



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 23-02808

Appearances

For Government:
John Renehan, Esquire
Aubrey De Angelis, Esquire
Department Counsel

For Applicant:
Carl Marrone, Esquire
National Security Law Firm

03/03/2025

Decision

ROSS, Wilford H., Administrative Judge:

Applicant mitigated the security concerns under Guidelines H (Drug Involvement and Substance Misuse), and J (Criminal Conduct).

Statement of the Case

On January 12, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and J. 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 answered the SOR in writing (Answer) on January 24, 2024, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on May 14, 2024. The case was assigned to me on May 21, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 30, 2024. I convened the hearing as scheduled on July 25, 2024. The Government submitted Government Exhibits 1 through 3, which were admitted without objection. Applicant testified on her own behalf, called four additional witnesses, and submitted Applicant Exhibits A through T. Her exhibits were also admitted without objection. Applicant requested that the record remain open for receipt of additional documentation. No additional documentation was submitted. DOHA received the transcript of the hearing (Tr.) on August 5, 2024. The record closed on August 16, 2024

Findings of Fact

Applicant is 30 years old and single. She has a master's degree in mechanical engineering. She has been employed by a defense contractor since 2020 and seeks to obtain national security eligibility and a security clearance in connection with her employment. This is her first application for a finding of national security eligibility. (Government Exhibit 1 at Sections 12, 13A, and 17; Applicant Exhibit K; Tr. 24-26, 68-69.)

Paragraph 1 (Guideline H, Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has used illegal drugs. She admitted all the allegations under this paragraph with explanations.

Applicant was involved in a serious automobile collision in April 2017 that resulted in severe injuries to her head and neck that required surgery in December 2017. Pictures of Applicant's injuries can be found in her Answer at page 7. The driver of the car, "T," was her boyfriend at the time. He was a drug user and provided her with several of the illegal drugs discussed below in attempts to help her relieve the pain from the accident and subsequent surgery. After breaking up with "T" she took up with "S." He was also a drug user and continued to supply her with several illegal substances. She subsequently broke up with him. She has had no involvement with either man since 2022. (Tr. 27-37, 46-49.)

Applicant admitted that she knew her employer had a drug-free workplace requirement. She stated that she never used illegal drugs at work or reported to work under the influence. (Government Exhibit 3; Tr. Tr. 72-73.)

Applicant moved across the country in 2023 to start a different job with the same company. The move allowed her to change her friendships and begin a healthier lifestyle. As further described below, she has not used any illegal drugs since December 2022. (Tr. 50.)

1.a. Applicant admitted that she used marijuana from approximately March 2016 through December 2022. She credibly stated that she had no future intentions of using marijuana. Her use of marijuana after her neck surgery was part of an unsuccessful attempt to resolve intense pain. She no longer uses any drugs to relieve her continual neck pain. Her current boyfriend, who holds a security clearance, does not use drugs. She realizes the negative impact continued marijuana use can have on her life. (Tr. 37-44, 82-83.)

1.b. Applicant admitted that she purchased marijuana on various occasions from about March 2016 until November 2020. She has no future intentions of purchasing marijuana or any other illegal drug. (Tr. 39-41.)

1.c. Applicant admitted that she used cocaine on an occasional basis from about March 2016 until November 2019, and again from November 2021 to about March 2022. Her use of cocaine after her neck surgery was part of an unsuccessful attempt to resolve continuous neck pain and associated features of the accident. She stopped using cocaine in March 2022 and credibly stated that she had no future intentions of using the drug. Her current boyfriend, who holds a security clearance, does not use drugs. She realizes the negative impact continued cocaine use can have on her life. (Tr. 45-49, 51-52, 85-86.)

1.d. Applicant admitted that she purchased cocaine on various occasions from about March 2016 until November 2020. She has no future intentions of purchasing cocaine or any other illegal drug. (Tr. 46.)

1.e. Applicant admitted that she used Xanax that was not prescribed for her on an occasional basis from about November 2017 to early 2018, and again from May 2022 to about October 2022. She took the drug to help with stress and anxiety. She stopped using Xanax in October 2022 and credibly stated that she had no future intentions of using Xanax. Her current boyfriend, who holds a security clearance, does not use drugs. She realizes the negative impact continued Xanax use without a prescription can have on her life. She has found alternative ways to resolve stress and anxiety that do not include drugs. (Tr. 52-54, 89-91.)

1.f. Applicant admitted that she purchased Xanax without a prescription, at least one time, during the period from about March 2016 until October 2022. She has no future intentions of purchasing Xanax or any other illegal drug in the future. (Tr. 53.)

1.g. Applicant admitted that she used Percocet that was not prescribed for her on an occasional basis from about November 2017 to about September 2022. Her use of Percocet after her automobile accident and subsequent neck surgery was part of an unsuccessful attempt to resolve intense pain. She no longer uses any drugs to relieve her continual neck pain. She stopped using Percocet in September 2022 and credibly stated that she had no future intentions of using Percocet. Her current boyfriend, who holds a security clearance, does not use drugs. She realizes the negative impact continued Percocet use can have on her life. (Tr. 54-59, 91-93.)

1.h. Applicant admitted that she purchased Percocet without a prescription on various occasions from about March 2016 until November 2020. She has no future intentions of purchasing Percocet or any other illegal drug in the future. (Tr. 58-59.)

1.i. Applicant admitted that she used MDMA (also known as molly or ecstasy) twice, in October 2021 and May 2022. She credibly stated that she had no future intentions of using MDMA in the future. Her current boyfriend, who holds a security clearance, does not use drugs. She realizes the negative impact continued MDMA use can have on her life. (Tr. 59-61, 93-94.)

1.j. Applicant admitted that she purchased MDMA on two occasions in October 2021 and May 2022. She has no future intentions of purchasing MDMA or any other illegal drug. (Tr. 59-61.)

Applicant had a drug abuse assessment in March 2024. The evaluator found, “[Applicant] does not, and did not, meet criteria for a substance use disorder.” She also took two negative drug tests in March and July 2024. (Applicant Exhibits E, F, and T.)

Applicant stated that she has lived a drug-free lifestyle since her last usage in 2022. She no longer has any contact with “T” or “S.” She loves her job, wants to concentrate on her career, and has found drug-free ways to resolve her chronic pain issues, as well as her problem with stress and anxiety. She also began seeing a therapist starting in March 2024 to discuss her issues. (Applicant Exhibit G; Tr. 43, 61-65, 97-100.)

Paragraph 2 (Guideline J, Criminal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has engaged in criminal conduct that creates doubt about a person's judgment, reliability, and trustworthiness. Specifically, that the allegations set forth under Paragraph 1, above, are cognizable under this paragraph as well. She admitted this allegation with explanations.

Mitigation

Applicant has worked at her current job since 2020. Her evaluations show an energetic and talented young engineer who is viewed favorably by her managers. She received a monetary award in recognition of her hard work in March 2024. (Applicant Exhibits I and J.)

Letters of recommendation were submitted by several of Applicant's coworkers. The writer of Applicant Exhibit M also testified for Applicant. They all state that Applicant is trustworthy and believable. They find her to be a hard-working person of integrity and recommend her for a position of trust. (Applicant Exhibits L, M, N, O, and R; Tr. 120-126.)

Applicant's current boyfriend, a clearance holder who works for another company, testified on her behalf. He described in detail how she currently handles her pain in a holistic manner. He also testified that he has confidence in her as a fellow clearance holder to continue to abstain from illegal substances. (Tr. 110-119.)

Two personal friends of Applicant also testified on her behalf. They both knew her during the period she was going out with "T." The witnesses agreed that he was not a good person. They recommend her for a position of trust. (Applicant Exhibits P and Q; Tr. 81-84, 101-109, 127-137.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's

overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline H, Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant used marijuana and cocaine from 2016 to 2022. She used Xanax and Percocet that were not prescribed for her from 2017 to 2022. She used MDMA on two occasions in October 2021 and March 2022. She also occasionally purchased all of the above drugs. Both of the stated disqualifying conditions have application to this case.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (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 used a variety of drugs for several years. She was not a habitual user, and did not meet the criteria for a substance use disorder. Some of her drug use, particularly marijuana and Percocet, was related to severe and chronic pain that she suffered from after an accident. In 2023 she moved across the country for a new job. Once there she found a new boyfriend, new non-drug using friends, and found holistic, non-drug ways to handle her pain. She has submitted a signed statement of intent. Her very credible testimony, along with the additional testimony of co-workers and friends, and the documentary evidence show that she has progressed beyond drug use. The adverse inference of her drug use has been overcome. Security concerns under Guideline H are mitigated.

Paragraph 2 (Guideline J, Criminal Conduct)

The security concerns relating to the guideline for criminal conduct are set out in AG ¶ 30, which states:

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 two conditions that could raise security concerns and may be disqualifying in this case:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(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 formally charged, prosecuted, or convicted.

Applicant used and purchased all of the illegal drugs described under paragraph 1, above. Both of the disqualifying conditions have application to the facts of this case.

The guideline includes four conditions in AG ¶ 32 that could mitigate the security concerns arising from Applicant's alleged criminal conduct. Two have possible application to the facts of this case:

(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.

Applicant's evidence shows that both of the mitigating conditions have been met. Her last involvement with illegal drugs occurred over a year before the record closed. She has an outstanding employment record, as shown by her documentary evidence and the testimony of work companions. She no longer associates with people who engage in illegal conduct. Mitigating conditions ¶ 32(a) and (d) are fully established. Security concerns under Guideline J are mitigated.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has fully mitigated the security concerns of her prior drug use and the associated criminal conduct. As stated elsewhere in this decision, and supported by the evidence, Applicant is a talented and successful young engineer who has learned from her mistakes and has moved forward with her life without drugs. Her conduct has earned her the privilege of being granted national security eligibility. Paragraphs 1 and 2 are found for Applicant.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a through 1.j:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge