



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



In the matter of: )  
)  
) ADP Case No. 23-00511  
)  
Applicant for Public Trust Position )

**Appearances**

For Government: Cassie L. Ford, Esq., Department Counsel  
For Applicant: *Pro se*

08/26/2024

**Decision**

OLMOS, Bryan J., Administrative Judge:

Applicant failed to mitigate the trustworthiness concerns under Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to sensitive information is denied.

**Statement of the Case**

On May 24, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing trustworthiness concerns under Guideline H. This action was taken under DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

Applicant answered the SOR on July 26, 2023, included Applicant Exhibits (AX) A-K, and requested a hearing before an administrative judge from the Defense Office of

Hearings and Appeals (DOHA). The case was assigned to me on April 15, 2024. On May 16, 2024, DOHA issued a notice scheduling the hearing for June 26, 2024.

I convened the hearing as scheduled. Department Counsel offered into evidence Government Exhibits (GX) 1-2. Applicant testified and initially offered into evidence additional exhibits AX L-Z. However, while describing the documents, he chose to withdraw AX W and AX X. These documents were then excluded. GX 1-2, AX A-V and AX Y-Z were admitted without objection. The record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on July 3, 2024.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted SOR allegations ¶¶ 1.a and 1.c. He denied SOR allegations ¶¶ 1.b and 1.d. His admissions are incorporated into my findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 29 years old. He completed an associate degree in May 2015 and a bachelor's degree in March 2020, with a concentration in information technologies. He then enrolled in a master's program and has continued to take courses part time. He anticipates completing the program in late 2024 or early 2025. (GX 1-2; AX M; Tr. 27-28)

In May 2022, Applicant began working as a contractor for his current, sponsoring employer. In February 2023, he was hired directly by his current employer as a technology support specialist and has since advanced within the company. He is now a data and workforce analyst and maintains increased responsibilities in that position. This is his first application for public trust access. (GX 1-2; AX H, L; Tr. 28-30, 41)

Applicant described a long history of battling mental health concerns relating to anxiety and depression. After graduating high school in 2012, he periodically received treatment and medication for these concerns, but did not recall receiving a diagnosis at the time. This treatment was through his primary care doctor. Over the next several years, he was prescribed multiple medication variations, but nothing seemed to provide long term relief and he described periods where he was "viewing the world through a fog." (Answer; GX 1-2; AX L, U; Tr. 33-35, 42-46, 65-68)

In about 2018, Applicant began experiencing high stress while working full-time as a department manager within a grocery store and continuing his college studies. He began researching illegal drugs as an option to self-medicate for his ongoing symptoms of anxiety and depression. He first tried LSD in July 2018 and described it as allowing him to willfully "step into insanity" while positively addressing his anxiety and depression. (GX 2) His use of LSD quickly became habitual as a self-described treatment for his mental health. He purchased the LSD from a food vendor that serviced his grocery store. He knew that the purchase and use of LSD was illegal (SOR ¶¶ 1.a and 1.c). (GX 1-2; AX L, U; Tr. 33-46, 50-53)

From June 2018 through April 2019, Applicant used LSD several times per month, primarily on weekends when he did not work. Although he lived with his parents, he was able to keep his drug use concealed from them. He also continued to see his doctor and recalled being diagnosed with generalized anxiety disorder and major depressive disorder. He never informed his doctor of his LSD use even though he periodically received prescriptions for his mental health. He claimed that he was careful not to mix any medications with his use of LSD. (GX 2; AX C, V; Tr. 42-54)

In April 2019, Applicant left his employment with the grocer to focus on completing his bachelor's degree. However, he continued to regularly use LSD. He admitted his use was "quite excessive" during this time and that he "went overboard" in using LSD to manage his mental health symptoms. (GX 1-2; AX L; Tr. 34-35)

With the start of the COVID pandemic, Applicant lost contact with his supplier of LSD. After completing his bachelor's degree in March 2020, he tried to stop using LSD in order to focus on his career. However, he found that there were no entry-level positions in his desired career, and he continued to want LSD as a stress relief. After a few months of not using LSD, he researched purchasing options through the dark web and ultimately used a TOR browser, the dark web, and cryptocurrency to continue purchasing and using LSD. During this period, his LSD use stopped being for self-medication and "was more or less a crutch to get me through every week, week after week." (GX 2; AX L; Tr. 34-38; 51-54)

In August 2021, Applicant began working with another grocer and found a new supplier for his ongoing use of LSD. In April 2022, a coworker offered to exchange psychedelic mushrooms with him for LSD and cash. Applicant was curious if the mushrooms could provide similar mental relief with less side effects than the LSD. He completed the exchange and tried mushrooms on two occasions in April and May 2022, before returning to LSD. He understood that the mushrooms he used were also illegal at the time (SOR ¶¶ 1.b and 1.d). (Answer; GX 2; AX A, L, U; Tr. 46-51)

Later in May 2022, Applicant was offered a position as a contractor with his current employer. He described the process of filling out the public trust application in June 2022 as a "kick in the pants to quit" his use of LSD. (Tr. 38) He also recommitted to maintaining a treatment plan through his doctor. However, he used LSD on one additional occasion in July 2022 before destroying the remaining LSD and mushrooms in his possession. (GX 2; AX A, Tr. 38-45)

Since July 2022, Applicant has not used any illegal drugs and described being "free of that addiction" while he continues to focus on work and his master's program. (Tr. 39) He described trying several combinations of medications for his mental health symptoms through 2023. In January 2024, he started his current medication regime and described it as working better than anything previous in helping to control his anxiety and depression. He also testified to researching additional counseling to better manage his symptoms. (Answer; GX 2; AX A-C, L, U; Tr. 56-65)

During his testimony, Applicant described his use of LSD and mushrooms as the “worst ongoing mistake of my life and it will not be repeated.” (Tr. 14) Although he never informed his parents or work colleagues of his past drug use, he described being more open with them about his mental health issues and maintaining a strong base of emotional support to rely on in the future instead of drugs. He no longer associates with any drug users or dealers. He submitted a negative drug test from July 2023 as well as a statement of intent to not use any illegal drugs in the future. (Answer; GX 2; AX A, T; Tr. 14-15, 55)

Applicant submitted several character reference letters from friends and colleagues. They described him as maintaining a strong work ethic and being a “truly valuable asset to the team.” (AX E) Recent performance evaluations noted that Applicant maintained exceptional focus and exceeded expectations. He has received several quality service awards through his current and past employers. (AX E-G, N-R)

### **Policies**

When evaluating an applicant's suitability for a public trust position, the administrative judge must consider the disqualifying and mitigating conditions in the AG. 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 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. 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, 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 trustworthiness decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk

the applicant may deliberately or inadvertently fail to protect or safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of sensitive information.

## Analysis

### Guideline H, Drug Involvement and Substance Misuse

The trustworthiness concern relating to the guideline for drug involvement and substance misuse is set out 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 adjudicative guidelines note several conditions that could raise drug involvement and substance misuse concerns under AG ¶ 25. The following are potentially applicable:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

With the exception of a small break in 2020, Applicant purchased and used LSD regularly from about June 2018 through July 2022. He purchased and used psychedelic mushrooms on two occasions in about April and May 2022. He knew that his use of LSD and mushrooms was illegal at the time. The above disqualifying conditions are established.

Conditions that could mitigate the drug involvement and substance misuse concerns are provided under AG ¶ 26. The following are potentially 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.

In his Answer to the SOR and during his testimony, Applicant acknowledged and spoke candidly about his use of LSD and limited use of psychedelic mushrooms. Since July 2022, he has terminated his drug use, disassociated from individuals he previously purchased drugs from and submitted a signed statement of intent to abstain from any further drug use. He also spoke of his commitment to his new employment, which was bolstered by the statements of his peers and supervisors. These are all positive actions that he has taken toward mitigating the drug involvement and substance misuse concerns.

However, Applicant regularly used LSD over an extended period through July 2022, including after the submission of his public trust application. He previously attempted to terminate his drug use and failed in 2020. He additionally experimented with psychedelic mushrooms for two months in 2022. Although he described the purpose of his drug use was to self-medicate for mental health concerns, he also admitted that he used LSD excessively and recreationally. Regardless of the purpose, he knew that his drug use was illegal. He also never informed his family or his doctor of his drug use and continued to take LSD while prescribed mental health medications. Although he testified that he is committed to managing his mental health symptoms through his doctor and additional counseling, not enough time has passed to persuasively demonstrate that his use of LSD and psychedelic drugs is fully in his past. He did not mitigate the trustworthiness concerns under Guideline H.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for public trust access 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 position of public trust 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 Guideline H in my whole-person analysis.

From about July 2018 through July 2022, Applicant regularly used LSD for both self-medication and recreational purposes. He also briefly used psychedelic mushrooms. He openly discussed his drug-use history and acknowledged his past mistakes. He is working toward maintaining a consistent treatment plan for his mental health and staying drug free. However, given the extent of his drug use, insufficient time has passed to establish that these trustworthiness concerns are truly behind him.

### **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
Subparagraph 1.a-1.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances, it is not clearly consistent with the national interest to grant Applicant a position of public trust. Eligibility for access to sensitive information is denied.

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Bryan J. Olmos  
Administrative Judge