



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



In the matter of:)
)
) ISCR Case No. 24-01279
)
Applicant for Security Clearance)

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

05/16/2025

Decision

WESLEY, ROGER C. Administrative Judge

Based upon a review of the case file, pleadings, exhibits, and testimony, Applicant did not mitigate drug involvement and substance abuse and personal conduct concerns. Eligibility for access to classified information or to hold a sensitive position is denied.

Statement of the Case

On July 30, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudications Services (CAS) issued a statement of reasons (SOR) to Applicant detailing reasons why under the drug involvement and substance abuse and personal conduct guidelines the DCSA CAS could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960); Department of Defense (DoD) Directive 5220.6 *Defense Industrial Personnel Security Clearance Review Program*, (January 2, 1992) (Directive); and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017.

Applicant responded to the SOR on August 28, 2024, and elected to have her case decided on the written record in lieu of a hearing. This case was assigned to me on May 2, 2025. Applicant received the File of Relevant Material (FORM) on January 28, 2025, and was instructed to file any objections to the FORM or supply additional information for consideration within 30 days of receipt. Applicant did not respond to the Government's FORM and did not object to the Government's materials included in the FORM.

Summary of Pleadings

Under Guideline H, Applicant allegedly (a) used marijuana with varying frequency from about January 2013 to about August 2023 and (b) used Mushrooms with varying frequency from about August 2005 to about June 2018. She provided no attachments.

Under Guideline E, Applicant allegedly (a) was arrested in January 2008 and charged with Unauthorized Use of an Access Card as Theft and Identity Theft; (b) falsified facts during an October 25, 2023 personal subject interview (PSI) with an authorized investigator for the U.S. DoD when he asked her about her January 2008 arrest; and (c) falsified material facts on an electronic questionnaires for investigations processing (e-QIP) using a questionnaire for non-sensitive information format (Standard SF-85) when she answered "No" to questions inquiring about any past use of illegal drugs, and thereby failing to disclose her past use of illegal drugs covered by Guideline H.

In Applicant's SOR response, she admitted most of the allegations covered by Guidelines H and E, denying only her alleged falsification of the e-QIP she completed in June 2018 (claiming she did her best to identify her past years of illegal marijuana and hallucinogenic mushroom use), without identifying her reasons for denying any past use of illegal drugs in the e-QIP she executed. For explanations relative to the allegations covered by Guidelines H and E of the SOR that she admitted, she claimed no conviction of charges as she continues to maintain her innocence with regard to her 2009 unauthorized use of an access card arrest and charges. She further claimed that because she cannot afford a lawyer to fight the charges, she cannot prove her innocence at this time. She also claimed that she is currently working on a master's degree and has established a successful profession and life for herself.

Findings of Fact

Applicant is a 37-year-old civilian employee of a defense contractor who seeks a security clearance. Allegations covered in the SOR and admitted by Applicant are incorporated and adopted as relevant and material findings. Additional findings follow.

Background

Applicant never entered into a civil marriage but has cohabited with another since January 2020. (Item 2) She has no children from this relationship. She earned a

bachelor's degree in May 2010 and attended additional college classes in 2014 without earning a degree or diploma. Applicant did not report any military service. (Items 2-4)

Since June 2018, Applicant has worked for her current defense contractor as a senior contract negotiator. (Item 2) Previously, she worked for a local government as a contracts manager. She has never held a security clearance. (Items 2 and 4)

illegal drug involvement

Applicant was introduced to marijuana in 2013. Between January 2013 and August 2023, she used marijuana with varying frequency. (GEs 2 and 4) She acknowledged her awareness of the illegality of marijuana possession as far back as 2015 (regardless of state laws legalizing the use of marijuana) that the possession and sale of marijuana remained illegal under the Federal Controlled Substances Act but continued to use the substance, nonetheless, until August 2023. (Items 2 and 4) She never purchased marijuana herself, however, and always relied on friends for providing her drugs.

Besides her marijuana use, Applicant used hallucinogenic mushrooms quarterly with her boyfriend from August 2005 to June 2018. (Items 2 and 4) She purchased her mushrooms for about \$30.00 and consumed them by eating them at musical festivals and in other social situations. (Item 4) Applicant last used mushrooms in June 2018.

Applicant assured in her August 2023 e-QIP (Item 3) that she had no intention of using marijuana, hallucinogenic mushrooms, or any other illegal drugs in the foreseeable future out of concern for her health. Her assurances, while not expressly challenged by the Government in the FORM, are not corroborated.

Unauthorized Use of Access Card

According to an arresting sheriff's report (Item 6), Applicant was arrested and charged in January 2009 with one count of unauthorized use of a customer's access card, theft and identity theft. Details of her arrest and charge are covered in the arrest report of the charging officer. (Items 4 and 6)

Summarized, at the time of her arrest, Applicant was a college student employed by a local electronics store. In November 2008, a customer visited the store to purchase a television. (Items 4 and 6) Because the customer's store credit card had expired for lack of use for over a year, he asked Applicant to assist him with completing an application for a new credit card. (Item 6) According to the sheriff's report, when the customer received his initial credit card statement in December 2008, he noted four purchases totaling \$1,671 on the account statement that he did not make. An investigation opened following the customer's reporting of the incident. (Item 6)

Although, Applicant denied any wrongdoing associated with any of the reported incidents uncovered in the investigation of the credit card incident, the investigation produced evidence to corroborate the charges. The assigned incident code for the

charged offense was forgery. (Item 6) Applicant denied any conviction of the charges and claimed the charges were expunged. (Item 4) While the sheriff's investigation produced credible evidence corroborating the charges, no disposition of the charges is posted in the record. (Items 5-6) Absent any probative evidence in the record of a disposition of the charge, there can be no inferences of a conviction or other adverse ruling.

Falsification of background forms

Asked to complete a questionnaire for non-sensitive positions (SF-85) in June 2018, Applicant willfully and knowingly failed to disclose her past use of marijuana and hallucinogenic mushrooms. (Items 3) She admitted her awareness as early as 2015 that the use, possession, and purchase of marijuana was barred by federal law (regardless of state laws legalizing marijuana use). Applicant denied using illegal drugs within the previous year. (Item 3) In deliberately denying her prior use of marijuana, Applicant falsified her e-QIP of June 2018.

Applicant completed another security clearance questionnaire (an e-QIP) in October 2023. (Item 2) In this e-QIP, she acknowledged her past drug use of marijuana and hallucinogenic mushrooms while denying any prior arrests and charges within the previous seven years. In a follow-up personal subject interview (PSI) with an investigator from the Office of Personnel Management (OPM) in October 2023, she was asked about her 2009 arrest for Unauthorized Use of an Access Card, as Theft and Identify Theft. (Item 4) In this version of the event, she told the OPM investigator that a friend or acquaintance wrote down his credit card number on a piece of paper that she used to make purchases for the customer. (Item 4)

Elaborating on Applicant's recitals of her 2008 store incident in her PSI, she told the investigator that the credit card information provided her came from the customer's father's credit card. (Item 4) By all reasonable comparisons with the information recited in the arrest report, the cited exculpatory information that Applicant provided the OPM investigator in her PSI was false and misleading and cannot be reconciled with the detailed transactional information contained in the local sheriff's case report. (Item 6) Clearly summarized in the sheriff's incident report are the corroborated accounts of Applicant's multiple use of her customer's credit card information to make multiple unauthorized transactions on the customer's credit card account. (Item 6)

Policies

By virtue of the jurisprudential principles recognized by the U.S. Supreme Court in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." 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. Eligibility for access to classified information may only be granted "upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

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, these guidelines are applied 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, reliable information about the person, past and present, favorable and unfavorable.

The AGs list guidelines to be considered by judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include conditions that could raise a security concern and may be disqualifying (disqualifying conditions), if any, and all of the conditions that could mitigate security concerns. These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. Although, the guidelines do not require judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision.

In addition to the relevant AGs, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in ¶ 2(a) of the AGs, which are intended to assist the judges in reaching a fair and impartial, commonsense decision based on a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are considered together with the following AG ¶ 2(d) factors: (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 of the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent:

Drug Involvement

The Concern: The illegal use of controlled substances, to include the misuse of 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.

Personal Conduct

The 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, and 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 ¶ 15.

Burdens of Proof

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 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 "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See Exec. Or. 10865 § 7. See *also* Exec. Or. 12968 (Aug. 2, 1995), § 3.1.

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 AGs 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. 95-0611 at 2 (App. Bd. May 2, 1996).

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 ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No.

02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Security concerns are raised over Applicant’s possession and use of illegal drugs (marijuana and mushrooms) over a considerable number of years. Additionally, security concerns are raised over applicant’s misuse of a customer’s credit card access. Further, security concerns are raised over Applicant’s falsification of information he provided in a 2023 PSI and in an earlier e-QIP she completed in 2018.

Drug and Substance Abuse Concerns

Applicant’s admissions to using and purchasing marijuana and hallucinogenic mushrooms over a period of many years (2013-2023 for marijuana and 2005-2018 for mushrooms) raise security concerns over judgment and risks of recurrence. On the strength of the evidence presented, two disqualifying conditions (DCs) of the AGs for drug involvement apply to Applicant’s situation: DC ¶¶ 25(a), “any substance misuse”; and 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” apply to Applicant’s situation.

To Applicant’s credit, she has ceased using marijuana and mushrooms and is committed to abandoning all involvement with the drug in the future. She is credited with remaining abstinent from marijuana use since August 2023 and from the use of mushrooms since 2018 and exhibits no visible signs or indications of succumbing to any risks or pressures she might encounter to return to illegal drug use in the foreseeable future. Applicant’s assurances of sustained abstinence from illegal drugs are encouraging. However, her assurances are not accompanied by any formal written intent to abstain from future use of marijuana and other illegal drugs with the understanding of the risk of a loss of a security clearance should she resume her use of marijuana or other illegal drugs in the future.

Considering all of the circumstances surrounding Applicant’s involvement with marijuana and mushrooms and her recent initiatives to abstain from marijuana and other illegal drug use warrant limited application of two potentially available mitigating conditions (MCs) of the drug involvement and substance misuse guideline. Partially applicable MCs are MC ¶¶ 26(a), “the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment”; and 26(b), which reads as follows

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 . . .
(2) changing or avoiding the environment where drugs were used and 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 eligibility: . . .

Still, Applicant's lengthy personal history of marijuana and mushroom use undercut her commitments to avert all risks of recurrence of marijuana involvement in the foreseeable future. Without more time and corroborating evidence of sustained abstinence from the use of illegal drugs over a more prolonged period of time and disassociation from those who continue to use them, mitigating conditions available to her are quite limited in scope.

While this is not a close case, even close cases must be resolved in the favor of the national security where doubt exists. *See Dept. of Navy v. Egan, supra*. Quite apart from any judgment reservations the Government may have for the clearance holder employed by a defense contractor, the Government has the right to expect the keeping of promises and commitments from the trust relationship it has with the clearance holder. *See Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980). In Applicant's case, it is still too soon to make safe predictions that she will be able to fulfill her promised commitments to avoid illegal drugs in the future. Without a face-to-face hearing to assess her credibility, her abstinence assurances become much more difficult to reliably evaluate.

Personal Conduct Concerns

Of additional security concern is Applicant's 2009 arrest and charge of Unauthorized Use of Access Card as Theft and Identity Theft. While the charge never resulted in a conviction, the underlying facts are supported by strong probative evidence reflecting a lack of candor and poorly exercised judgment by Applicant. Applicable to the facts of Applicant's case is DC ¶ 16(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."

In completing her e-QIP of June 2018, Applicant willfully and knowingly failed to disclose her past illegal use of marijuana and mushrooms. In a follow-up PSI of October 2023, she provided false and misleading information about the circumstances surrounding her misuse of a customer's credit card access information, for which she was subsequently and charged with unauthorized use of a customer's access card. In both instances she committed candor and judgment lapses that create personal conduct security concerns.

Of further security concern are Applicant's multiple omissions and misstatements made in the course of security clearance investigations of her suitability to hold a security clearance or sensitive position. Past. Applicable DCs are ¶¶ 16(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,” and 16(b), “deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative,” apply.

Applicant’s arrest and charge incident and her furnishing of false and misleading information reflect multiple instances of candor and judgment lapses that raise serious security concerns about her overall judgment, reliability, and trustworthiness. Without more definitive mitigating formation from her about her 2009 arrest, and ensuing omissions and misleading statements, none of the potentially available mitigating conditions are available to her. See ISCR Case No. 02-07555 at 2-3 (App. Bd. July 19, 2004); ISCR Case No. 01-07735 at 2 (App. Bd. June 25, 2002)

Whole-person assessment

From a whole-person perspective, Applicant has failed to establish enough independent probative evidence of her overall trustworthiness, reliability, and good judgment required of her. Whole-person assessment of Applicant’s clearance eligibility requires consideration of whether her multiple instances of using illegal drugs over a prolonged period of time and material omissions of security-significant facts in her past e-QIP and PSI are compatible with minimum standards for holding a security clearance.

While Applicant is entitled to credit for her work in the defense industry, her efforts are not enough at this time to overcome drug recurrence risks associated with her considerable history of illegal possession and use of illegal drugs and material omissions of her past use of illegal drugs and arrest circumstances. So, while her credible efforts to abstain from illegal drugs are encouraging, overall trustworthiness, reliability, and good judgment have not been established.

I have carefully applied the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that illegal drug involvement and personal conduct concerns are not mitigated. Eligibility for access to classified information is denied.

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:

GUIDELINE H (DRUG INVOLVEMENT):	AGAINST APPLICANT
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Subparagraphs 1.a-1.b:	Against Applicant
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GUIDELINE E: (PERSONAL CONDUCT): AGAINST APPLICANT

Subparagraphs 2.a-2.c: 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.

Roger C. Wesley
Administrative Judge