



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



In the matter of: )  
)  
) ISCR Case No. 23-01718  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeffrey Kent, Esq., Department Counsel  
For Applicant: *Pro se*

07/31/2024

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**Decision**

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LAFAYE, Gatha, Administrative Judge:

Applicant failed to provide sufficient evidence to mitigate security concerns raised under Guidelines H (drug involvement and substance misuse), J (criminal conduct), and E (personal conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on January 3, 2023. On August 21, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) alleging security concerns under Guidelines H (drug involvement and substance misuse), J (criminal conduct), and E (personal conduct). The DCSA CAS acted under Executive Order (EO) 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 the adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on August 25, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's written case on September 8, 2023, including Items 1 through 6. On September 12, 2023, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He received the FORM on September 25, 2023, and did not object to the Government's evidentiary submission. He later submitted a 12-page responsive document via email on November 8, 2023. The Government did not object to the submission. Applicant's documentary submission is marked as Item AE-A, and admitted in evidence without objection. Likewise, the Government evidentiary submission, Items 1 through 6, are admitted in evidence without objection. The case was assigned to me on January 4, 2024.

### **Findings of Fact**

In Applicant's response to the SOR, he admitted allegations in SOR ¶¶ 1.a-1.c, 1.e-1.k, 2.a, and 3.a. He denied allegations in SOR ¶¶ 1.d and 1.l. His admissions are incorporated in my findings of fact.

Applicant is 26 years old. He received his high school diploma in June 2016. He initially attended a university in August 2016, but subsequently enrolled in community colleges between January 2019 and June 2020. He returned to the university and completed his bachelor's degree in December 2021. He has never been married and has no children. (Item 4, Item 6 at 5-9) He has worked as a consultant for a defense contractor since November 2022. (*Id.*)

Applicant completed his first SCA in January 2023. He disclosed that he was arrested in October 2018, and charged with felony possession of marijuana with intent to distribute; and possession of a Schedule I controlled substance. Police officers arrived at his apartment on Halloween to execute a search warrant, which authorized them to search for 0.5 ounces or more of marijuana. (Item 6 at 5-6) They found 2.0 ounces of marijuana, and a batch of marijuana brownies. He stated that he sold marijuana to buy beer and to support his own marijuana use. (Item 6 at 5) He routinely purchased marijuana from a supplier at the university every two weeks, paying between \$700 and \$800 each time. (*Id.*) In September 2019, he pled guilty to misdemeanor possession of marijuana with intent to distribute. His sentence included 12 months confinement (suspended for 12 months), probation, fines, and community service. He also disclosed that he was arrested in November 2018, and charged with public intoxication. (Item 4 at 35-39)

Because of his status as a university student, Applicant's arrest for possession of marijuana with the intent to distribute was reported to university officials. He was expelled from all university programs from January to December 2019 for violating the university's code of conduct. He was required to meet pre-conditions, which included writing an essay prior to being permitted to re-enroll in the university. (Item 6 at 5-7)

In addition to marijuana, Applicant disclosed his extensive involvement with other illegal drugs in his SCA (Item 4 at 39-40). He also provided additional details in his March 2023 background interview, which he authenticated. (Item 6 at 7-8)

Applicant first used marijuana in March 2012 while visiting a friend. He was in the eighth grade at the time. (Item 6 at 7-8; AE A at 2-3) He continued to use marijuana every week, one to four times, until his October 2018 felony arrest for possession of marijuana, with intent to distribute. (*Id.*) A year later, he started using marijuana again in about November 2019. He stated he had acquired a medical marijuana card, but a copy of the medical marijuana card he references was not provided. He continued to use marijuana in a similar pattern: one to four times a week, until he stated that he stopped using it in November 2022. (Item 6 at 7-8)

Applicant purchased marijuana from about September 2012 through November 2022. (Item 6 at 6-7) He also sold marijuana in high school and college, from September 2014 through October 2018. While in college, he expanded his illegal drug involvement beyond marijuana. He purchased and sold lysergic acid diethylamide (LSD) in about September 2016. He purchased and used hallucinogenic mushrooms from about 2016 through March 2022. He also purchased and used the prescription drug Adderall, not prescribed to him, from about 2016 through about 2018. He purchased and used cocaine from about 2016 through about 2018. He admitted to purchasing cactus analog mescaline (peyote) in about 2016 (or before), and dimethyltryptamine (DMT) in 2018. He maintained that he stopped all illegal drug activities in November 2022, after he began working as a consultant for a defense contractor. He denied an intent to use any illegal drugs in the future. (Item 4 at 35-44; Item 5; Item 6 at 5-8)

Applicant submitted a 12-page supplemental document, to include a personal statement dated November 8, 2023. In his statement, he maintained that he completely stopped selling marijuana or any illegal drugs after he was arrested in October 2018:

Since my arrest in (October) 2018, I have not sold marijuana or any other drugs. ... Since that date, all my drug use has been legal or decriminalized under local laws. My use of mushrooms has only been where they are decriminalized, and my use of marijuana was always legal under local laws. (AE A at 2-3)

He did not provide a copy of, or reference to any state law decriminalizing the use of hallucinogenic mushrooms or marijuana. Nor did he provide a copy of the medical marijuana card he stated that he received in late 2019. He maintains that he stopped using marijuana in November 2022; and hallucinogenic mushrooms in about mid-2022. He stated that he abstained from being involved with all other illegal drug activity for about six years. (AE A at 2)

Applicant has made significant positive changes to his life, professionally and personally, after his arrest and subsequent conviction. He stated that he completed all actions in compliance with his one-year probation following his conviction. Specifically,

he completed 100 hours of community service; followed the terms of his restricted driver's license; and completed a drug education class. He changed his major to pursue opportunities closer to his interests; and he has current work experience in his chosen field. More recently he began taking college courses to advance his technical knowledge. He also learned healthy ways to manage stress by participating in sports-related hobbies with new friends. He is making himself available for participation in community service activities. He stated that he disassociated himself from people and places with links to his past illegal drug activities, and has committed to abstaining from using or misusing illegal drugs in the future, acknowledging that any such use or involvement would be grounds for revocation of national security eligibility. (Item 6 at 7-8; and AE A at 3) There is no evidence in the record showing that he has completed a prescribed drug rehabilitation or treatment program that includes rehabilitation and aftercare requirements. No favorable prognosis by a duly qualified medical professional has been submitted. (Items 4, 6; and AE A at 2-3)

Applicant submitted six letters of support, which included letters from his supervisor, career manager, two colleagues, a family member, and a close neighbor. All persons expressed their awareness of his prior illegal drug use and drug-related activities, and commented favorably on his initiative, dependability, and potential. They collectively favored his application for a top-secret security clearance. (AE A)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." EO 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the 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.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” EO 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

## Analysis

### Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is described in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. 802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

AG ¶ 25(a): any substance misuse (see above definition); and

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

Applicant admitted to his extensive drug involvement and substance misuse and the record evidence supports his admissions. He partially denied allegations in SOR ¶¶ 1.d and 1.l, based on imperfectly drafted language in these allegations. I find that both charges, as drafted, sufficiently placed him on notice of the allegations against him. There is no requirement for absolute perfection. AG ¶¶ 25(a) and 25(c) are applicable.

The following mitigating conditions are potentially applicable:

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 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(d): 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) is not fully established. Applicant ended his most troubling involvement with illegal drugs following his arrest in October 2018, including purchasing and selling various illegal drugs detailed in the SOR. His drug involvement and substance misuse occurring before his arrest in October 2018, is partially mitigated by time. However, regarding his decision to re-establish his pattern of using marijuana at the same level of frequency as before his October 2018 arrest casts doubt on his reliability, trustworthiness and judgment. The same holds true for his post-October 2018 involvement with hallucinogenic mushrooms. His response towards these federally illegal drugs after going through a significant drug arrest and expulsion from college, reflected a continuation of

his attitude and judgment toward illegal drug use. I specifically find that SOR ¶ 1.d is not mitigated.

AG ¶ 26(b) is not fully established. Applicant has acknowledged his drug involvement and substance misuse, and taken positive steps to disassociate himself from people and places connected to his prior drug use and involvement. In his written statement, he also acknowledged that any future involvement or misuse is grounds for revocation of national security eligibility. Similar to the above, these positive steps taken partially mitigates his more troubling involvement with illegal drugs for conduct predating his October 2018 arrest. However, a pattern of abstinence has not been established for his subsequent involvement with marijuana and hallucinogenic mushrooms.

AG ¶ 26(d) is not established. Applicant completed a drug education program following his arrest in October 2018, and his sentence a year later. However, he has not completed a prescribed drug treatment program that includes rehabilitation and aftercare requirements. Neither has he provided a favorable prognosis by a duly qualified medical professional.

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

The security concern for criminal conduct is described in AG ¶ 30:

Criminal activity creates doubt about an Appellant'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.

Applicant's admissions and the evidence in the FORM establish the following disqualifying condition under AG ¶ 31.

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.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

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) and 32(d) are not fully established. The above analysis under Guideline H applies here. Applicant has a long, robust history of illegal drug involvement and substance misuse, including the purchase, use and sale of marijuana and other federally illegal drugs. It is noted that police officers who searched his apartment arrived at his home with a search warrant in hand, which led to his arrest and ultimate conviction for marijuana possession with intent to distribute. He has made substantial progress towards his full rehabilitation as discussed above. However, the fact that he re-started using marijuana after the events of October 2018, at the same level and frequency as before his arrest; and that he also chose to use hallucinogenic mushrooms, leave me with questions and doubts about his current reliability, trustworthiness, and judgment; and his willingness to comply with federal laws, rules, and regulations. Not enough time has passed to fully mitigate criminal conduct concerns.

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

The security concern under this guideline is described 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 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 condition is potentially applicable:

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.

Applicant's admissions and the evidence in the FORM are sufficient to establish the disqualifying condition in AG ¶ 16(e). His extensive drug involvement and substance misuse, including his arrest and conviction for possession of marijuana, with intent to distribute creates a vulnerability to manipulation, exploitation, and duress.

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

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



AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

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

The above analysis under Guidelines H and J also apply here. For reasons previously stated, not enough time has passed to fully mitigate Applicant's personal conduct concerns. He has made meaningful progress but, as stated above, his decision to re-start his use of marijuana and hallucinogenic mushrooms casts doubt on his reliability, trustworthiness, and judgment; and his willingness to comply with federal laws, rules, and regulations. He is credited with taking positive steps to alleviate stressors and to change his drug use behavior. The overall evidence, however, leaves me with questions and doubts about whether he has fully overcome his personal conduct security concerns. With his history, he is finally on the right track, if he can persist.

### **Whole-Person Concept**

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guidelines H, J and E in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under these guidelines, and evaluating all evidence in the whole-person context, I conclude Applicant has not mitigated security concerns under Guidelines H (drug involvement and substance misuse), J (criminal conduct) and E (personal conduct).

## **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, b, d, and g:	Against Applicant
Subparagraphs 1.c, e, f, and h-l:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

## **Conclusion**

It is not clearly consistent with the national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Gatha LaFaye  
Administrative Judge