



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-00478

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: *Pro se*

02/20/2025

Decision

BLAZEWICK, Robert B., Chief Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is denied.

Statement of the Case

On April 11, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR on April 15, 2024, and initially requested to have a hearing before an administrative judge. On May 29, 2024, Applicant notified Department Counsel in writing that he would rather have the case decided on the

written record in lieu of a hearing. The Government's written case was submitted on June 27, 2024. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on July 29, 2024, and he did not respond. The case was assigned to me on December 3, 2024. The Government's documents identified as Items 4 and 5 are admitted in evidence without objection.

Findings of Fact

The SOR alleges that Applicant used marijuana with varying frequency from about January 2007 to at least February 2023 (SOR ¶ 1.a); that he used mushrooms with varying frequency from about April 2008 to at least January 2023 (SOR ¶ 1.b); and that he used cocaine with varying frequency from about June 2012 to at least November 2022 (SOR ¶ 1.c). In his answer, Applicant admitted all three allegations.

Applicant is 36 years old. He has never been married but has had a cohabitant since March 2020. He does not have any children. He earned a bachelor's degree in May 2011 and a master's degree in May 2013. He has been employed with a defense contractor since April 2023. He has never held a security clearance. (Items 4-5)

Applicant first used marijuana in high school at age 18. He continued to use marijuana in college on a daily basis until he graduated in 2011. During the four years following college, he rarely used marijuana. From 2015 to 2020, he used marijuana quarterly, but started increasing his usage in 2020 with the onset of the COVID-19 pandemic. In 2021 he obtained a medical marijuana card. From 2020 to 2023, he used marijuana semi-weekly. He stopped using marijuana in February 2023 after submitting his security clearance application (SCA). Applicant's cohabitant uses marijuana and has smoked it with him. He conceded that he knew marijuana was illegal under federal law and, although not alleged, he also admitted that he purchased marijuana from 2007 to 2023. (Items 4-5)

Applicant's first use of hallucinogenic mushrooms was in 2011, at age 22, during his senior year of college. He used hallucinogenic mushrooms twice in college and once in January 2023 when he purchased them at a local store. (Items 4-5)

Applicant's first use of cocaine was in 2012, at age 23, with quarterly use from about 2012 to 2015. He stopped using cocaine after 2015 until offered some at a friend's apartment during a party in November 2022, where he did two small lines of cocaine. He stated that he used cocaine at that time because he was at a party and felt peer pressure. (Items 4-5)

Applicant stated in his SCA that he has no desire to use illegal drugs that would jeopardize his security clearance. He stated during his May 2023 background interview

that the likelihood that his drug use would recur is “none” because he wants to keep his security clearance. He reiterated that he does not intend to use illegal drugs in the future in his response to interrogatories signed in March 2024. In April 2024, Applicant signed a statement of intent to abstain from all drug involvement and substance misuse and he acknowledged that any future involvement or misuse is grounds for revocation of national security eligibility. (Items 2, 4-5)

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.” Exec. Or. 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.” Exec. Or. 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*, 484 U.S. 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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

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*, 484 U.S. at 531.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline 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.

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

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.

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;

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 not established. Applicant's involvement was frequent and did not occur under circumstances making recurrence unlikely. The key issue is whether it is mitigated by the passage of time. The first prong of AG ¶ 26(a) (happened so long ago) focuses on whether the drug involvement was recent. There are no bright-line rules for determining when conduct is recent. If the evidence shows that a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant's last drug involvement was in February 2023, less than two years ago, and ceased only after Applicant completed his SCA. While under some circumstances this could be considered a significant period of time, when contrasted with Applicant's 16-year history of drug use, it is not a sufficiently lengthy period of abstinence to fully establish the mitigating condition. Notably, Applicant's use of all three drugs ebbed and flowed over the years, with periods of more frequent use as well as periods of abstinence, but all three were last used within approximately the past two years. This pattern of abstinence followed by further use indicates that additional drug use may recur and that two years of abstinence is insufficient, particularly since Applicant only ceased his drug use for the purpose of obtaining a security clearance. It appears the only circumstances that changed are Applicant's desire for a security clearance; likewise, there is no additional evidence of conduct indicating reform or rehabilitation.

AG ¶ 26(b) is not fully established. Applicant acknowledged during his background interview that he still associates with the individuals with whom he previously used illegal drugs, specifically his cohabitant and his friend who hosted a party with cocaine available. He did not provide evidence that he no longer resides with his cohabitant or that his cohabitant has also stopped using illegal drugs. Similarly, he last obtained cocaine at a friend's party but he has not provided any evidence establishing that he no longer associates with this or other drug-using friends or no longer attends parties where illegal drugs are being used. This is of particular importance since he cited being at a party and feeling peer pressure as his reasons for using cocaine in 2022. As such, AG ¶¶ 26(b)(1) and 26(b)(2) are not established.

Applicant submitted a statement of intent in accordance with AG ¶ 26(b)(3), but his lengthy history of drug use, relatively recent sobriety, and his continued association with drug-using associates lessens the credibility and sincerity of his statement.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not

overcome this presumption. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his drug involvement and substance misuse.

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

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Robert B. Blazewick
Chief Administrative Judge