



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



In the matter of:)	
)	
)	ISCR Case No. 23-00361
)	
Applicant for Security Clearance)	

Appearances

For Government: Jenny Bayer, Esq., Department Counsel,
For Applicant: *Pro se*

01/17/2025

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant refuted the personal conduct security concern but he did not mitigate all of the drug involvement and substance misuse security concerns or the financial considerations security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On June 9, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse), Guideline F (financial considerations), and Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant submitted a response to the SOR (Answer) on July 12, 2023, and he requested a hearing before an administrative judge. The case was assigned to me on April 1, 2024. Applicant waived his 15-day hearing notice requirement and the Defense Office of Hearings and Appeals (DOHA) issued a notice on April 18, 2024, scheduling the matter for a video teleconference hearing on April 25, 2024. I convened the hearing as scheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1 through 4. Applicant testified and called one witness but submitted no documents. At Applicant's request, I kept the record open until May 9, 2024, to enable him to submit documents. He timely submitted documents that I collectively marked as Applicant's Exhibit (AE) A and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on May 3, 2024.

SOR Amendment

At the hearing and without objection from Applicant, I granted Department Counsel's motion to amend the SOR, pursuant to ¶ E3.1.17 of the Directive, to correct a typographical error in SOR ¶ 1.k by striking "204" and replacing it with "2014." Accordingly, SOR ¶ 1.k now reads, "From about June 2014 to about April 2020, you purchased LSD." (Tr. 16-20)

Findings of Fact

Applicant admitted all the SOR allegations in his Answer. He is 39 years old. He married in 2008 and divorced in 2011. He has a six-year-old child. (Answer; Tr. 34, 36-38, 49-50; GE 1)

Applicant obtained his high school diploma in 2002 and he earned various certifications between 2010 and 2016. Except for periods of unemployment from approximately June 2016 to September 2016, January 2017 to May 2017, December 2018 to March 2019, and June 2023 to September 2023, he has primarily worked as a painter for various companies since 2007. He worked for three defense contracting companies between approximately 2012 and 2023. His most recent such employer, for whom he began working in September 2022, placed him on administrative leave without pay in June 2023 pending the outcome of his security clearance. He has since worked as a painter for his current employer, a non-defense contracting company. He was first granted a security clearance in approximately 2015, when he worked as a painter for a defense contracting company. (Tr. 6-11, 35-36, 39-46, 50-53; GE 1-2)

Guideline H: Drug Involvement and Substance Misuse

Applicant used and purchased marijuana, with varying frequency, from approximately November 2006 to August 2022. (SOR ¶¶ 1.a, 1.c) His use of marijuana during this period occurred while holding a sensitive position. (SOR ¶ 1.b) As previously stated, he was granted a security clearance for the first time in 2015, when he worked as a painter for a defense contracting company (COMPANY A). He continued to hold a clearance when he worked as a painter for another defense contracting company (COMPANY B) from around November 2016 to December 2016. He testified that he held the clearance for four years, so he continued to hold the security clearance when he again worked for COMPANY B from October 2019 to December 2019. He was granted a clearance again when he worked for his most recent defense contracting company (COMPANY C) from September 2022 to June 2023. Although he had a security clearance during these periods, he did not consider the federal illegality of marijuana because his

use of marijuana did not affect his work, as he maintained he never reported to work under the influence of marijuana or other illegal drugs. (Answer; Tr. 7-11, 35-36, 74-93; GE 1-2)

In about June 2016, he tested positive for marijuana on a urinalysis test administered by his then-employer. (SOR ¶ 1.d; GE 2) He was consequently fired. He denied having used marijuana and stated he was at a party where marijuana was being used. Other than his positive drug test in 2016, he stated he has not been fired or failed a drug test since joining the painters' union in 2007. He also stated he passed a drug test one week prior to the hearing. He disclosed the information about his drug involvement on his SCA and he discussed it during his background interview. (Answer; Tr. 23-24, 44-45, 53, 79-80, 86-90; GE 1-2)

Applicant stated he last used marijuana in June 2023. He used marijuana approximately daily to once to twice weekly in a social setting or before bed when he had trouble sleeping, as a relaxation tool. His use varied depending on how much he was working, as he stated that he did not use marijuana before or during work. He is aware marijuana is federally illegal but recreational marijuana use is legal in the state in which he resides. Before the marijuana dispensaries opened in his state, he purchased marijuana for his personal use from a friend of a friend. After it became legal where he lives, he then purchased marijuana through the dispensaries in his state. (Answer; Tr. 74-93; GE 1-2)

