



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



In the matter of:	)	
	)	
	)	ISCR Case No. 23-02334
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Patricia Lynch-Epps, Department Counsel  
For Applicant: *Pro se*

07/16/2024

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**Decision**

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Lokey Anderson, Darlene D., Administrative Judge:

On May 1, 2023, Applicant submitted a security clearance application (e-QIP). (Item 3.) On January 15, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCAS CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse; and Guideline E, Personal Conduct. The action was taken under Executive Order 10865 (EO), *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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on January 29, 2024. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on March 1, 2024. A complete copy of the File of Relevant Material (FORM), containing five Items was received by Applicant on March 7, 2024. He was afforded an opportunity to file

objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted no response to the FORM. DOHA assigned the case to me on June 24, 2024. Items 1 through 5 will hereinafter be referred to as Government Exhibits 1 through 5.

### **Findings of Fact**

Applicant is 35 years old. He has never married and has one child, a daughter. He has a high school diploma and military training. He holds the position of Master Expeditor for a defense contractor. He is seeking to obtain a security clearance in connection with his employment.

#### **Guideline H - Drug Involvement and Substance Misuse** **Guideline E – Personal Conduct**

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; and that he has engaged in conduct involving questionable judgment, which can raise questions about an individual's reliability and trustworthiness.

Applicant served on active duty in the United States Army from September 2009 through October 2017, and received a General Under Honorable Conditions Discharge. A security clearance was required for his military service, and Applicant applied for and was granted a security clearance in about September 2009. Applicant was a good soldier with no disciplinary actions in his file. However, after serving seven years on active duty, Applicant felt that he should have some input into where he would be assigned for his next duty station. He wanted to move somewhere on the East Coast, in order to be closer to his daughter, and to be able to drive to see her. Apparently, leadership did not grant his request to his satisfaction. Applicant decided that he would not re-enlist, and that he would have to force his way out of the military. The quickest way out that he could think of was to test positive on a drug test. He did his research and found out that since he had a clean record he would be discharged with minimal problems. (Government Exhibit 3.)

Applicant knew that following the holidays, his unit would undergo a whole unit drug test. Strategically timing his illegal drug use in January 2017, Applicant used Ecstasy (MDMA), while holding a sensitive position and serving on active duty in the Army. Applicant stated that he purposely used Ecstasy (MDMA) with friends while in a night club in Nuremburg, Germany. He stated that he used the illegal drug knowing his unit would be drug tested after everyone returned from leave. In January 2017, Applicant was drug tested and a few weeks later, he was informed that his urinalysis was positive. (Government Exhibit 3.)

In February 2017, Applicant received an Article 15 punishment for drug abuse and was found guilty. He received a reduction in rate to E-3, loss of pay for two months and 45 days extra duty. (Government Exhibit 3.) He stated that he received a General

Under Honorable Condition Discharge because up until he tested positive on the drug test, he had been a good soldier and the leadership did not want to ruin his career. Applicant stated that had he known that it would have taken until October 2017 to be discharged he would have hung-in-there until December 2017, when his contract ended. (Government Exhibit 3.)

Applicant stated that the only time that he has ever used ecstasy (MDMA) has been on January 1, 2017, and that he has no intentions of ever using it again. Applicant stated that he has made positive changes in his life. He is no longer in the Army environment, and he can see his daughter a lot more. He stated that he has a better life, better job, and better peers. (Government Exhibit 3.)

In December 2022, Applicant began working for a defense contractor in a position that requires a security clearance. He completed a security clearance application dated May 1, 2023. Section 23a of the application asked the Applicant if in the last seven years he had “illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc), narcotics (opium, morphine, codeine, heroin, etc.) stimulants (amphetamines, speed, crystal methamphetamine, Ecstasy, ketamine, etc.) . . Applicant answered, “NO.” (Government Exhibit 4.) This was a false answer. Applicant failed to disclose that he had used ecstasy in January 2017. He stated that he misunderstood the question, and the timeline. (Government Exhibit 2.)

## **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. 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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the 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.

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 four conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug;
- (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.

Applicant deliberately used ecstasy (MDMA), an illegal drug, while in a sensitive position, and in possession of a security clearance, while serving on active duty in the US. Army. The above disqualifying conditions apply.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns:

- (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.

None of the mitigating factors are applicable. In 2017, Applicant's deliberate use of Ecstasy, (MDMA) while serving in the U.S. military and while in possession of a security clearance, for the purpose of testing positive on his urinalysis in order to be discharged from the military, is egregious. Applicant knew that the use of ecstasy is against military policies and Federal law. He also knew that the use of any illegal drug, including Ecstasy, is never tolerated while possessing a security clearance.

Rather than follow the established military rules and regulations set forth in his enlistment contract, he chose to deliberately and intentionally violate these rules and regulations by choosing to use an illegal drug to give the military reason to discharge him. His conduct shows immaturity, poor judgment, unreliability, and untrustworthiness.

Applicant knew that he would be released from the military and his security clearance would be revoked for using Ecstasy. However, he did not consider the future consequences this misconduct could have. His actions are not mitigated.

### **Guideline E- Personal Conduct**

The security concern for Personal Conduct is set out 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 cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a while-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. This includes, but is not limited to, consideration of;

(2) any disruptive, violent or other inappropriate behavior; and

(3) a pattern of dishonesty or rule violations.

Applicant deliberately failed to list his use of Ecstasy on his security clearance application in response to questions concerning his use of illegal drugs. The above disqualifying conditions are applicable.

The guideline at AG ¶ 17 contains conditions that could mitigate security concerns. Two of the conditions are potentially applicable:

(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.

None of the mitigating conditions are applicable. Applicant was not honest or truthful on his security clearance application in response to question 23a regarding his illegal drug use. He is not new to the security clearance process. Prior to his current employment, he applied for and obtained a security clearance while on active-duty in the Army. He understands that the responses to the questions on the security clearance application are critical. He knew or should have known to be honest and truthful when answering the questions. However, he must be competent enough to understand the questions in order to provide truthful responses. The questions are not difficult or complicated, but they do take time to answer, and carelessness is not excusable. Knowing that the Government heavily relies on a person's honesty and truthfulness in their responses to the questions on the application, Applicant deliberately attempted to conceal his illegal drug use.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. Applicant has not shown sufficient mitigation 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 did not follow the rules. Instead, he chose to live his life to his convenience, and disregarded the law. While serving on active duty, to break his enlistment contract, Applicant deliberately used Ecstasy in order to test positive on his urinalysis to be released from his military obligations. This was immature, irresponsible, inappropriate behavior, that shows questionable judgment. Under the particular facts of this case, Applicant does not show the maturity level, integrity, and reliability necessary to access classified information. Applicant does not meet the eligibility qualifications for a security clearance.

### **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 Guidelines H and E 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. Applicant understands the requirements associated with holding a security clearance and knows that Ecstasy or any illegal drug use is not tolerated. Applicant 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 does not meet the qualifications for a security clearance.

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, and Personal Conduct 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
Subparagraph 1.a.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson  
Administrative Judge