



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



In the matter of:)
)
) ISCR Case No. 24-00967
)
)
Applicant for Security Clearance)

Appearances

For Government:
Andrew H. Henderson, Esquire, Department Counsel

For Applicant:
Alan Edmunds, Esquire

07/16/2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated the security concerns raised under Guideline B (Foreign Influence), Guideline H (Drug Involvement and Substance Misuse), and Guideline J (Criminal Conduct). National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on May 15, 2023 (the Questionnaire). On September 12, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines B, H, and J. The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within DoD after June 8, 2017.

Applicant responded to the SOR allegations on November 26, 2024 (Answer) and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on December 23, 2024. The case was assigned to me on January 15, 2025. DOHA sent Applicant a Notice of Hearing on February 12, 2025, initially scheduling the case to be heard via Microsoft Teams video teleconference on March 5, 2025. Applicant then retained counsel, who requested a continuance. I granted the request, and on February 21, 2025, the matter was rescheduled by mutual agreement for April 9, 2025.

I convened the hearing as rescheduled. Department Counsel offered three documents marked as Government Exhibits (GE) 1 through 3 and a fourth document, a Request for Administrative Notice regarding Ukraine in support of the Government's SOR allegations under Guideline B. The Government's Administrative Notice request was designated as Hearing Exhibit (HE) I. Applicant's counsel raised no objections to GE 1 through GE 3 and HE I. The Government's exhibits were admitted into the record. (Tr. at 10-12.)

Department Counsel introduced three additional exhibits during the hearing in rebuttal to Applicant's testimony regarding the status of his previously granted security clearance during a period relevant to the Guideline H allegations. These documents were marked as GE 4 through GE 6. Applicant's counsel initially objected to GE 4 as rebuttal evidence on the ground that it was not produced as part of the Government's pre-hearing document production, but then he waived his objection. He also waived any objections to GE 5 and GE 6. All three exhibits were admitted into the record. Applicant's counsel introduced 23 proposed exhibits marked as Applicant Exhibits (AE) A through W. AE U consists of five separate character reference letters. AE W, which was re-marked at the hearing as Hearing Exhibit (HE) W, is Applicant's undated Request for Discovery. (Tr. at 11-12, 32-33, 43-44; 47-48, 55-58.)

At the conclusion of the hearing, I left the record open until April 23, 2025, in response to a request from Applicant's counsel to have the opportunity to supplement the record in light of Department Counsel's submission of GE 4 through GE 6 as rebuttal evidence. On April 24, 2025, Applicant's counsel submitted five additional documents identified in an accompanying exhibit list as proposed AE W through AE AA and two additional unmarked documents, one of which was a Request for Administrative Notice, which I subsequently remarked as HE II. (The email correspondence between Applicant's counsel and his staff, Department Counsel, and me, beginning with Department Counsel's submission of GE 4 through GE 6 during the hearing through the final submission of Applicant's post hearing submission, discussed below, is marked as Hearing Exhibit III.) (Tr. at 75; HE III at 10-40, 41-42.)

Neither Department Counsel nor his staff were copied on the emails submitting AE W through AE AA, and a post-hearing Declaration by Applicant. On May 5, 2025, I forwarded those emails and attached exhibits to Department Counsel, with a copy of my email addressed to Applicant's counsel. I asked Department Counsel to provide the

Government's position on the admissibility of Applicant's post-hearing submissions and to provide any comments on the proposed exhibits he deems appropriate. On May 6, 2025, Department Counsel responded and objected to the documents due to the untimeliness of the April 24th submissions and the failure of Applicant's counsel to serve the Government with its post-hearing submission of evidence. Applicant's counsel responded by email the same day. He commented that he was not in the United States at that time of the submission, and he apologized for the brief delay. He referred to the delay as "harmless error" and asked for understanding. (HE III at 6-8.)

I delayed my response until May 12, 2025, with the intent to give Applicant's counsel time to return to his office and assume control over some confusion created by his post-hearing submission. I wrote that I would accept the untimely submission, and I gave Department Counsel until May 16, 2025, to submit the Government's objections/comments to the proposed exhibits. On May 15, 2025, Department Counsel responded. He objected to all of Applicant's proposed post-hearing exhibits. (HE III at 4-5.)

Applicant's counsel responded on May 16, 2025, and argued in favor of the admissibility of each proposed exhibit. His office also submitted a revised, final exhibit list to clarify his post-hearing submission. He identified four documents as AE W through Z. AE W is identified as a Declaration by Applicant. AE X is a duplicate copy of Applicant's form DD 214, dated January 23, 2020, which was admitted at the hearing as AE C. AE Y consists of two unsigned and undated copies of tax returns Applicant claims he filed for tax years 2021 and 2022. A final document marked as AE Z is a request for Administrative Notice regarding Ukraine, which I have redesignated as Hearing Exhibit II. My ruling on Applicant's three final, post-hearing exhibits (AE W through Y), which have been objected to by Department Counsel, are set forth below. (HE III at 1A-1B, 1-5.)

The record closed on May 19, 2025. DOHA received the transcript of the hearing (Tr.) on April 17, 2025.

Evidentiary Ruling

Department Counsel has objected to Applicant's three post-hearing, proposed exhibits, AE W through AE Y. Applicant Exhibit W, Applicant's Declaration, sets forth Applicant's comments on certain issues that arose during the hearing. Department Counsel had no opportunity to cross examine Applicant about his statements in the Declaration. I do not find any significant new facts set forth in the Declaration, other than Applicant's complaints about my questioning the truthfulness of parts of his testimony. Accordingly, the Government's case was not materially impacted by the statements in the exhibit. I will admit AE W and give it the weight it deserves. AE X is a second copy of Applicant's January 23, 2020 DD 214. I will sustain the objection to this proposed exhibit as duplicative. Lastly, AE Y are copies of two unsigned and undated federal tax returns for the tax years 2021 and 2022 when Applicant was a student and his annual income was under \$10,000. Presumably, this exhibit is offered to show that Applicant was not

earning any income from his role at the time in the Army Reserves. I will admit the exhibit and give it the weight it deserves.

Procedural Ruling

Department Counsel requested in HE I that I take administrative notice of certain facts relating to Ukraine. He provided an 11-page summary of those facts, supported by 21 U.S. Government documents pertaining to Ukraine attached to his request. The documents elaborate upon and provide context for the factual summary set forth in HE I. After the hearing, Applicant's counsel submitted a four-page Request for Administrative Notice (HE II) setting forth additional facts relating to Ukraine and the relationship between Ukraine and the United States. I note that the Government's Request is dated December 20, 2024, and does not address the current U.S. relationship with Ukraine after the change in U.S. Presidential Administrations in January 2025. Also, I note that Applicant did not provide copies of the cited sources with his Request and that the few citations in his Request that contain dates pre-date January 2025. Accordingly, the record is incomplete regarding the current relationship between the United States and Ukraine. I take administrative notice of facts included in the Government documents attached to HE I and facts set forth in HE II that are limited to the country conditions in Ukraine. These facts are limited to matters of general knowledge, not subject to reasonable dispute. They are set forth in the Findings of Fact, below. (HE I; HE II.)

Findings of Fact

Applicant is 28 years old. He was born in Ukraine in 1996. His mother, who was born in Russia, divorced his father, a Ukrainian citizen. She immigrated with Applicant and his sister to the United States in 2011 following her engagement to a naturalized U.S. citizen, who was born in Ukraine. Applicant was about 15 years old at the time. In May 2014, he graduated from high school in the U.S. and earned a bachelor's degree in December 2023 at an American university. Applicant enlisted in the U.S. Army Reserves in March 2015 and became a naturalized U.S. citizen in August 2015. He applied for a security clearance in March 2015, but no immediate action was taken on his application. On June 26, 2019, the DCSA, acting under the name of the Department of Defense Consolidated Adjudication Facility, or DoD CAF, fully adjudicated the application and granted Applicant national security eligibility. Applicant failed to disclose his prior application and the positive adjudication of that application in the May 2023 Questionnaire. (Tr. at 13, 30-33, 55-56, 58-59; GE 1 at 5-8, 10-13, 18, 21-25, 39; GE 2 at 4; GE 3 at 1; GE 4 at 1-2; GE 5; GE 6; AE O; AE P; AE Q.)

Applicant has served in the Army Reserves for about ten years (2015 to the present). He was called to active duty in March 2019. After serving in Kuwait and Jordan, he was released from active duty in January 2020. He continued his duties in the Reserves through August 2022. His status in the Reserves and the status of his security clearance between 2020 and 2022/2023 is disputed and is somewhat complicated due to a lack of clear testimony and exhibits in the record. That issue is discussed in more detail

below. Applicant reenlisted in the Reserves in August 2023. His present pay grade is E-5. He has been given an 80% disability rating by the VA. Also, he began in-processing for employment as a linguist with a U.S. contractor earlier in 2023. He prepared the May 15, 2023 Questionnaire in connection with his non-governmental employment. He also completed a Counterintelligence-Focused Security Screening Questionnaire, dated May 31, 2023, (CI Interview) in connection with his duties as a deployed contract linguist. At the time of the hearing, he was working for the contractor on a temporary basis as a linguist in Germany performing services for NATO's support of Ukraine. At the hearing, Applicant discussed his service in the Reserves as though he was no longer a reservist. However, he has not provided any documentation evidencing that he has been discharged, so it appears that he remains a reservist until his 2023 reenlistment contract expires at a future date, as discussed below. (Tr. at 13-14, 33; GE 1 at 13, 18; GE 3 at 1, 6; AE C; AE G.)

Paragraph 1, Guideline B (Foreign Influence)

The Government alleged in this paragraph of the SOR that Applicant is ineligible for a security clearance due to having contacts, who are citizens and residents of Ukraine. In the Answer, Applicant admitted the allegations. I find the following facts as set forth in the pleadings, developed at the hearing, and detailed in the documentary record:

SOR ¶ 1.a. Applicant's Father - a Citizen and Resident of Ukraine. Applicant's father is about 56 years old and is a citizen and resident of Ukraine. Applicant last saw his father in person in 2019. As of January 2024, Applicant communicated with his father electronically or by telephone on a monthly basis. He testified that he speaks with his father "occasionally" and last spoke with him two months prior to the hearing. (Tr. at 16, 34-35; GE 1 at 21-22; GE 2 at 5.)

Applicant testified that his father is a physical education teacher in a Ukrainian school. After acknowledging that the school is a public school run by the Ukrainian government, he then corrected himself stating that he believes that his father may no longer be a schoolteacher. In fact, he commented further that his father was just filling in temporarily for someone else. His father has always worked as a judo coach and owns a location where judo and martial arts are practiced. (Tr. at 34-35; GE 2 at 5.)

SOR ¶ 1.b. Applicant's Friends – Citizens and Residents of Ukraine. In his responses to the Government's interrogatories, Applicant listed three friends who were citizens and residents of Ukraine. He claimed that he last communicated with them in April 2021, about ten months before Russia's invasion of Ukraine. He advised the investigator conducting his January 2024 security interview (Security Interview) that he has yearly or twice-yearly contact with two of the friends using texts or social media. In his August 2024 interrogatory responses, he reported having contact with all three friends once every two years, and his last contact was in April 2021. Applicant only listed two Ukrainian friend in the CI Interview. Also, Applicant failed to identify any foreign contacts in response to Section 19 of the Questionnaire, which asked if he has any foreign contacts

with whom he has close and continuing contact. He corrected this response in his Security Interview. At the hearing, he testified that he last communicated with the three friends in April 2021, which includes any communication via text or social media. (Tr. at 17-18, 35-37; GE 2 at 11, 19; GE 3 at 9; 25-26.)

SOR ¶ 1.c. Applicant's Friends who are Members of the Ukrainian Military. Of the three Ukrainian friends, Applicant identified in his interrogatory responses two of them as members of the Ukrainian military. In his May 2023 CI Interview, he disclosed that one friend in the Ukrainian military sent him \$200 in April 2022, and Applicant used the funds to buy and send drone parts to the friend for military use. He also disclosed that in January 2023 he sent the other friend in the Ukrainian military \$60 to help pay for the maintenance of a truck used by the friend's military unit. He also identified in the May 2023 CI Interview that the second friend was an artillery officer in the Ukrainian military and that Applicant has monthly contact with this friend. At the hearing, Applicant claimed that he was unable to say whether the two friends are still members of the Ukrainian military and that his last contact with them was in April 2021. (Tr. at 35-37; GE 2 at 11, 19; GE 3 at 25-26.)

Paragraph 2, Guideline H (Drug Involvement and Substance Misuse)

Under this guideline, the Government alleged that Applicant's use of five different types of illegal recreational drugs during various periods when he held a sensitive position, *i.e.*, had been granted a security clearance, was disqualifying. In the Answer, Applicant admitted each of the allegations including the separate allegations that his drug use occurred during periods when he held a sensitive position by virtue of having been granted a security clearance. At the hearing, he testified that the dates of drug use he provided in the Questionnaire were good estimates and could be relied upon. (Tr. at 52.) I find the following facts as set forth in the pleadings, developed at the hearing, and detailed in the documentary record:

SOR ¶ 2.a. Marijuana Use – January 2016 to May 2022. Applicant disclosed in the Questionnaire that he experimented with marijuana once or twice during the period 2016 to 2022 when he was with friends. He testified that he used marijuana twice during the six-year period set forth in the SOR allegation. He said he did not "clearly recall" who he was with or where the drug use occurred. In the 2023 CI Interview, he stated that he "ate marijuana edibles" in April or May 2022. In his 2024 Security Interview, he advised that in 2022, he took a couple of "hits" from "a joint" that was offered to him. He provided a more specific month of his last use of marijuana in his August 2024 interrogatory responses, *i.e.*, May 2022. At the hearing, he claimed he had no recollection of the circumstances regarding each of his uses of the drug. (Tr. at 15, 19-20, 42-43; GE 1 at 36; GE 2 at 9, 16-18; GE 3 at 11.)

Applicant responded to an interrogatory question asking when he learned that marijuana remained illegal under federal law by writing that he first learned that fact when he read the interrogatory statement, which was in August 2024 when he signed his responses to the interrogatories. He answered another interrogatory question

affirmatively acknowledging that he was required to take a pre-employment drug test for his current contractor position as a linguist, which was in 2023 around the submission date of the Questionnaire. He also testified that he was required to take drug tests several times a year while serving in the Reserves and living in a state that had legalized marijuana. I find Applicant's interrogatory response denying knowledge about the illegal status of marijuana under federal law prior to August 2024 to be one of many claims he made throughout the security clearance process that lacked credibility. (Tr. at 15, 24-25, 38; GE 2 at 9, 16-18.)

SOR ¶ 2.b. Cocaine Use - September 2021 to April 2022. Applicant disclosed in the May 15, 2023 Questionnaire that he used cocaine "a few times" during the period from September 2021 to April 2022 when he was with some friends. In the May 31, 2023 CI Interview, Applicant responded that he only used cocaine once in April or May 2022. At his January 10, 2024 Security Interview, which he authenticated as an accurate summary of his interview responses, he stated that he used cocaine two to three times during the September 2021 to April 2022 period. In his August 24, 2024 interrogatory responses, he wrote that he used cocaine twice, first in September 2021 and then again in April 2022. At the hearing, he testified that he used cocaine twice. When I asked Applicant to state if that was true, he responded "that seems to be correct." He then confirmed that his testimony was "correct." He said his first use of cocaine was in September 2021 after a concert. He said he did not have a clear recollection of the incident. He believes he met someone, went to the person's home, and was offered cocaine. His second use of cocaine occurred in April 2022 under similar circumstances. He does not recall if he used cocaine the second time with the same person or any of the other surrounding circumstances. (Tr. at 20-21, 38-39, 43, 53; GE 1 at 36; GE 2 at 9-10, 16; GE 3 at 11.)

At the hearing, Applicant attempted to clarify his admissions to SOR ¶¶ 2.a and 2.b in the Answer that he used both marijuana and cocaine while possessing a security clearance. He testified that he only intended to admit in the Answer that he used both drugs. He said he did not intend to admit to the portion of the allegation regarding drug use while holding a sensitive position and possessing a security clearance. He explained that he did not believe that he held a security clearance after he was "separated from the Army Reserves" at the time of his uses of marijuana and cocaine. See findings below regarding Applicant's status as a reservist in 2021 and 2022. (Tr. at 21.)

SOR ¶ 2.c. LSD Use – May 2022. Applicant disclosed in the Questionnaire that he had "a few psychedelic trips" to see what the effects would be on his consciousness and "clarity of thought." He wrote that "the trips were profound." He commented that he will rely on therapy "to address inner issues" in the future. In the Questionnaire, he mentioned two types of hallucinogenic drugs, LSD and psilocybin mushrooms, referred to collectively as one type of drug. He did not separately state how many times he used each drug. In his responses to the Government's interrogatories, he provided separate information regarding his use of each type of hallucinogenic. He responded that he only used LSD once and that occurred in May 2022. He provided the same information in the

CI Interview and at the hearing. Applicant testified that he used LSD at a concert. When asked if he only used the drug once, he responded, "That seems to be the case." When pressed by Department Counsel for a more definitive answer, he acknowledged that he had indeed only used LSD once. He could not recall any of the surrounding circumstances such as the performing bands, where the concert took place, or who he was with at the concert. In the Security Interview, he was a little more forthcoming. He stated that the LSD "trip" lasted almost 12 hours and that it was not a pleasant experience. (Tr. at 21-22, 39-40; GE 1 at 37; GE 2 at 10, 16; GE 3 at 11.)

SOR ¶ 2.d. Psilocybin Mushroom Use – September 2021. The other hallucinogenic drug use Applicant disclosed in the Questionnaire was psilocybin mushrooms. He did not write in the Questionnaire how many times he used this drug or when. In the CI Interview, he disclosed that he used "[psychedelic] mushrooms" three times in April-May 2022, and he then said he used the drug twice during the same time frame. Applicant stated at his Security Interview that he used psilocybin mushrooms and did not provide how many times he used the drug. He referenced one particular, five-hour "trip." In his interrogatory responses, Applicant disclosed that he used a psilocybin mushroom once in September 2021. At the hearing, he testified that he used this drug one time without specifying a timeframe. He could provide no details regarding the surrounding circumstances before or during his drug-induced "trip," other than his use of psilocybin mushrooms could have been at a festival. In his Security Interview, he elaborated that his use of mushrooms resulted in a "trip" that was "spiritual in nature." Applicant testified that his admission to the allegation in SOR ¶ 2.d was intended to be limited to the portion of the allegation related to his one-time use of psilocybin mushrooms and not to the portion of the allegation that he possessed a security clearance at the time of his hallucinogenic drug use. (Tr. at 22, 40-41; GE 2 at 10, 16; GE 3 at 11.)

SOR ¶ 2.e. Ecstasy Use – September 2021 to January 2022. Applicant disclosed in the Questionnaire that he used ecstasy, also referred to as MDMA, twice with friends, once in September 2021 and again in January 2022. At the CI Interview about two weeks later, he responded that he used ecstasy one time, which occurred in April-May 2022. In his Security Interview, he advised that he used ecstasy on two separate occasions during the period September 2021 to January 2022. At the hearing, he admitted that he used ecstasy twice during the period 2021 to 2022. In the Questionnaire, he wrote that he took mild doses of the drug, and the experiences were "quite literally, overwhelming." At the hearing, he had no clear recollections of the surrounding circumstances of the two times he claimed he used ecstasy. (Tr. at 22, 41-42; GE 1 at 37-38; GE 2 at 10, 16; GE 3 at 11.)

SOR ¶¶ 2.a through 2.e, Use of Illegal Drugs while Holding a Sensitive Position with a Security Clearance. The SOR alleged that Applicant used five different types of illegal drugs while he held a sensitive position and a security clearance. In the Answer, Applicant admitted each of the Guideline H allegations without any exceptions or comments. At the hearing, Applicant's counsel announced in his opening statement that Applicant was not aware that he may have held a security clearance during the 2021

to 2022 period when Applicant used the drugs discussed above. Counsel noted that Applicant submitted the Answer before he retained an attorney. Counsel did not formally amend the Answer prior to the hearing or at the hearing. Applicant then testified that he did not believe that he was a member of the Reserves after he received a DD 214 in January 2020 until he reenlisted in 2023, and in particular during the period in September 2021 and May 2022 when he used drugs. He also did not believe he had an active security clearance at that time. He further explained, as noted, that he did not intend to admit in the Answer the portions of each of the Guideline H allegations relating to using drugs while holding a sensitive position with a security clearance. (Tr. at 8-9, 21-23, 33, 65.)

Applicant's new claim was inconsistent with the information he provided in the Questionnaire that he had been a member of the Army Reserves from March 2015 to the date of the Questionnaire, *i.e.* May 15, 2023. He clarified in detail his dates with the Reserves at his Security Interview. He reported that his original status with the Reserves was from March 2015 to March 2021, at which point he transferred to the Individual Ready Reserve, or IRR, of the Army Reserves. That status continued until March 2022, at which time he was assigned to a Reserves' medical group. Applicant did not disclose to the investigator any change in his security clearance status during 2021 or 2022. To add to the confusion about Applicant's status as a reservist and holder of a sensitive position and a security clearance in 2021 and 2022, Applicant testified at the hearing that he served in the Reserves for almost ten years, referring to his initial enlistment date in 2015 and the date of the hearing in 2025, just as he wrote in the Questionnaire. (GE 1 at 13, 18; GE 2 at 4, 9; AE G.)

As a result of this change in positions at the outset of the hearing, Department Counsel attempted to create a record at the hearing that disputed Applicant's new position regarding his security clearance status in 2021 and 2022. He introduced three documents that he was able to produce during the proceeding. These records evidence that Applicant was initially granted national security eligibility on June 26, 2019, and that his sponsor at the time was an Army Reserves medical unit. One of the records, later designated as GE 4, reflects that this sponsorship continued until August 30, 2021. GE 4 also indicates that on August 19, 2021, the U.S. Army's Human Resources Command assumed sponsorship of Applicant's clearance with the notation on the exhibit of "IRR." That sponsorship ended on March 13, 2024, and two other medical commands picked up sponsorship of his clearance in 2024. Also, GE 4 indicates that Applicant's industry sponsor appears as an "owning" entity as of May 9, 2023. Applicant testified that he was unaware of any security clearance relationship with any part of Reserves or the Army during the 2021 or 2022 period. (Tr. at 32; GE 4 at 2; GE 5.)

Three of Applicant's exhibits add some clarity to his military history as a Reservist. When his deployment on active duty ended in January 2020, he was given a DD 214, dated January 23, 2020 (AE C). Applicant's counsel referred to this document as an Honorable Discharge from the Reserves. In fact, the exhibit specifically states in Block 23, titled "Type of Separation," that this document is a "Release from Active Duty." He had been called up to active duty in March 2019 and deployed overseas. It also states in

Block 6 that Applicant's "Reserve Obligation" would terminate on March 15, 2023. (Tr. at 8, 61-62; AE C; AE D; AE G; AE I.)

Applicant also submitted an exhibit (AE G) identified in his Exhibit List as "Enlistment IRR." This exhibit reflects that Applicant transitioned to IRR status in May 2021. He then transitioned in August 2022 from IRR status to what the Army Reserves call a "Troop Program Unit," or TPU. His unit was a medical group. Another exhibit introduced by Applicant shows that he actually joined the medical group in March 2022 (AE N). As noted above, Applicant's DD 214 (AE C) provides that his enlistment contract would expire in August 2023. He reenlisted in the Reserves in August 2023. Applicant testified and provided a post-hearing Declaration, signed under oath, stating that he separated from the "military" in 2020 and reenlisted in 2023. As best as can be determined from his reenlistment document, AE D, and from AE G and AE I, Applicant's status in the Reserves was as a part of the IRR from about May 2021 through March or perhaps August 2022, at which time he joined a medical group of the Reserves. He was not required to drill during that period when he was in the IRR and was not paid as a Reservist. However, as a member of the Army Reserves IRR, he remained part of the military during that period. (Tr. at 22-23; GE 2 at 4; AE D; AE G; AE I; AE N; AE W at 2; AE Y.)

It is also clear that Applicant's security clearance remained active during his time as part of the IRR. Applicant denies that he was aware of having a security clearance during the period in 2021 and 2022 when he used drugs. However, he did advise the investigator at the 2023 CI Interview that he had been granted a Secret clearance on June 26, 2019, and it had never been suspended or revoked. He provided no testimony or exhibits evidencing that he was advised about the status of his clearance while in the IRR. Due to the untimely disclosure of Applicant's changed position on his admissions to the Guideline H SOR allegations, Department Counsel had no opportunity to address this issue by litigating the responsibilities of a Reservist after separation from active duty and while part of the IRR and what information Applicant would have received about his clearance status. (Tr. at 13-16, 22-23, 30-33, 55, 62; GE 2 at 4; GE 3 at 7; AE G; AE Y.)

Mitigation and Whole-Person Evidence

I have carefully reviewed all of Applicant's testimony and exhibits addressing mitigation and the whole-person analysis. Below is a summary of the most significant evidence.

Applicant asserts that he does not intend to use illegal drugs in the future. He signed a written statement making this commitment and has repeatedly stated that he has no interest in using drugs again. Applicant took and passed drug tests while in the Reserves several times a year. He has also taken three online education classes regarding the use of cocaine, LSD, and marijuana. Since his reenlistment in 2023, he asserts that he has not taken any illegal drugs and has not tested positive on a drug test. (Tr. at 15, 21-22, 27-29, 39-42; AE A at 1-2; AE B; AE W at 2.)

Applicant also submitted a written statement setting forth his intent to avoid all contact with “unauthorized” foreign individuals outside of his official duties and his family. As for his family, he committed that all communications with them will be casual and infrequent. (AE A at 3-4.)

Applicant presented many exhibits evidencing the courses he has taken as part of the Reserves and the awards he has received during his duty in the Reserves prior to 2020. Another exhibit shows that he has been certified as an Emergency Medical Technician. He is presently a Combat Medical Specialist in the Reserves. He has received extensive training as part of his duties in the Reserves. Applicant has also had a significant career as an Emergency Medical Technician (EMT) in his civilian employment. (AE C; AE E; AE J; AE K; AE L; AE R; AE S.)

Applicant submitted five character reference letters. He testified that all of the reference writers were aware of this case, though he did not state whether they are aware of the Government’s specific national security allegations. None of the letters specifically state that the writers were made aware of the Government’s security concerns. (Tr. at 29; AE U.)

An Army medic who has known Applicant since their 2019 deployment together described Applicant’s character as “honest, reliable, and compassionate.” He also praised Applicant’s “drive to succeed.” A physician/teacher at a university where Applicant has worked described Applicant as professional and diligent. He has been impressed by Applicant’s professional demeanor and “unwavering integrity.” An EMT colleague and friend wrote that Applicant has strong technical knowledge and excellent communication skills. He wrote that Applicant mentors others and works hard to help others develop professionally. A long-time friend of Applicant’s wrote that he has consistently observed Applicant’s “unwavering commitment to honesty, trustworthiness, and dependability.” Lastly, a captain in the Army Reserves wrote that Applicant’s “character and personal accomplishments reflect the nature of his deep commitment to the United States of America and to the success of our Army.” (AE U.)

At the hearing, I questioned Applicant as to why he did not disclose his June 2019 security clearance in the May 2023 Questionnaire. He responded that “I may have simply made a mistake for which I apologize.” He admitted that he had a college degree and had no problem reading the Questionnaire. He denied that he intentionally failed to disclose his prior clearance because he was admitting in the Questionnaire derogatory information about his drug use about one year before the submission of the Questionnaire, and the disclosure of his 2019 clearance in the Questionnaire might raise awkward questions. (Tr. at 49-50.)

Ukraine

In 1991, Ukraine declared its independence from the Soviet Union. Russia invaded and occupied Ukraine's Crimean Peninsula in 2014. Russia then claimed Crimea as part of Russia. Russian proxies also asserted control over two eastern regions of Ukraine, Luhansk and Donetsk. In February 2022, Russia escalated the conflict by invading Ukraine on several fronts. In December 2023, Russia began launching massive aerial assaults on Ukraine, striking cities and civilian infrastructure across Ukraine. Russia's leader seeks to destroy Ukraine and subjugate its people. Since late 2023, Russia has made continual incremental battlefield gains and is benefiting from uncertainties about the future of Western military assistance. At this writing, the war in Ukraine is ongoing.

In 2023, the U.S. State Department issued warnings to U.S. citizens not to travel to Ukraine due to the armed conflict, noting that the security situation in Ukraine remains unpredictable. There have been significant human rights abuses by Russian forces in areas under Russian control. These abuses include arbitrary, unlawful, and extra-judicial killings, enforced disappearances, torture, and cruel treatment and punishment. The Russian forces have reportedly caused widespread civilian casualties and forcibly separated families. There are also reports of Ukrainian Government officials engaging in serious human rights abuses.

Ukraine seeks closer ties with NATO and holds Enhanced Opportunities Partner status with the alliance. This designation reflects NATO's recognition of Ukraine's importance to international security.

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 B (Foreign Influence)

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

Guideline B sets forth nine conditions in AG ¶ 7 that could raise security concerns and may be disqualifying. The following two conditions are potentially applicable to the facts of this case:

- (a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and
- (b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

The conditions set forth in AG ¶¶ 7(a) and 7(b) apply to the facts of this case. Applicant's connections to Ukraine through his relationship with his father raise a heightened risk of foreign influence and exploitation as well as a conflict of interest. Also, the conditions in Ukraine as a war zone raise a heightened risk of exploitation, inducement, manipulation, pressure, or coercion of Applicant. The resulting insecurity of Applicant's father raises the risk for Applicant even higher. The fact that Applicant is presently working for NATO against the interests of Russia in Ukraine further increases that risk and the potential for a significant conflict of interest. I also conclude that Applicant's two childhood friends in Ukraine who are members of the Ukrainian military, create a heightened risk of foreign influence and exploitation and have the potential to create a conflict of interest for Applicant so as to render AG ¶¶ 7(a) and 7(b) applicable.

The applicability of the above potentially disqualifying conditions shifts the burden to Applicant to mitigate any security concerns. I considered all of the mitigating conditions under AG ¶ 8 and conclude that the following three conditions have possible application to the facts of this case:

- (a) the nature of the relationships with foreign persons, the country in which these persons are located, or the positions or activities of those persons in that country are such that it is unlikely the individual will be placed in a position of having to choose between the interests of a foreign individual, group, organization, or government and the interests of the United States;
- (b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government, or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

With respect to Applicant's father, none of the above conditions are established. The nature of Applicant's relationship with his father and the country conditions in Ukraine where his father is a citizen and resident create the heightened risk circumstances Guideline B addresses. Also, there is a potential for a conflict of interest because Applicant has a sense of familial loyalty to his father. Applicant may have relationships and loyalties in the United States developed in the last 13 years since he immigrated as a minor to this country. It cannot be concluded, however, that he can be expected to resolve any conflict of interest in favor of the U.S. interest. Moreover, Applicant should not be put in the position where he might ever have to make a choice between his father's safety and well-being and the interests of U.S. national security. Lastly, Applicant's contacts and communications with his father are not so casual and infrequent that there is little likelihood his relationship with his father could create a risk of foreign influence or exploitation.

With respect to Applicant's childhood friends who are citizens and residents of Ukraine who are likely to be members of the Ukrainian military fighting the Russian aggression, I conclude that both of the mitigating conditions AG ¶¶ 8(b) and 8(c) apply. There is no conflict of interest because Applicant's obligations to his friends are so minimal that he can be expected to resolve any conflicts in the interests of the United States. Moreover, Applicant's contacts and communications with his friends in Ukraine, while likely greater than he has admitted, are so casual and infrequent that there is little likelihood of a risk of foreign influence or exploitation.

Paragraph 2, Guideline H (Drug Involvement and Substance Misuse)

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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.

AG ¶ 25 sets forth the following conditions that could raise security concerns and may be disqualifying in this case:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The evidence establishes AG ¶¶ 25(a) and 25(c). This shifts the burden to Applicant to mitigate the security concerns raised by his conduct.

With respect to AG ¶ 25(f), the Appeal Board set forth the evidentiary requirements for the Government to establish application of that disqualifying condition in ISCR Case No. 22-01661 (App. Bd. Sep 21, 2023). The first element, access to classified information, requires proof of (1) national security eligibility (*i.e.*, a security clearance), (2) a signed nondisclosure agreement, and (3) “a need to know.” Although Department Counsel introduced evidence that Applicant met the eligibility requirement, there was no evidence addressing the other two requirements. Accordingly, the Government failed to establish the first element of AG ¶ 25(f)

With respect to the second element of AG ¶ 25(f), holding a sensitive position, the Appeal Board quoted from Security Executive Agent Directive, ¶ D.8, which includes the following definition of the term “a sensitive position:”

Any position within or in support of an agency in which the occupant could bring about, by virtue of the nature of the position, a material adverse effect on the national security regardless of whether the occupant had access to classified information

Based upon my above findings, Applicant’s position with the Reserves at the time of his drug use was as part of the IRR. For understandable reasons, there was nothing in the record addressing the sensitivity of his position in the IRR in 2021 and 2022. The fact that Applicant held a security clearance at the time he was a member of the IRR does not establish, under the circumstances of this case, that he held a sensitive position. Also, it is possible that Applicant had rejoined a medical unit of the Reserves before he used marijuana in May 2022, cocaine in April 2022, or LSD in May 2022. But even then, the record does not address the sensitivity of that position, let alone unambiguously establish when Applicant transitioned from the IRR to the Army Reserve medical unit in 2022.

Also, I also cannot conclude under the circumstances presented that Applicant’s admissions to the SOR Guideline H allegations relieved the Government of its burden of

proof under the circumstances presented by this case. He made those admissions when he was not represented by counsel, and when he received the benefit of legal advice, he believed the correct response to the SOR was to admit the drug use and deny that the use was while holding a sensitive position or a security clearance. Accordingly, I find that the Government has not met its burden to establish that Applicant used illegal drugs while granted access to classified information or holding a sensitive position. Therefore, AG ¶ 25(f) does not apply. I note here my disapproval of Applicant's hearing tactic of not alerting Department Counsel prior to the hearing of his intent to withdraw a material factual admission in his Answer.

AG ¶ 26 of this guideline provides conditions that could mitigate security concerns. I have considered all the mitigating conditions under AG ¶ 26 and conclude that the following two conditions have possible application to the facts of this case:

(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 the 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 established mitigation under AG ¶ 26(a). His illegal drug use did not happen so long ago nor was it infrequent. At the time of his drug use during the period September 2021 to May 2022, he had been a member of the Reserves for several years. He knew better than to take recreational drugs. Moreover, his drug use was a little more than one year before he submitted the Questionnaire. Under the circumstances of this case, Applicant's drug use continues to cast doubt on his current reliability, trustworthiness, or judgment.

With appropriate legal advice, Applicant has checked the boxes to satisfy AG ¶ 26 in theory. He has presented a signed statement of intent with all of the correct wording to address AG ¶ 26(b)(3). Shortly before the hearing, he took three online drug education classes. He claims he no longer associates with the people with whom he used drugs, but then he also claims he is unable to identify the friends and acquaintances with whom

he used drugs. At the time of the hearing, he was working in a foreign country far away from his home, but his home is still his home where he will return upon the completion of his temporary foreign work assignment. He has acknowledged his past illegal drug use and established a pattern of abstinence. However, the primary security concerns raised by Applicant's drug use is not the risk of a recurrence of illegal drug use, but the security risks raised by his recent, unreliable behavior and poor judgment. The circumstances of this case render his mitigation under AG ¶ 26(b) to be inadequate to mitigate fully his drug use in light of my conclusion under AG ¶ 26(a) that his behavior continues to cast doubt on his reliability, trustworthiness, and judgment.

Paragraph 3 (Guideline J, Criminal Conduct)

The security concern under this guideline is set out in AG ¶ 30 as follows:

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 five conditions that could raise security concerns under this guideline. The following condition is potentially applicable in this case and may be disqualifying:

(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's illegal drug use violated federal and military criminal law. Each use was an instance of criminal conduct. The condition specifically states that the lack of charges or prosecution has no significance under this Guideline. The focus is on criminal conduct and what that establishes about the individual's judgment, reliability, and trustworthiness. Accordingly, Applicant's criminal conduct establishes AG ¶ 31(b) and shifts the burden to him to mitigate security concerns.

AG ¶ 32 sets forth four mitigating conditions under Guideline J. The following two mitigating conditions have possible application in 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.

Neither mitigating condition has been established. AG ¶ 32(a) does not apply to the facts of Applicant's criminal conduct for the same reasons that AG ¶ 26(a) under Guideline H did not apply with respect to Applicant's drug use. The criminal conduct is too recent to support a conclusion that Applicant's actions do not cast doubt on his current reliability, trustworthiness, and judgment. Moreover, his testimony regarding the nature and extent of his criminal behavior and the unreliable testimony that he could not recall most of the basic details regarding his behavior raises serious issues regarding his reliability and trustworthiness. This additional, unreliable behavior undercuts the mitigation value of all of Applicant's evidence supporting his claim of mitigation and rehabilitation, rendering AG ¶ 32(d) only partially satisfied.

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 must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I have given careful consideration to Applicant's extensive mitigating and whole-person evidence, and I acknowledge Applicant's many accomplishments in both his military and civilian careers. However, his testimony at the hearing was highly problematic. I have outlined above some of the inconsistencies in his testimony. I found much more of his testimony to be unreliable and intended to minimize the derogatory information in the record. Based upon his demeanor at the hearing and the extraordinary vagueness of his testimony on critical factual issues, I left the hearing believing he would say anything to enhance his chances of a favorable ruling, including denying his role in the Reserves from the date of his separation from active duty in January 2020 until his

reenlistment in 2023. The documentary evidence, including the summary of the Security Interview, clearly refute his attempt at the hearing to distance himself from the Reserves at a time he was engaged in illegal drug use. In reviewing the transcript of the hearing in the context of his statements during interviews and in writing, I conclude that Applicant lacks candor, integrity, and maturity. If he had testified openly, consistently, and candidly, with a clear recollection of his drug use, he might have been able to provide sufficient mitigating and whole-person evidence to mitigate the security concerns under Guidelines H and J. On the other hand, the security concerns raised by the residence of Applicant's father in a country engaged in war with a significant military power with interests adverse to U.S. interests would likely be impossible to resolve, even with the utmost candor at the hearing. Overall, the record evidence leaves me with questions and doubts as to Applicant's suitability for national security eligibility and a security clearance.

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 B:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b and 1.c:	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a through 2.e:	Against Applicant
Paragraph 3, Guideline J:	AGAINST APPLICANT
Subparagraph 3.a:	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 national security eligibility. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge