



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 23-02591

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: Samir Nakhleh, Esq.

02/27/2025

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse, Guideline J, criminal conduct, and Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

History of the Case

On December 11, 2023, the Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H, J, and E. The DCSA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on January 23, 2024. He requested a hearing. The case was assigned to me on September 3, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 16, 2024, and the hearing was held as scheduled on December 16, 2024. The Government offered exhibits (GE) 1

through 4, which were admitted into evidence without objection. The Government's exhibit list and pre-hearing discovery letter were marked as hearing exhibits (HE) I and IV. Applicant testified, and offered exhibits (AE) A through V, which were admitted into evidence without objection. Applicant's exhibit lists were marked as HE II and III. The record closed at the completion of the hearing. DOHA received the hearing transcript (Tr.) on December 27, 2024.

Findings of Fact

Applicant admitted all the SOR allegations, with explanations. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 35 years old. In 2012, he graduated from college with a degree in aerospace engineering. He is single, never married, and has no children. (Tr. 17-18; GE 1-2)

Under Guideline H, the SOR alleged Applicant used LSD in about April 2023 (SOR ¶ 1.a); and that he used LSD in about April 2023, after being granted eligibility for access to classified information or while holding a sensitive position. (SOR ¶ 1.b).

The SOR alleged Applicant used psilocybin mushrooms in about July 2021 (SOR ¶ 1.c); and that he used psilocybin mushrooms in about July 2021, after being granted eligibility for access to classified information or while holding a sensitive position. (SOR ¶ 1.d).

The SOR alleged Applicant used cocaine, with varying frequency from about July 2018 to about September 2020 (SOR ¶ 1.e); and that he used cocaine, with varying frequency, from about July 2018 to about September 2020, after being granted eligibility for access to classified information or while holding a sensitive position. (SOR ¶ 1.f).

The SOR also alleged Applicant used marijuana, in varying frequency, from about August 2008 to about December 2011, and from about February 2016 to about 2020 (SOR ¶ 1.g); and that he used marijuana from about February 2016 to about 2020, after being granted eligibility for access to classified information or while holding a sensitive position. (SOR ¶ 1.h) It alleged he purchased marijuana, in varying frequency, from about August 2008 to about December 2011, and from about February 2016 to about 2020. (SOR ¶ 1.i).

Both Guidelines J and E cross-alleged all the Guideline H concerns stated above. (SOR ¶¶ 2.a and 3.a). Additionally, under Guideline E, the SOR alleged Applicant falsified his February 2023 security clearance application (SCA) when he failed to disclose his marijuana use from February 2016 to 2020. (SOR ¶ 2.b).

Applicant first used marijuana in the 2008 through 2011 timeframe when he was in high school and later in college. He used marijuana recreationally about once a week. He also purchased marijuana at various times between 2009 and 2011 for personal use. (Tr. 32; GE 2)

Applicant first worked for a DOD contractor in 2013. As part of his job, he completed an SCA in April 2013, and disclosed his previous uses and purchases of marijuana. He also indicated that he had no intent to use or purchase illegal drugs in the future. He was granted security clearance eligibility. (Tr. 19, 28; GE 2)

From approximately February 2016 to sometime in 2020, while holding a security clearance and employed in a sensitive position, Applicant used marijuana. During this timeframe, he used marijuana three to four times at social gatherings, such as concerts, or being with friends. He also purchased marijuana at state-sponsored dispensaries for his mother one time, and for his partner. He claims his partner no longer uses marijuana, but his mother does. (Tr. 28, 45-46, GE 3, p. 12)

Between approximately July 2018 and September 2020, while holding a security clearance and employed in a sensitive position, Applicant used cocaine on approximately two to three occasions, while attending social functions or parties. He claimed these uses were experimental and he has no intentions to use it in the future. (Tr. 28, 44-45, GE 1, pp. 41-42)

Sometime in 2021, while holding a security clearance and employed in a sensitive position, Applicant used psilocybin mushrooms on at least two occasions, while attending a bachelor party and a wedding. He used it because he wanted to try it out and see what it was like. He claimed he does not intend to use this drug in the future, but on these occasions, his "curiosity got the best of me." (Tr. 28, 44-45, GE 1, p. 42)

In April 2023, while holding a security clearance and employed in a sensitive position, Applicant used LSD on at least one occasion, while attending a concert. Although not alleged in the SOR, Applicant admitted in his 2023 SCA, that he used LSD in 2021 on two social occasions. (I will not use his 2021 LSD uses for disqualification purposes, but I will consider them as they might relate to credibility, mitigation, and the whole-person factors.) He used it in 2021 because he wanted to try it out and see what it was like. He claimed he does not intend to use this drug in the future, but on these occasions, his "curiosity got the best of me." (Tr. 28, 30, 44-45, GE 1, p. 42, GE 3, p. 6)

Applicant has never received drug counseling or treatment. He took three online courses in January 2025 educating him on the drugs of marijuana, cocaine and LSD. He received completion certificates. He also submitted a statement of intent not to use illegal drugs in the future. He also presented evidence of two negative drug tests, using hair analysis, that he took in January and November 2024. (Tr. 34-36, 38; AE A-C, Q)

