



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



In the matter of: )  
)  
) ISCR Case No. 24-00138  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

12/03/2024

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**Decision**

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LAFAYE, Gatha, Administrative Judge:

Applicant provided sufficient evidence to mitigate security concerns raised under Guideline H (drug involvement and substance misuse). Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on August 1, 2023. On April 23, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) alleging security concerns under Guideline H (drug involvement and substance misuse). The DCSA CAS 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) effective within the DOD on June 8, 2017.

Applicant responded to the SOR on April 30, 2024, 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 June 26, 2024, including documents marked as Items 1 through 6. On July 19, 2024, a complete copy of the file of relevant material (FORM) was provided 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 August 1, 2024, and did not respond. The case was assigned to me on November 13, 2024. Items 1 through 3, the SOR, the transmittal letter, and Applicant's Answer to the SOR, are already part of the administrative record. Items 4 through 6 are admitted in evidence without objection.

### **Findings of Fact**

In his Answer, Applicant admitted all allegations in the SOR (SOR ¶¶ 1.a through 1.d). His admissions are incorporated in my findings of fact. After careful review of the evidence, I make the following additional findings of fact.

Applicant is 24 years old. He graduated from high school in June 2018. In September 2018, he enrolled in college located in his home state (S1) and earned his bachelor's degree in June 2022. Upon graduation, he accepted a position that required him to move to another state (S2). He married in June 2023 and does not have children.

In July 2022, Applicant began his career working as an industrial engineer for a defense contractor located in S2. During college, between 2018 and 2022, he worked as a part-time barista for a local coffee shop. (Item 4)

Applicant completed his first SCA in August 2023 and responded "yes" to questions in Section 23, Illegal Use of Drugs or Drug Activity, asking whether, in the last seven years, he had illegally used any drugs or controlled substances; and whether he intended to use this drug or controlled substance in the future. He admitted he illegally used marijuana, cocaine, hallucinogenic mushrooms, and the stimulant drug Adderall, primarily, during high school and college. Specifically, he admitted using marijuana from August 2016 to August 2022; cocaine from December 2018 to March 2019; mushrooms from October 2019 to April 2023; and Adderall on one occasion while doing homework in March 2021. A fraternity brother gave it to him to try. (Item 4 at 36-42; Item 5 at 3-4)

Applicant explained that he started smoking marijuana with friends during his junior or senior year in high school, but that he gradually "petered off" because he did not like how it made him feel. In college, he stated he smoked marijuana occasionally with friends during his freshman and sophomore years, and consumed marijuana edibles a few times during his senior year. He stated that the recreational use of marijuana was legal in S1 but only became legal for him in late 2021 when he reached the age of 21. He stated he stopped using marijuana altogether because he did not particularly enjoy feelings of paranoia. He also wanted to avoid limiting his future job opportunities. (Item 5) He admitted purchasing marijuana during the same period. (Items 1, 5).

Applicant experimented with using cocaine at fraternity parties during his freshman year. He stated it was around, a lot of people were using it, and he was curious about

how it would make him feel. He stated he felt slightly more energetic, which caused him concern about its potential for addiction. He stopped experimenting with cocaine to avoid the possibility of becoming addicted to it. (Item 5 at 4)

Applicant stated he first used hallucinogenic mushrooms at his girlfriend's home in October 2019 because he was curious about how it would affect him. He felt happy and uplifted, and stated he experienced visual hallucinations four to five times after consuming mushrooms. (Item 5 at 4) He admitted consuming hallucinogenic mushrooms about eight times, including after he received his employer's drug policy training in July 2022. As explained in the training, Applicant's employer adheres to a drug-free workplace standard, summarized below:

[Employer] will not knowingly hire or rehire individuals who possess, use, sell, manufacture, transfer, or traffic in illegal drugs.

We prohibit possession, use, sale, manufacture, transfer, trafficking in, or being under the influence of illegal drugs, in the workplace or in the performance of company business. ...

We comply with the Drug-Free Workplace Act of 1988 and federal, state, and local laws and regulations concerning violations of criminal drug statutes in the workplace. (Item 6)

The policy went on to explain that, as a federal contractor, the employer was required to maintain a drug-free workplace, and that state and local initiatives legalizing marijuana for medical or recreational purposes "do not change this requirement." It referenced that resources were available to assist employees with drug or alcohol dependency problems. (Item 6 at 4)

Applicant stated he did not anticipate being selected for a cleared position and only learned of the development in August 2023. (Item 5 at 4) He had been tested for the use of illegal drugs in May 2022, and the results were negative. (Item 5 at 10) He had already stopped using mushrooms when he learned of the new position. He vowed to never use illegal drugs in the future for any reason. (*Id.*)

In his Answer, Applicant expressed "deep regret" for using the illegal or controlled substances, especially after becoming an employee of a defense contractor. He stated:

It has been over a year since my last misuse of a controlled substance and I have no desire to use them again. It has become very clear to me how serious my previous actions/decisions have affected my career aspirations and opportunities. Having moved from [S1] to [S2] I have very limited contact with my previous drug-using contacts. [T]hose who I still have contact with have discontinued their use of controlled substances on their own accord. ...

I hereby abstain from all drug involvement and substance misuse, and acknowledge that any future involvement or misuse is grounds for revocation of national security clearance [eligibility].

## **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* 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.” *Egan* at 531. See also 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.

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

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 possessed and used marijuana, cocaine, hallucinogenic mushrooms, and the prescription drug Adderall, not prescribed to him. AG ¶¶ 25(a) and 25(c) apply to this case.

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.

AG ¶ 26(a) is applicable. This is Applicant's first time going through the security clearance process. He readily admitted his illegal drug involvement and substance misuse in his SCA, background interview, and his response to interrogatories. He started smoking marijuana in high school, and though his use "petered off," he continued to use marijuana in college. He also experimented with cocaine, used Adderall once, and consumed hallucinogenic mushrooms first with his girlfriend in 2019. Applicant is credited with stopping his illegal drug use and involvement with marijuana, cocaine, and Adderall. Though he did not immediately stop his consumption of hallucinogenic mushrooms, he has not used mushrooms since April 2023. Enough time has passed to demonstrate his is commitment to abstaining from using any illegal drugs in the future.

AG ¶ 26(b) is applicable. Appellant acknowledged his drug use, and has successfully refrained from using marijuana, cocaine, and Adderall since his graduation in 2022, with the exception of mushrooms, which he has not used since April 2023. I find that he has established enough of a pattern of abstinence for this provision to apply. He successfully disassociated himself from drug users, and resides thousands of miles from the environment where drugs were used. He also completed a statement of intent acknowledging that any future drug involvement or misuse would be grounds for revocation of his national security eligibility. He successfully mitigated drug involvement and substance misuse security concerns under this provision.

Applicant's evidence is sufficient to overcome concerns and doubts about his trustworthiness, reliability, and his willingness to comply with laws, rules, and regulations.

### **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.

I have incorporated my comments under Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d), above. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all evidence in the whole-person context, I conclude Applicant successfully mitigated Guidelines H (drug involvement and substance misuse) security concerns.

### **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:           FOR APPLICANT

Subparagraphs 1.a – 1.d.           For Applicant

### **Conclusion**

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Gatha LaFaye  
Administrative Judge