Applicant associates with individuals who use marijuana. He previously stated he intended to continue to use marijuana in the future. (SOR ¶ 1.e) He stated such was his intent since recreational marijuana use is legal in his state and he hoped it would become legal at the federal level in the future. As of the date of the hearing, he stated he no longer intended to use marijuana in the future because he no longer enjoys it. He also wants to obtain a security clearance, and he understands that illegal drug use is not compatible with doing so. (Answer; GE 1-2; Tr. 90-93, 103-106)

Applicant admitted in his Answer that he used mushrooms and lysergic acid diethylamide (LSD), with varying frequency, from approximately June 2014 to July 2022 (SOR ¶¶ 1.f, 1.j); he used ecstasy, with varying frequency, from approximately June 2014 to May 2022 (SOR ¶ 1.h); and he purchased mushrooms, LSD, and ecstasy from approximately June 2014 to April 2020 (SOR ¶¶ 1.g, 1.k). He disclosed the information about his drug involvement on his SCA and he discussed it during his background interview. (Answer; Tr. 74, 94-102; GE 1-2)

Applicant used ecstasy when he was with his former partner or when he was at a music festival. He used it out of curiosity and to enjoy the music festivals. He stated in his SCA that he used ecstasy less than 10 times and he used one ecstasy pill on each occasion. He testified, however, that he only used ecstasy once or twice in 2014 and he has not since used it. (Tr. 74, 94-105; GE 1-2)

Applicant also used hallucinogenic mushrooms and LSD at home or at a party or music festival, as a relaxation tool. He also stated in his SCA that he used these drugs

less than 10 times and they made him feel unproductive. He testified, however, that he used LSD only once in 2014, he used mushrooms around three times between 2014 and 2020, and he has not since used mushrooms. He purchased ecstasy, mushrooms, and LSD for his personal use from a friend of a friend until 2020. He stated that when he disclosed his drug use on his SCA, he was approximating the timeframe in which he used these drugs. He was aware ecstasy, mushrooms, and LSD are illegal drugs. He stated he does not associate with anyone who uses these drugs and he does not intend to use these drugs in the future. (Tr. 74, 94-105; GE 1-2)

Guideline F: Financial Considerations

The SOR also alleged that Applicant has three delinquent debts: a \$12,884 charged-off credit card (SOR ¶ 2.a), a \$756 delinquent medical debt (SOR ¶ 2.b), and a \$274 charged-off utility account (SOR ¶ 2.c), all of which he admitted. His financial issues are established by his April 2023 response to interrogatories, his August 2022 background interview, and credit bureau reports (CBR) from August 2022 and April 2024. (GE 1-4)

Applicant attributes his financial issues to his periods of unemployment, underemployment, financial illiteracy, and immaturity. His job as a painter is weather-dependent, and he is consistently out of work between late November and early March every year. He usually supports himself through unemployment benefits during these periods and he takes this time to physically recover from his strenuous job. He has also had to take occasional leave from work to assist with his father, who had a stroke in April 2024. (Answer; Tr. 24, 35-47, 50-55, 112-113; GE 1-4)

Applicant incurred the credit card debt in SOR ¶ 2.a between 2012 and 2016, when he lived and worked in a different state. He indicated during his background interview that he was young, immature, and did not understand credit. This is the only delinquent debt listed on his most recent CBR from 2024. He had not paid the medical debt in SOR ¶ 2.b because he was unsure what it was for. He had the utility account in SOR ¶ 2.c when he lived at a previous address, and he believed the account remained in his name after he moved out. He intends to look into his debts to resolve SOR ¶¶ 2.a and 2.b and potentially dispute SOR ¶ 2.c. He provided documentation reflecting that he began working with a company in May 2024 to repair inaccuracies on his credit file, but he did not provide documentation reflecting he resolved the SOR debts. (Tr. 55-66; AE A; GE 2)

As of the date of the hearing, Applicant earned approximately \$3,000 to \$8,000 monthly or \$56 hourly. His salary ranges because of his weather-dependent work. He previously earned approximately \$8,000 monthly when he worked for the most recent defense contracting company from September 2022 to June 2023. He estimated he had approximately \$6,000 in various financial investments. He has never received financial counseling but he intends to do so to help him manage his finances. Tr. 35-41, 47-49, 60, 106-110)

Guideline E: Personal Conduct

The SOR also alleged that Applicant falsified his response to “**Section 26-Financial Record**” of his August 2022 SCA, which inquired about “**Delinquency Involving Routine Accounts**,” when he marked “No” and failed to list his delinquent debts in SOR ¶¶ 2.a- 2.c. (SOR ¶ 3.a; GE 1) Applicant maintained that although he failed to list his delinquent debts in response to questions in this section of his SCA, he did so unintentionally. He stated it is difficult for him to discuss his finances and although he read and understood the financial questions on his SCA, he relied on the opportunity to discuss them in person as he knew he would have a background interview subsequent to completing his SCA. He discussed all of his delinquent debts during his background interview. (Answer; Tr. 23, 56-57, 66-74)

Applicant’s employer presented him with a performance award in April 2023 for his hard work and dedication on a team project that was completed ahead of schedule and with zero deficiencies. (Answer) Applicant’s union representative, who has known Applicant since approximately 2010, testified. He stated that Applicant has “been a good union member and very active.” He also attested to Applicant’s reliability, trustworthiness, and judgment. (Tr. 111-117)

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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 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.”

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 security 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 of potential, rather than actual, risk of “compromise of classified information. Section 7 of Exec. Or. 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* Exec. Or. 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 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 guideline notes the following applicable conditions that could raise security concerns under AG ¶ 25:

- (a) any substance misuse . . . ;
- (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;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

As alleged, Applicant used and purchased marijuana from approximately 2006 to 2022. His use of marijuana during this period occurred while holding a sensitive position.

He tested positive for marijuana on a urinalysis test administered by his then-employer in about June 2016. He expressed an intent to continue using marijuana in the future. He used LSD once in 2014, ecstasy once or twice in 2014, and mushrooms around three times between 2014 and 2020. He also purchased mushrooms, LSD, and ecstasy from approximately 2014 to 2020. AG ¶¶ 25(a), 25(b), 25(c), 25(f), and 25(g) apply.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

(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;

(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.

I found Applicant credible in his testimony that he was approximating the timeframe in which he used LSD, ecstasy, and mushrooms when he disclosed his use of these drugs on his SCA. Despite his admissions in his Answer, he clarified and maintained at the hearing that he used LSD only once and he used ecstasy only once or twice in 2014, he used mushrooms around three times between 2014 and 2020, and he purchased mushrooms, LSD, and ecstasy from approximately 2014 to 2020. Ten years have passed since his use and purchase of LSD and ecstasy and four years have passed since his last use and purchase of mushrooms. I find that ¶¶ 26(a) and 26(b) apply to SOR ¶¶ 1.f-1.k and I find these allegations in Applicant's favor.

The same cannot be said for Applicant's marijuana involvement, which continues to raise doubts about his reliability, trustworthiness, and judgment. He used marijuana from 2006 to June 2023, more recently than what was alleged in the SOR, and he purchased marijuana from approximately 2006 to at least 2022. His use of marijuana from 2006 to 2022 occurred while he was holding a sensitive position. He has had only one positive urinalysis test for marijuana, in 2016, eight years ago, but he continued to use marijuana until June 2023. Although he stated at the hearing that he no longer intended to continue to use marijuana, he previously expressed an intent to do so. He continues to associate with individuals who use marijuana and he did not provide a signed statement of intent to abstain from all drug involvement and substance misuse. He needs more time

to show that his marijuana involvement is a thing of his past. I find that none of the mitigating conditions are established for SOR ¶¶ 1.a-1.e.

Guideline F: Financial Considerations

The security concern for financial considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds . . .

The guideline notes several conditions that could raise security concerns under AG ¶ 19. The following are potentially applicable in this case:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant has a history of not being able to pay his debts. AG ¶¶ 19(a) and 19(c) are established.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;
- (c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue.

Conditions beyond Applicant's control contributed to his debts. The first prong of AG ¶ 20(b) applies. For the full application of AG ¶ 20(b), he must provide evidence that he acted responsibly under his circumstances. Although Applicant is working with a company to resolve inaccuracies on his credit report, he did not provide documentation to show payment or other resolution for his three SOR debts. He has not received financial counseling. He needs more time to establish that he has his finances under control. I find that these financial issues continue to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 20(a), 20(b), 20(c), 20(d), and 20(e) do not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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.

Notwithstanding his admission to SOR ¶ 3.a in his Answer, Applicant was credible in his testimony that he did not intentionally fail to disclose his delinquent debts on his SCA. He relied on the opportunity to discuss his finances in person as he knew he would have a background interview subsequent to completing his SCA. As such, AG ¶ 16(a) is not established for SOR ¶ 3.a and I find that allegation in Applicant's favor.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H, F, and E in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant refuted the personal conduct security concern, but he did not mitigate all of drug involvement and substance misuse security concerns or the financial considerations 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Subparagraphs 1.f-1.k:	For Applicant
Paragraph 2, Guideline F:	AGAINST APPLICANT
Subparagraphs 2.a-2.c:	Against Applicant
Paragraph 3, Guideline E:	For Applicant
Subparagraph 3.a:	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 interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge