



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



In the matter of: )  
)  
) ISCR Case No. 23-01959  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro Se*

04/29/2024

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**Decision**

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MASON, Paul J., Administrative Judge

Applicant has not mitigated the security concerns raised by the guidelines for drug involvement and substance misuse, and criminal conduct. Eligibility for a security clearance is denied.

**Statement of the Case**

On April 6, 2023, Applicant certified and signed an Electronic Questionnaires for Investigations Processing (e-QIP, Item 4) to obtain or retain a security clearance required for employment with a defense contractor. On June 6, 2023, he provided a personal summary interview (PSI) to an investigator from the Office Personnel Management (OPM). After examining the background investigation, the Defense Counterintelligence Security Agency (DCSA) Consolidated Adjudications Services (CAS) could not make the affirmative findings necessary to issue a security clearance. On October 24, 2023, the DCSA CAS issued a Statement of Reasons (SOR) to Applicant detailing security concerns under the guideline for drug involvement and substance misuse (Guideline H), and criminal conduct (Guideline J). The action was taken by the Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, establishing in Appendix A of the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), made effective in the Department of Defense (DOD) on June 8, 2017.

On November 21, 2023, Applicant admitted all allegations under drug involvement except SOR ¶ 1.b, and provided explanations. He admitted all allegations under criminal conduct, and provided explanations. He decided to have his case evaluated administratively on the written record in lieu of a hearing. On January 23, 2024, the Government sent a copy of its File of Relevant Material (FORM), the Government's evidence in support of the allegations in the SOR, to Applicant. He received the FORM on January 23, 2024. See Court file. He was provided 30 days after receipt of the FORM to submit a response that was due by February 22, 2024. The Defense Office of Hearings and Appeals (DOHA) received no response from Applicant. I was assigned the case on April 2, 2024. The Government's three exhibits have been received into evidence.

### **Findings of Fact**

The SOR lists eight allegations under the drug involvement and substance misuse guideline (Guideline H). Applicant admitted all allegations except for SOR ¶ 1.b, in which he denied that he intended to use marijuana in the future. (SOR ¶ 1.b; Item 2 at 34; November 2023 answer at 1) His three reasons for indicating in his April 2023 e-QIP that he intended to use marijuana in the future were: (1) immaturity; (2) he wanted to find out if he could use marijuana as a sleep aid; and (3) he wanted to find out if he could use the drug on the weekend for special occasions. In his subsequent April 2023 PSI, he stated that the only reason he indicated in his April 2023 e-QIP that he would use marijuana in the future was to ask the investigator what his alternatives were for using marijuana in the future. (November 21, answer to SOR at 7) When the investigator advised him to stop altogether, he stopped and claimed that he has not resumed using marijuana.

Applicant is 27 years old and single with no children. He graduated from high school in May 2015. He received his bachelor's degree in May 2022. He has been employed as an associate computer support analyst by a defense contractor since August 2022. He was unemployed for two months between June and August 2022. Before the period of unemployment, he was a sample builder for about 14 months. From January 2019 to October 2021, he was an event promoter. Between July 2014 and January 2021, he was employed as a starter attendant. (Item 2 at 10-11)

Applicant recalled maintaining good grades and considered himself leadership quality during high school. After graduating in May 2015, he started smoking marijuana in the summer of 2015. During his first year of college in the fall of 2015 at age 18, he ingested marijuana frequently then daily, either in cigarette form or through a bong. He also consumed marijuana edibles, concentrated forms of the drug, or through vaporizers. (SOR ¶ 1.a; November 2023 answer at 1; Item 2 at 34)

In 2016, Applicant first consumed MDMA because of curiosity and his drug-using friends told him that it created a happy feeling. (SOR ¶ 1.c) After being given a half pill of ecstasy, he preferred using MDMA to increase his musical experience at festivals. He first used Adderall in March 2016. (SOR 1.c: November 2023 answer to SOR at 1) There is no indication in the FORM that Applicant ever had a prescription for the drug. The drug helped him stay awake to spend long hours studying for exams. He purchased his first Adderall pill and split it into quarters to be used on different study days. He completed his

first year (2015-2016) with a 3.4 grade point average (GPA). (November 2023 answer to SOR at 1)

In his second year of college (2016-2017), Applicant, at age 19, joined a new fraternity and switched his major. He was living with other college students who did a lot of partying. His overuse of alcohol and drugs caused him to miss classes because of hangovers, and persuaded him to drop most of his classes except for golf, his elective. His GPA slipped to 3.0. (November answer to SOR at 2)

In his third year of college (2017-2018), Applicant, at age 20, moved out of the dorm. He was a frequent drinker and a daily marijuana smoker. He used Lysergic acid diethylamide (LSD) and psilocybin mushrooms. (SOR ¶ 1d) He purchased and used both until 2022, but a bad experience caused him to discontinue use. (November 2023 answer to SOR at 2-3; Item 2 at 34, 37)

Applicant used cocaine from April 2018 to March 2022. (SOR ¶ 1.e; November 2023 answer at 3; Item 2 at 35) The drug helped him stay awake to increase his alcohol consumption during nights of heavy drinking. He does not intend to use cocaine in the future because he does not intend to drink excessive amounts of alcohol in the future. When he does drink too much, he gets physically sick.

By 2018, Applicant had built enough connections in his fraternity to where he became the middleman to connect sellers with buyers, adding a service of delivering the purchased drug to the buyer. Driven by the profit motive and his own expenses and credit-card debt, he decided to sell Adderall because of its popularity among students studying for exams. Applicant purchased 250 Adderall pills for five dollars each (\$1,250), and sold them for ten dollars a tab, profiting \$1,250 every two or three months. He sold the drug from June 2018 to August 2022. His GPA in his third year was 2.9. (SOR ¶ 1.g; November 2023 answer to SOR at 3; Item 3 at 37)

In his fourth year of college (2018-2019), Applicant (age 21) moved out of an apartment into a house closer to school. The house was occupied by eight other students who were about to graduate. He continued to spend large amounts of time with his fraternity partying. (November 2023 answer to SOR at 3-4)

In the Spring of 2019-Spring of 2020, Applicant, at age 22, took educational leave from school. He worked at his golf course and sold Adderall. He continued interacting with his fraternity and using cocaine, marijuana, MDMA, mushrooms, and drinking excessively. In the Spring and Summer of 2020, Applicant decided to return to school. He chose to leave the fraternity after concluding that the fraternity members seemed to base their friendship with him by the frequency of times he would go out with them. Upon his departure, some of the fraternity members treated him like a stranger, which indicated to him who his real friends were. He also reduced his alcohol and drug use. He continued to use marijuana at a daily rate. (November 2023 answer to the SOR at 4)

From 2020 to 2021, Applicant was 23, and in his fifth year of college. He changed his major again because of his advisor's observation that he liked to help people. He completed the course material online and worked at his golf course. During a camping trip

in 2021, he tried ketamine and thought it was cocaine. (SOR ¶ 1.f) He did not use the drug again. He began working for a company full time. He stopped using marijuana for two months before a company-sponsored drug test. After he passed the test, he was hired and resumed smoking because he enjoyed the comradery created by smoking with his roommates. His daily routine was working during the daylight hours and studying during the evening. He then used marijuana to help him sleep. From 2021 to about July 2022, he sold mushrooms until about July 2022. He stopped the drug when the supply and demand for the drug evaporated. (SOR ¶ 1.h; November 2023 answer to the SOR at 5; Item 3 at 2)

In his sixth year of college from 2021 to 2022, Applicant was 24 years old, and undecided about his career choice. He graduated in May 2022 with a 3.1 GPA and honor roll recognition. He moved back home. In August 2022, he traveled to another state for a birthday party and ingested an MDMA pill. (November 2023 answer to the SOR at 6)