Applicant admitted that he continues to associate with friends and family who use illegal drugs. As stated above, his mother who lives in a different state continues to use marijuana. He also admitted that since April 2023, he has been around friends on approximately five occasions when they have used illegal drugs. He admitted that he “struggles” with cutting ties with these friends. The last time he was around his friends when they were using illegal drugs was one or two months before his hearing. He claimed that he has set boundaries for these people when he is around. (Tr. 41-42, 47, 49, 54)

In February 2023, Applicant completed a new SCA. While he listed his cocaine use (2018-2020), his psilocybin mushroom use (2021), and his LSD use (2021), he failed to list his marijuana use and purchases from 2016 to 2020. During his testimony, Applicant maintained this omission was unintentional. He had to re-accomplish his SCA forms several times and this information got left out. I find his explanation for the omission plausible. (Tr. 37; GE 1)

Whole-Person Information

Applicant has received numerous awards for his work performance, which are detailed in AE G-N and U. His performance appraisals for 2021 and 2022 rate him as an overall “exceptional performer” and his 2023 appraisal rates him as an “effective performer.” (AE G-P, S, U)

Four work colleagues provided character letters in support of Applicant, including his program manager, his direct supervisor, the facility security officer, and a coworker. Only his program manager mentioned in her letter that she was aware of his drug involvement. The general tone of all the letters was that Applicant is a dedicated worker and valued employee. He is a trusted and reliable employee. All recommend reinstatement of his clearance. (AE R (i.-iv.))

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 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, 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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 that an 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.

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 H, Drug Involvement and Substance Abuse

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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 in this case include:

(a) any substance misuse;

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant's marijuana use and purchase of marijuana, and his use of cocaine, LSD, and psilocybin mushrooms, as alleged, is supported by his admissions and other evidence. His admitted use of marijuana from 2016 to 2020, his use of cocaine from 2018 to 2020, his use of Psilocybin mushrooms in 2021, and his April 2023 use of LSD all occurred when he was holding a sensitive position. I find AG ¶ 25(a) applies to all the SOR allegations, and ¶ 25 (f) applies to SOR ¶¶ 1.b, 1.d., 1.f, and 1.h.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

(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 the various named drugs was not frequent, however, it was recent, with his last use of LSD occurring in April 2023. A troubling aspect of his drug abuse is that much of it occurred after he was granted a security clearance in June 2013. He stated in his 2013 SCA that he had no intention to use illegal drugs. Even after he completed his most recent SCA in February 2023, where he again stated his intent NOT to use illegal drugs in the future, he used LSD. His promises to abstain from using illegal substances carry little weight given his track record of not living up to those promises. The recency of his past use, his use while holding a security clearance and, more specifically, his continued use of illegal substances after twice committing not to use them in the future, cast doubt upon his current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) does not apply. He has not distanced himself from his drug-using friends and finds doing so a difficult thing to do. He presented a written statement stating his future

intention not to use drugs, but as stated above, he failed to live up to similar commitments in the past. While AG ¶ 26(b) has some application, it is insufficient to overcome his demonstrated unreliability, untrustworthiness, and poor judgment.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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.

16. Conditions that could raise a security concern and may be disqualifying include:

(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;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-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.

While Applicant's drug-related conduct starting in 2008 and intermittently continuing until April 2023 is sufficiently disqualifying under Guideline H, it also indicates Applicant's questionable judgment, untrustworthiness, and unreliability. AG ¶ 16(c) applies to SOR ¶ 2.a. The Government failed to establish that Applicant's failure to list his marijuana use on his April 2023 SCA was deliberate, rather than an unintentional omission as he claimed. AG ¶ 16(a) does not apply to SOR ¶ 2.b.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following relevant:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is

unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

Applicant's use of multiple drugs after he was granted a security clearance, his recent use of LSD, and his failure to live up to his commitment not to use illegal drugs in the future lead to the conclusion that recurrence is more likely than future abstinence. Drug use is not a minor offense. At this point, the evidence supports the conclusion that there are significant current doubts about Applicant's reliability, trustworthiness, and judgment. Although Applicant claims he will not use illegal drugs in the future, his credibility is suspect on that matter. AG ¶ 17(c), does not apply.

Guideline J, Criminal Conduct

The security concern relating to the guideline for criminal conduct is set out 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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying in this case. The following is potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

Applicant's illegal drug abuse supports the application of AG ¶ 31(b).

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and considered the following relevant:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual 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 not 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.

For the same reasons stated above under Guideline H, AG ¶¶ 32(a) and 32(d) do not substantially apply.

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 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 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 considered Applicant's age, and the supportive statements of his coworkers. However, I also considered Applicant's history of drug use after obtaining a security clearance. He failed to provide sufficient evidence to mitigate the drug involvement, criminal conduct, and personal conduct security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guidelines H, J, and E.

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.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Paragraph 3, Guideline J:

AGAINST APPLICANT

Subparagraphs 3.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 Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge