



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



In the matter of:)	
)	
)	ISCR Case No. 23-02830
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: Grant Couch, Esq.

05/06/2025

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns under Guidelines E (personal conduct), H (drug involvement and substance misuse), and J (criminal conduct). Eligibility for access to classified information is granted.

Statement of the Case

On March 18, 2024, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, H, and J. Applicant responded to the SOR on April 16, 2024, and requested a hearing before an administrative judge.

The case was assigned to me on November 21, 2024. The hearing convened as scheduled on February 25, 2025. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified, and the documents that were attached to his SOR response were marked Applicant Exhibits (AE) A through P and admitted without objection.

Findings of Fact

Applicant is a 32-year-old employee of a defense contractor. He has worked for his current employer since about September 2017. This is his first application for a security clearance. He earned a bachelor's degree in 2013 and a master's degree in 2022. He married in 2021. He has a child who will be two years old this fall. (Transcript (Tr.) at 20, 33-34, 43-45, 52; GE 1, 2; AE D, G, H)

Applicant has a history of illegal drug use, including marijuana, cocaine, 3,4-methylenedioxymethamphetamine (MDMA or ecstasy), lysergic acid diethylamide (LSD), and hallucinogenic mushrooms.

Applicant used MDMA when he was in college. He estimated that between 2015 and February 2022, he used MDMA about once a month, or about 15 times a year. He purchased it, or it was provided to him by friends. (Tr. at 14-15, 31-32; Applicant's response to SOR; GE 1, 2)

Applicant first used cocaine when he was in college. He estimated that he used cocaine recreationally before 2016, but it increased to about 20 times a year in 2017 or 2018, before it tapered off again. He occasionally purchased cocaine, but it was mostly provided to him by friends. He last used cocaine in about March 2022. (Tr. at 14-15, 27-31; Applicant's response to SOR; GE 1, 2)

Applicant estimated that he used LSD and hallucinogenic mushrooms twice each between about 2017 and February 2022. He purchased it, or it was provided to him by friends. (Tr. at 16; Applicant's response to SOR; GE 1, 2)

Applicant started using marijuana when he was in high school. He estimated that he used marijuana less frequently than other drugs. He used it about every three months until he stopped completely in about June 2021. He lived in a state in which recreational marijuana use did not violate state law. He purchased it from dispensaries, or it was provided to him by friends. (Tr. at 15, 24-26; Applicant's response to SOR; GE 1, 2)

Applicant has not used any illegal drugs since about March 2022. He stopped associating with his drug-using friends. He wanted a career and a stable future for his family, and he knew that illegal drug use was not conducive to his long-term goals. He has matured, and he regrets his previous drug use. He completed several online substance abuse courses. He is a father now, and he enjoys spending time with his wife and child. His wife previously used illegal drugs, but she does not anymore. He credibly testified that he will not use illegal drugs in the future. He signed a 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. (Tr. at 15-17, 20-23, 43-44; Applicant's response to SOR; GE 1, 2; AE A, C)

Applicant submitted a Questionnaire for National Security Positions (SF-86) in June 2023. He reported his illegal drug use between 2015 and 2022 for the questions

that asked him to go back seven years. He did not report his earlier use under the questions that asked him to list his “first use.” I do not find that he intentionally provided false information, as his more recent drug use is far more damaging than his use from before the seven-year window. (Tr. at 17, 40-41; Applicant’s response to SOR; GE 1)

Applicant submitted documents and letters attesting to his strong moral character and excellent job performance. The authors praised his trustworthiness, work ethic, leadership, dedication, loyalty, and integrity. (AE E-F, I-N)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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(c), 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 EO 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* EO 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 several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (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 possessed and used marijuana, cocaine, MDMA, LSD, and hallucinogenic mushrooms. AG ¶¶ 25(a) and 25(c) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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 has not used any illegal drugs since about March 2022. He has matured, and he regrets his previous drug use. He wanted a career and a stable future for his family, and he knew that illegal drug use was not conducive to his long-term goals. He is a father now, and he enjoys spending time with his wife and child. He stopped associating with his drug-using friends. He completed several online substance abuse courses. He credibly testified that he will not use illegal drugs in the future. He signed a 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 find that Applicant has abstained from illegal drug use for an appropriate period, and that illegal drug use is unlikely to recur. His drug use no longer casts doubt on his reliability, trustworthiness, and good judgment. The above mitigating conditions are applicable.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant'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. 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 individual was formally charged, prosecuted, or convicted.

Applicant used multiple controlled substances. The above disqualifying condition is applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(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.

The discussion above under drug involvement and substance misuse applies equally here. I find evidence of successful rehabilitation; the conduct is unlikely to recur; and it no longer casts doubt on Applicant's reliability, trustworthiness, and good judgment. AG ¶¶ 32(a) and 32(d) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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.

The SOR cross-alleged the drug involvement allegations under the personal conduct guideline. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. AG ¶ 16(c) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

The discussion above under drug involvement is incorporated here. I find the conduct is unlikely to recur, and it no longer casts doubt on Applicant's reliability, trustworthiness, or good judgment. The above mitigating conditions are applicable.

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 have incorporated my comments under Guidelines E, H, and J in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under Guidelines E, H, and J.

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:	For Applicant
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Subparagraphs 1.a-1.d:	For Applicant
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Paragraph 2, Guideline J:	For Applicant
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E:	For Applicant
Subparagraph 3.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge