



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



In the matter of:	)	
	)	
	)	ADP Case No. 23-01129
	)	
Applicant for a Public Trust Position	)	

**Appearances**

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

08/27/2024

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse and Guideline B, foreign influence. Eligibility for a sensitive position is denied.

**Statement of the Case**

On February 21, 2024, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing trustworthiness concerns under Guideline H, drug involvement and substance misuse and Guideline B, foreign influence. The action was taken 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 11, 2024, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on April 18,

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. The Government's evidence is identified as Items 1 through 3. Applicant did not submit a response to the FORM or object to the Government's documents. The case was assigned to me on August 5, 2024. The Government's documents are admitted into evidence.

### **Administrative and Procedural Matters**

Department Counsel requested that I take administrative notice of certain facts about Lebanon and the United Arab Emirates (UAE) (Hearing Exhibits (HE) I and II). Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note, the U.S. Department of State issued a level 4 travel advisory to not travel to Lebanon due to the unpredictable security situation related to military action between Israel and Hizballah, a U.S. designated foreign terrorist group operating in Lebanon. There is the potential for death or injury due to terrorist attacks. Islamic State of Iraq and the Levant (ISIS), also a U.S. designated foreign terrorist group, operates in Lebanon. There is an increase in violent crimes and political violence. Iran continues to provide financial support to Hizballah. The Office of the Director of National Intelligence assessed that Iran and Lebanese Hizballah remain committed to terrorist attacks and have the capability to target U.S. persons and interests in the region. There are also significant human rights issues in Lebanon. (HE I)

The UAE has a level 2 travel advisory issued by the State Department, advising U.S. citizens to travel with caution. The possibility of attacks against U.S. citizens remains ongoing and serious. There is a threat of terrorism in the UAE. Illegal exports of dual-use military and electronic components and internet technology have passed through the UAE and UAE-owned businesses on their way to restricted destinations, such as Iran and Iraq. The UAE has significant human rights issues, including unlawful government interference with privacy and fundamental freedoms. (HE II)

### **Findings of Fact**

Applicant admitted the allegations in SOR ¶¶ 1.a, 1.b, 2.a, and 2.b. He denied SOR ¶¶ 1.c and 2.c. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 25 years old. He is not married and has no children. He is a college graduate. He has worked for his current employer, a federal contractor since November 2021. (Item 2)

Applicant completed a Questionnaire for National Security Positions (e-QIP) in March 2022. In it he disclosed that he used marijuana from July 2018 to January 2022, while in college to deal with stress and anxiety. He said he was a daily user and after he graduated from college, he reduced his usage to a couple of times a month. He stated:

I do not intend to use this drug in the future since I realized it makes me okay with being bored. I also realized that it is the cause of my anxiety and stress. When I use now I do not like the way the drug makes me feel because I feel trapped. (Item 2)

Applicant reported that because he was a daily user during college, he purchased marijuana monthly. Marijuana was not legal in the state where he lived when he was using it. (Item 2)

Applicant also disclosed in his e-QIP that from May 2019 to August 2020, he used psychedelic mushrooms on four occasions. He reported he did not intend to use this drug in the future because he did not see the benefit. (Item 2)

Applicant completed government interrogatories that are undated. In them, he adopted and affirmed the accuracy of his March 2022 personal subject interview. In his interview, he told the government investigator that he would travel to a different state where marijuana is legal and would purchase it there because it was illegal in the state where he lived. He said that he did not intend to use marijuana in the future. In response to the interrogatories, he reported that his marijuana use began in June 2018 and continued until October 15, 2023. He used it weekly and in response to his "intentions of future use," he stated that he would use it "as a substitute for alcohol." He also reported his use of psychedelic mushrooms on two to three occasions from April 2019 to April 2020, and he had no intentions to use them in the future. (Item 3)

In Applicant's SOR answer, he denied ¶ 1.c, which alleged he intended to continue to use marijuana in the future. He stated, "I deny, I've stopped the use of marijuana." He did not specify when he stopped using marijuana. (Item 1)

The SOR alleged that Applicant's mother is a citizen and resident of Lebanon. He stated in his SOR answer that she is also a citizen of the United States. She was born in Lebanon and resides there. He was born in Lebanon and became a citizen by birth of that country and the United States due to his mother's citizenship. He has a Lebanese passport that he has renewed and uses for convenience to travel there. He has contact with his mother at least twice a week by video. He indicated she has no affiliation with the Lebanese government or military. He did not provide any other information about his mother or how she supports herself or if she has financial interests in Lebanon. He told the government investigator that he does not have any financial interests in Lebanon or any obligation to the country. He traveled to Lebanon three times between 2021 and 2022 using his Lebanese passport. (Items 2, 3)

Applicant has two brothers. SOR ¶ 2.c alleges his brother is a citizen of Lebanon and a resident of the UAE. In his SOR answer, Applicant said, "I deny, he is also a citizen of the United States and lives in [State A]." In Applicant's SCA, he reported he has a brother who was born in Lebanon and is a dual citizen of the United States who lives in [State B]. At the time Applicant was interviewed, this brother was a college student. He reported a second brother who was born in Lebanon, is a dual citizen of the United States,

and resides in the UAE. Applicant did not provide sufficient information on which brother he was referring to in his SOR answer. It is unknown if his brother in State B moved to State A or if his brother who lived in the UAE has moved to the United States, but it appears they both live in the United States. Applicant has contact with both brothers twice a week. (Items 2, 3)