Before he was hired by his current employer in August 2022, during the pre-employment process, Applicant was notified that he would be required to take a blood test. He had already stopped using marijuana as well as Adderall, cocaine, and hallucinogens. After he passed the test, he resumed smoking marijuana occasionally. Since the April 2023 interview, Applicant claims that has not used marijuana nor does he intend to use the drug in the future. (November 2023 answer to the SOR at 7)

Applicant stated that he used drugs because of immaturity and the peer pressure that was generated by his drug-using friends. He is no longer interested in using illegal drugs. His primary concern is developing his career while paying more attention to his mental and physical health. (November 2023 answer to the SOR at 8)

Applicant has been working for his employer for over a year since August 2022, and participates with a team of analysts to improve the internal processes of his employer. He has conscientiously complied with all regulations in safeguarding proprietary information. He has reestablished connections to his family. He drinks sparingly. Applicant believes he is trustworthy.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines, which should be applied with common sense and the general factors of the whole-person concept. All available and reliable information about the person, past and present, favorable and unfavorable, should be carefully reviewed before rendering a decision. The protection of the national security is the paramount consideration. AG ¶ 12(d) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security." 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 in seeking a favorable security decision.

## Analysis

### Drug Involvement and Substance Misuse

The security concern under the Drug Involvement/Substance Abuse Guideline is set forth 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.

In my analysis of this case, I have taken administrative notice of Executive Order (E.O.) 12564 signed by the then-President of the United States on September 15, 1986. The primary positions addressed in the E.O. are: (1) federal employees cannot use illegal drugs; (2) illegal drug use by federal employees, on or off duty, is contrary to the efficiency of the service; and (3) persons who use illegal drugs are not suitable for federal employment.

I have also taken administrative notice of the Director of National Intelligence Memorandum Adherence of Federal Laws Prohibiting Marijuana Use, (October 25, 2014), which clearly states that state laws do not authorize persons to violate federal law, including the Controlled Substances Act (21 U.S.C. §§ 801-971 (1970)), which identifies marijuana as a Schedule 1 controlled drug.

On December 21, 2021, the Director of National Intelligence signed the memorandum, Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for access to Classified Information or Eligibility to Hold a Sensitive Position. Agencies are required to employ the "whole person concept" stated under SEAD 4, to determine if an applicant's behavior raises a security concern that has not been mitigated.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

- (a) any substance misuse (see above definition);
- (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 commit clearly and convincingly to discontinue such misuse.

After his graduation from high school in May 2015, Applicant began using marijuana during the summer. Not long after he began college in the fall, he became a frequent if not daily user of the drug. He consumed the drug through edibles, various levels of concentration, in flower form, or through vaporizer pens. In April 2023, he stated an intention not to use the drug in the future. Applicant's marijuana use over the years satisfies AG ¶¶ 25(a) and 25 (g). AG ¶ 25(c) applies because his use of the drug indicates that he had to possess it. Even though there is no evidence that he purchased the drug, Applicant never explained how he obtained a steady supply of marijuana to support his daily use. The frequency suggests that he either purchased the drug regularly or cultivated the drug.

Applicant used Adderall that was not prescribed to him and MDMA from March 2016 to August 2022. Desiring to make a profit off the drug to help pay his own expenses and credit-card debt, he decided to sell Adderall because of its popularity among students studying for exams. He purchased 250 Adderall pills for five dollars (\$1,250), and sold them for ten dollars a tab, profiting \$1,250 every two or three months. He sold the drug from June 2018 to August 2022. His purchase, sale and use of Adderall between March 2016 and August 2022 falls within AG ¶¶ 25(a) and 25(c). His use of MDMA for the same period also establishes AG ¶¶ 25(a) and 25(c).

