



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



In the matter of:)	
)	
)	ISCR Case No. 24-01162
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

06/05/2025

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his eligibility for access to classified information. He failed to mitigate the security concerns stemming from his drug involvement and substance misuse. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant submitted his security clearance application (SCA) on August 14, 2023. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on August 15, 2024, detailing security concerns under Guideline H, drug involvement and substance misuse. The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On September 5, 2024, Applicant submitted an answer (Answer) to the SOR and elected a decision on the written record by an administrative judge from the Defense

Office of Hearings and Appeals (DOHA). On November 13, 2024, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Government's Exhibits (GE) 1 through 4. DOHA sent the FORM to Applicant on November 15, 2024, and he received it on January 28, 2025. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit a response to the FORM. The SOR and the Answer (GE 1 and 2, respectively) are the pleadings in the case. GE 3 and 4 are admitted in evidence without objection. The case was assigned to me on April 2, 2025.

Findings of Fact

Applicant is 30 years old, never married, and has no children. Since August 2021, he has had a cohabitant. He earned his bachelor's degree in May 2016 and his doctorate in May 2023. He has worked as a researcher for his clearance sponsor since September 2021. He is a freelance writer and editorial assistant. He has had articles and editorial roles with a major cable TV network and has been published in specialty periodicals. He has never had a security clearance. (GE 3.)

Under Guideline H, the August 15, 2024 SOR alleged that Applicant: **(a)** used marijuana with varying frequency from about 2012 to about August 2024; **(b)** purchased marijuana with varying frequency from about 2012 to about July 2024; **(c)** used psilocybin (mushrooms) with varying frequency from about 2020 to about July 2023; **(d)** purchased psilocybin with varying frequency from about 2022 to about April 2023; **(e)** as of your DOHA interrogatory response on about August 2024, you intend to continue to use marijuana in the future; and **(f)** as of your DOHA interrogatory response on about August 2024, you intend to continue to use psilocybin in the future. (GE 1.) Applicant admitted SOR ¶¶ 1.a through 1.e. He denied ¶ 1.f stating: "I have not used it since this process started and would plan on continuing for this to be the case for as long as I'm up for a security clearance." (GE 2.)

In Applicant's August 2023 SCA, he addressed his future intention to use marijuana and psilocybin. As to marijuana, he stated: "It's not important enough to me to continue with it." As to psilocybin, he stated: "Again, it's not important enough to me to continue it if I had a job with security clearance." (GE 3.)

In Applicant's December 1, 2023 personal subject interview (PSI), he discussed his drug use. He traced his first marijuana use to his college days in 2012 to 2014. His use was recreational, and it relaxed him. But when he began having panic attacks associated with his use in certain settings, he chose to stop. He resumed use in 2022, when it became legal in the state of his domicile. He continues that use weekly. He used mushrooms beginning in 2009. He uses alone or with his cohabitant. His last use was in July 2023. (GE 4.)

Applicant has not reported his drug use to his employer. He has never been drug tested by his employer, nor has he ever failed a drug test. He will continue his drug use, until his employer requests that he stops using. He is aware that drug use as a federal

employee is prohibited. He does not plan to stop because he enjoys it. He claims he is not dependent on drugs. His employer's drug-free workplace policy prohibits the use of illegal drugs in the workplace or working while under the influence of illegal drugs. (GE 4.)

The Government's interrogatories asked when Applicant became aware that marijuana was federally illegal. He answered August 2006. (GE 4.) He was also asked if he intended to continue to use marijuana or other illegal drugs in the future. On August 3, 2024, he responded in pertinent part as follows:

I am not addicted to marijuana and other psychedelic drugs; I enjoy them but do not need them. Since marijuana is legal in my state (and the Justice department has recently proposed to reschedule it to Schedule II or the equivalent of Tylenol) I will continue to use it until told otherwise on the assumption that the law is just now catching up to the science surrounding hallucinogens and marijuana. (GE 4.)

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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 then 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 in seeking a favorable security decision.

Discussion

Guideline H, Drug Involvement and Substance Misuse

Under AG ¶ 24 for illegal drug use, suitability of an applicant may be questioned or put into doubt because drug use can both impair judgment and raise questions about a person's ability or willingness to comply with laws, rules, and regulations:

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.

Marijuana and psilocybin are Schedule I controlled substances, and possession of them is regulated by the federal government under the Controlled Substances Act. 21 U.S.C. § 811 *et seq.* The knowing or intentional possession and use of any such substance is unlawful and punishable by imprisonment, a fine or both. 21 U.S.C. § 844. In an October 25, 2014 memorandum, the Director of National Intelligence (DNI) affirmed that the use of marijuana in particular is a security concern. James R. Clapper, Director of National Intelligence, Memorandum: *Adherence to Federal Laws Prohibiting Marijuana Use* (October 25, 2014). See also <http://www.dea.gov/druginfo/ds.shtml>

On December 21, 2021, DNI signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior medicinal or recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the "whole-person concept" stated under SEAD 4, to determine whether the applicant's behavior raises a security concern that has not been mitigated.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including . . . purchase

Applicant admitted facts that trigger disqualifying conditions AG ¶¶ 25(a) and (c).

The next inquiry is whether Applicant's security concerns raised by marijuana and psilocybin use have been mitigated. The following mitigating condition under AG ¶ 26(b) for drug involvement is the most appropriate and will be discussed here:

[T]he individual acknowledges . . . his 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.

The initial requirement of AG ¶ 26(b) is that Applicant acknowledges "his drug involvement and substance misuse." He satisfied this requirement by his SCA, his PSI, his Answer, and his responses to interrogatories.

One of the next requirements is that Applicant show evidence of an "established pattern of abstinence." Three non-exclusive examples are given, none of which are established by any evidence in this case. In fact, the pattern of abstinence here is barely visible, if extant at all. The SOR was issued on August 15, 2024, and Applicant answered it on September 5, 2024, admitting to marijuana use in August 2024. So, the pattern of abstinence can be measured in only a couple weeks, or maybe just days. Given his many years of illegal drug use, this pause is hardly the period of abstinence contemplated by AG ¶ 26(b). This mitigating condition does not apply.

Whole-Person Concept

Under AG ¶ 2(a), 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. AG ¶¶ 2(a) and (d)(1)-(9). I have considered potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For those reasons, I conclude that Applicant has not mitigated the security concerns arising under Guideline H, drug involvement and substance abuse. I find against him on SOR ¶ 1.

Formal Findings

