himself to be influenced by others, in a bad way. He knew from his early days as a cadet in college that using illegal drugs was prohibited. He testified that he has no future intent to use any illegal substances in the future. He also provided a written statement expressing this intent. In May 2023, after the issuance of his SOR, he completed a four-hour Drug awareness program. He received a certificate of completion, but no details about the program were provided. During his testimony, he accepted responsibility for his actions,

expressed remorse, and acknowledged his lack of good judgment. He stated that he has learned from these mistakes and will not make them again because he is more mature, and he now realizes what a serious matter this is. (Tr. 70, 103-105; AE B (pp.37, 39))

## **Character Evidence**

Applicant called three witnesses to testify for him (W1, W2, W3). W1 is one of Applicant's current supervisors at his civilian position. W1 holds a security clearance. W1 has known him for about one year. W1 described him as a valuable member of the team who is trustworthy, dependable, reliable, responsible, and whose judgment is great. Applicant told W1 about his drug use. All of it occurred before W1 knew him. W1 was surprised to learn of his drug use. W1 was aware he held a security clearance at the time of his uses. W1 also provided a written letter supporting Applicant. (Tr. 21-26; AE B (p. 87))

W2 is Applicant's current USAR company commander, a captain in the USAR who holds a security clearance. W2 described Applicant as one of his top performers and someone he relies upon to accomplish necessary tasks. W2 made him a team leader. Applicant also has a reputation in the unit as someone who gets things done. He has participated in random unit drug tests on multiple occasions with no positive results. He came to W2 and told him about his marijuana use. W2 was unaware the use occurred while Applicant held a security clearance. W2 could not remember if he also told him about using illegal mushrooms and ecstasy. W2 admitted that Applicant's drug use caused him concern about his behavior. W2 felt that Applicant's willingness to come forward and admit his wrongdoing showed his integrity. W2 also provided a written letter supporting Applicant. (Tr. 28, 30-35, 40-41; AE B (pp. 82-83))

W3 is a personal friend of Applicant. W3 knows Applicant through Applicant's wife. Starting in July 2020, W3 and Applicant's wife were roommates for about two years. W3 is aware of Applicant's past drug use through his admissions to her. W3 sees Applicant socially about one time a week. During all their social interaction, she has never seen him use any illegal substances. W3 described Applicant as a reliable person. W3 gave an example of how Applicant assisted her when she was experiencing financial difficulties by helping W3 set up a budget plan that got W3's finances back on track. W3 trusted him with personal information in the process. W3 holds a security clearance and believes Applicant has the necessary traits to hold a clearance. W3 also provided a written letter supporting Applicant. (Tr. 48-51; AE B (pp. 43-44))

In addition to the testimony and letters from W1, W2, and W3, other personal friends and professional colleague have provided letters of support for Applicant. All generally express the same sentiment, that he is reliable, trustworthy, and responsible. They believe his past infrequent drug use is not reflective of his true self. (AE B (pp. 41-46, 81-87))

Applicant also provided his completed civilian performance appraisals from 2020 and 2021, which reflect "highly effective" and "exceptional" contributions. He received two

Achievement Awards and one Spot Award for his accountability. He also provided his USAR 2019-2022 Officer Evaluation Reports (OERs), which reflect that overall he is considered "Most Qualified" or "Highly Qualified" by his superior rating officers. He provided documentation showing he has been awarded an Army Achievement Medal with one oak leaf cluster. (AE B (pp. 89-95, 97-106))

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, 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(a), the entire process is a careful weighing 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, 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 to obtain a favorable security decision."

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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).

## **Analysis**

### **Guideline H, Drug Involvement and Substance Abuse**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable in this case include:

- (a) any substance misuse; and
  
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant's drug use is supported by his admissions. However, concerning his admitted use of marijuana at various times from August 2020 to January 2021, and his use of illegal mushrooms two times in July 2020, while he held a security clearance at that time, there is no evidence that he had access to classified information during the time frame alleged. I find that AG ¶ 25(a) applies to all three allegations, but that AG ¶ 25(f) only applies to SOR ¶ 1.c.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

- (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.

Of all of Applicant's drug use, his marijuana use was the most frequent and recent. He used it about ten times from August 2020 to January 2021. His illegal mushroom use occurred twice in 2020, and his ecstasy use once in 2019. He credibly claimed that he has not used any illegal drugs since January 2021. He signed a letter of intent not to use illegal drugs in the future and testified to the same. He completed a drug awareness course in May 2023. He receives partial mitigation credit under AG ¶ 26(a), because his use was infrequent and somewhat remote. However, full mitigation cannot be applied because his decisions to use illegal drugs on three different occasions, while holding a security clearance, shows extremely poor judgment, trustworthiness, and reliability. This is particularly true because of his USAR background and his knowledge that drug use is unacceptable as a Soldier and as a clearance holding contractor employee.

Applicant acknowledged his past drug use to both his civilian and military superiors, disclosed his use on his 2022 SCA, and provided a statement of intent to refrain from using illegal drugs in the future. AG ¶ 26(b) fully applies.

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

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (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 that the individual may not properly safeguard classified or sensitive information; and

(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.

Applicant's admitted drug involvement and substance misuse is cross-alleged under Guideline E. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. The conduct also created vulnerability to exploitation, manipulation, and duress during the period of time before he reported his drug activity. AG ¶¶ 16(e) and 16(c) are applicable, as well as the general concerns expressed in AG ¶ 15.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(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; and

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

Applicant's decisions to use three different illegal drugs during three different time frames trouble me very much. He is someone who has been exposed to the illegality of illegal drug use since he was a cadet in college and first joined the USAR in 2013. He was drug tested then, drug tested before he started his first two civilian contractor positions, and drug tested regularly as a current drilling USAR officer. He acknowledged excising poor judgment by using these drugs. He also acknowledged that on two occasions he was influenced by others to engage in drug abuse. So, I must reconcile his otherwise outstanding civilian and military record and the support he received from his friends and colleagues, against his decisions, on three separate occasions, to put at risk his civilian and military careers by using illegal drugs. Given his established track record, I have doubts about Applicant's reliability, trustworthiness, and judgment. While all three



mitigating conditions have some application, none of them establish full mitigation for Applicant's personal conduct concerns.

### **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 the 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 the facts and circumstances surrounding this case. I considered Applicant's age, his military service, the supportive testimony of his friends and colleagues, and his drug education course. However, I also considered Applicant's history of using three different drugs during three time periods, all while holding a security clearance. Although I believe Applicant mitigated his drug misconduct and believe it will not recur, I cannot say the same about the poor decision process he went through on three separate occasions and therefore cannot mitigate his personal conduct. Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

### **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: Subparagraphs 1.a-1.c:	FOR APPLICANT For Applicant
Paragraph 2, Guideline E: Subparagraph 2.a:	AGAINST APPLICANT 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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Robert E. Coacher  
Administrative Judge