Applicant's father is a citizen of Lebanon and resides in the UAE. He maintains contact with him twice a week. He indicated his father has no affiliation with the government or the military. The nature of his father's job is unknown, as he only provided the name of the company. It is unknown whether his father has a financial interest in Lebanon or the UAE. Applicant traveled to the UAE on his U.S. passport 16 times from 2016 to 2021 to visit his family. No other specific information was provided by Applicant about his father. (Items 2, 3)

## **Policies**

When evaluating an applicant's suitability for national security eligibility, 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 used in evaluating an applicant's eligibility for access to sensitive 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(c), 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 sensitive information 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. Directive ¶ E3.1.15 states 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 public trust 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 that an applicant may deliberately or inadvertently fail to 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.

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 B, Foreign Influence**

The trustworthiness concern for foreign influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise trustworthiness concerns under AG ¶ 7. The following are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

There are serious terrorism concerns, ongoing human rights problems, and other security concerns about both Lebanon and the UAE. I considered the totality of

Applicant's ties to Lebanon and the UAE. The nature of a nation's government, its relationship with the United States, and its human rights record are relevant in assessing the likelihood that an applicant's family members are vulnerable to government coercion. Based on detailed information provided in HE I and II there is sufficient intelligence information that raises security concerns about both countries.

Applicant's two brothers are dual citizens of Lebanon and the United States. It appears they both live in the United States. Neither of the above disqualifying conditions apply to them. I find in Applicant's favor on SOR ¶ 2.c. Applicant's mother is a resident of Lebanon. There are trustworthiness concerns in Lebanon that create a heightened risk of foreign exploitation, manipulation, inducement, pressure, and coercion. AG ¶ 17(a) applies.

Applicant's father is a citizen of Lebanon and a resident of the UAE. As noted above, there are security concerns regarding terrorist activities, human rights issues, and other concerns related to the region for both countries that create a heightened risk of foreign exploitation, manipulation, inducement, pressure, and coercion. AG ¶¶ 7(a), and 7(b) apply.

Conditions that could mitigate foreign influence trustworthiness concerns are provided under AG ¶ 8. The following is potentially applicable:

(a) the nature of the relationships with foreign person, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interests; and

(c) contact or communication with foreign citizens is so casual or infrequent that there is little likelihood that it could create a risk of foreign influence or exploitation.

Applicant's contact with his father and his mother is not casual or infrequent. He has contact with both twice a week and has made numerous trips to the UAE for family visits. He has also traveled to Lebanon three times between 2021 and 2022. There is insufficient evidence about his father's employment, length of ties and obligations to the UAE, and other information that would be helpful in analyzing whether the foreign influence concern might be mitigated. There is insufficient evidence about how his mother supports herself, her employment, length of ties and obligations to Lebanon, and other

information that would be helpful in analyzing whether the foreign influence concern might be mitigated. Although there is not a question as to Applicant's loyalty to the United States, it is unreasonable and unrealistic to ask Applicant to choose between his loyalty toward his parents and the United States if there was a conflict of interest. I am unable to find that it is unlikely that Applicant would be placed in a position of having to choose between his parents and the interests of the United States. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about his parents and the issues raised by his contact or evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). Without amplifying information, none of the mitigating conditions apply.

### **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.

AG ¶ 25 provides conditions that could raise trustworthiness concerns. The following are potentially applicable:

- (a) any substance misuse;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant used marijuana with varying frequency from about June 2018 to at least October 2023. He used hallucinogenic mushrooms with varying frequency from April 2019 to April 2020. He said in his SCA that he did not intend to continue to use marijuana. During his background interview with a government investigator in March 2022, he again said he did not intend to use marijuana in the future. However, when he responded to government interrogatories, he disclosed he had continued to use marijuana after he completed his e-QIP, and after his background interview up until at least October 2023, and that he intended to use it as a substitute for alcohol. Applicant has repeatedly

changed his mind about his future intent to use marijuana. In his SOR answer, he now says he does not intend to use it in the future. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate trustworthiness concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 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 to overcome the 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 being 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.

There is insufficient evidence to apply the above mitigating conditions. Applicant has repeatedly waffled on whether he will discontinue using marijuana. He used it after he was on notice that it was a trustworthiness concern when he completed his e-QIP and background interview. When he completed his government interrogatories, he said he would use it as a substitute for alcohol. Based on his continued use throughout the security review process, I find his drug use is recent and may recur and his conduct casts doubt on his current reliability, trustworthiness, and good judgment. The evidence is insufficient to conclude he is committed to discontinuing his use of marijuana and has established a significant period of abstinence.

### **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 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 public trust position 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 B and H in my whole-person analysis.

Applicant failed to meet his burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a public trust position. For all these reasons, I conclude Applicant failed to mitigate the trustworthiness concerns raised under Guideline H, drug involvement and misuse and Guideline B, foreign influence.

### **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-1.c:	Against Applicant
Paragraph 2, Guideline B:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to grant Applicant's eligibility for a public trust position. Eligibility for access to sensitive information is denied.

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Carol G. Ricciardello  
Administrative Judge