From June 2017 to at least April 2022, Applicant's use and purchase of LSD and mushrooms falls within the scope of AG ¶¶ 25(a) and 25(c). Applicant's sale of mushrooms from June 2021 to July 2022 also falls within AG ¶ 25(c). Applicant ingested Ketamine on one occasion in January 2021.

AG ¶ 26. Conditions that could mitigate security concerns include:

(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.

Applicant's use of marijuana from 2015 to April 2023 at mostly a daily frequency and his intention to use the illegal drug in the future, demonstrates poor judgment and unreliability that removes AG ¶ 26(a) from consideration. Though he may have stopped using Adderall and MDMA in August 2022, he repeatedly sold the Adderall from 2018 to August 2022. He used cocaine from 2018 to March 2022, when he stopped because of its tendency to enable him to drink more alcohol. AG ¶ 26 (a), which cannot be applied to mitigate Applicant's Adderall and cocaine use, cannot be applied to mitigate his use of mushrooms which he subsequently sold from June 2021 to July 2022. Because of his infrequent use of LSD and singular use of Ketamine, those two drugs are resolved in Applicant's favor.

In view of Applicant's frequent use of marijuana, Adderall, MDMA, hallucinogenic mushrooms, and cocaine between 2015 and August 2022, his sale of Adderall from 2018 to August 2022, and sale of mushrooms from June 2021 to July 2022, his claim that he discontinued all drug use in August 2022 is not sufficient due to his lengthy period of illegal drug abuse. His drug history is aggravated by his efforts in 2021 and August 2022 to conceal his illegal marijuana use by abstaining for a short period prior to a pre-employment drug test to evade drug detection during the test, and once he passed the test, he resumed illegally using marijuana. Applicant did not provide a signed statement of intent not to use illegal drugs in the future. AG ¶ 26(b) does not apply.

### **Criminal Conduct**

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

Criminal activity creates doubt about a person'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.

The potential disqualifying conditions under AG ¶ 31 are:

(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 charged, prosecuted or convicted.

AG ¶ 31 (b) applies as Applicant's illegal drug use from 2015 to August 2022 creates doubt about his judgment, reliability, and trustworthiness. It also raises doubt about his ability to comply with rules and laws.

AG ¶ 32 lists the pertinent mitigating conditions that may be applicable in this case:

(a) so much time has passed since the criminal behavior happened, or it happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but 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) does not apply due to the seriousness of Applicant's drug history. His two recent efforts in 2021 and August 2022 to avoid drug detection raise some concerns that this conduct could recur in the future. The absence of independent evidence to reinforce his claims of abstinence raise lingering doubt concerning his judgement, reliability, and trustworthiness.

AG ¶ 32(d) carries some probative weight in Appellant's favor based on his leadership of a team that improves procedures for his employer, and his dedication in safeguarding proprietary information.

### **Whole-Person Concept**

I have examined the evidence under the guideline for drug involvement/substance misuse in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 27 years old and single. He has been employed as a computer analyst since August 2022.

The evidence supporting the denial of Applicant's clearance is based on his lengthy drug history. Depending on the extent of drug involvement, an applicant's use of illegal drugs in college may be mitigated by immaturity and peer pressure. However, Applicant's drug use was extensive and appeared to increase the more he interacted with the other members of his fraternity. He was considered the person to contact to obtain certain illegal drugs, including Adderall, MDMA, and mushrooms. He sold Adderall for more than four years because he knew college students would purchase the drug to study for exams. His criminal pattern and practice of regular sales of Adderall and mushrooms for profit cannot be excused by immaturity or peer pressure. Considering the entire record under the whole person, Applicant's evidence in mitigation does not overcome the guidelines for drug involvement and criminal 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-c, e, g, h: Subparagraph 1.d:	Against Applicant (Mushrooms: Against Applicant) (LSD: For Applicant)
Subparagraph 1.f:	For Applicant
Paragraph 2, Guideline J:	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 security interest of the United States to grant Applicant eligibility for access to classified information or hold a sensitive position. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge