



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



In the matter of:)	
)	
)	ISCR Case No. 24-02211
)	
Applicant for Security Clearance)	

Appearances

For Government:
John Renehan, Esquire, Department Counsel

For Applicant:
Alan Edmunds, Esquire, Applicant’s Counsel

08/27/2025

Decision

CEFOLA, Richard A., Administrative Judge:

On April 13, 2023, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On February 28, 2025, the Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement and Substance Misuse). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective June 8, 2017.

Applicant answered the SOR in writing on April 4, 2025, and requested a hearing before an administrative judge. I received the case assignment on June 3, 2025. DOHA issued a Notice of Hearing on June 5, 2025, and I convened the hearing as scheduled on July 23, 2025. The Government offered Exhibits (GXs) 1 through 3, which were received without objection. Applicant testified and submitted Exhibits (AppXs) A through K, which were received without objection.

At the hearing, the Government amended the SOR, adding security concerns under Guideline E (Personal Conduct). Pursuant to Applicant's request, the hearing was continued until August 14, 2025. Applicant further testified and submitted AppXs L and M, which were received without objection. He also asked that the record be kept open for the receipt of additional documentation, but submitted nothing further. DOHA received the transcripts of the hearing (TRs) on August 1st (Vol 1) and August 25th (Vol 2) of 2025. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations. He denied the factual allegations in Paragraph 2 of the SOR, with explanations at the hearing. (TR Vol 1 at page 41 line 24 to page 45 line 11.) Applicant also provided additional information to support his request for eligibility for a security clearance.

Applicant is 42 years old, married, but has no children. He has a bachelor's degree, and has worked for a defense contractor for "two and a half years." (TR Vol 1 at page 12 line 12 to page 14 line 25, and at page 23 line 22 to page 24 line 24.)

Guideline H – Drug Involvement and Substance Misuse

1.a. and 1.b. Applicant admits that in July of 2023, on one occasion, at a party more than two years ago, he used cocaine and hallucinogenic mushrooms, while employed in a sensitive position. He regrets this one-time usage, and has signed a Statement of Intent to abstain from any future drug usage. (TR Vol 1 at page 15 line 1 to page 17 line 5, at page 20 line 4 to page 21 line 1, at page 26 line 3 to page 27 line 15, and AppX F.)

1.c. and 1.d. Applicant suffers from sleep apnea. He admits that twice in June 2016, more than nine years ago, and twice in August 2023, about two years ago, he used marijuana to treat his sleep apnea. Applicant's last usage was while employed in a sensitive position. He avers he "didn't like the effects, didn't like how it made . . . [him]

feel, and . . . [he does not] have any intention to do it again.” Applicant now uses a CAP (Continuous Automatic Pressure) Machine to deal with his sleep apnea. Applicant has taken courses about drug usage, been tested for drug usage, and has signed a Statement of Intent to abstain from any future drug usage. (TR Vol 1 at page 17 lines 6~20, Vol 2 at page 6 line 1 to page 9 line 23, at page 10 line 23 to page 11 line 3, and AppXs B, C, F, G, H, L and M.)

Guideline E - Personal Conduct

2.a. Applicant denies that he falsified facts during a June 4, 2024, interview, when he admitted using marijuana twice in June 2016, and twice again in August 2023. In his April 2013 e-QIP Applicant admits, “I have used once or twice a week.” I find his testimony credible, that he was referring to his four-time, total usage, of marijuana. (TR Vol 1 at page 15 line 1 to page 16 line 1, at page 27 line 16 to page 31 line 23, at page 33 line 7 to page 34 line 11, Vol 2 at page 6 line 1 to page 7 line 13, at page 9 lines 18~23, and at page 10 line 23 to page 11 line 3.) I find no willful falsification.

Policies

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(a), 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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 access to classified information. 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 information.

Section 7 of Executive Order 10865 provides that 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 relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions are established:

- (a) any substance misuse (see above definition); and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Appellant used cocaine and hallucinogenic mushrooms in July 2023, and used marijuana in June 2016 and August 2023. He was employed in a sensitive position during his 2023 usages. Therefore, AG ¶ 25 (a) and (f) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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 was involved with drugs five times in his life; most recently, three times in 2023. His last drug usage, marijuana, was in August 2023, about two years ago, to treat sleep apnea. He now uses a CAP machine to treat his sleep apnea. Applicant has taken numerous drug courses, and has eschewed any future drug usage. I find that Applicant's past, infrequent drug involvement is not of present security significance. Drug Involvement and Substance Misuse is found for Applicant.

Guideline E - Personal Conduct

The concern under this guideline is set out in AG ¶ 15:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

Based on Applicant's alleged deliberate falsification of his SCA, the following disqualifying condition could apply:

AG ¶ 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.

Applicant denies he falsified material facts during his subject interview. I find no falsification. Applicant's testimony has been consistent and credible throughout the hearing process. Personal Conduct is found for Applicant.

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 an applicant's conduct and all the 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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his drug involvement and substance abuse, and his personal conduct.

Formal Findings

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a~1.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Richard A. Cefola
Administrative Judge