



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



## Appearances

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

12/08/2025

## Decision

HOGAN, Erin C., Administrative Judge:

The security concern raised under Guideline E, Personal Conduct, are found for Applicant because he did not intentionally falsify his security clearance application. The security concerns raised under Guideline H, Drug Involvement and Substance Misuse, are not mitigated. Eligibility for access to classified information is denied.

## Statement of the Case

Applicant submitted a security clearance application (SCA) on June 24, 2024. (Item 2) The Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on March 27, 2025, detailing security concerns under Guidelines E and H. DCSA acted under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On April 17, 2025, Applicant answered the SOR and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On May 28, 2025, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 3. Applicant received the FORM on June 24, 2025. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. He did not submit additional matters in response to the FORM. The case was forwarded to the Hearing Office on August 13, 2025, and assigned to me on November 18, 2025.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

### **Findings of Fact**

In Applicant's SOR response, he admits the allegations in SOR ¶¶ 1.a – 1.e and denies the allegation in SOR ¶ 2.a. Applicant's admissions are accepted as findings of fact. (Item 1)

Applicant is 33 years old. He is being sponsored for a security clearance by his employer, a DOD contractor. He was worked for his employer since December 2022. This is his first time applying for a security clearance. He has no military experience. His highest level of education is a bachelor's degree. He is single, resides with his girlfriend and has no children. (Item 2)

The SOR alleges under Guideline H that Applicant used ecstasy and MDMA with varying frequency from about October 2015 to about May 2024 (SOR ¶ 1.a: Item 3 at 2, 13); he used a hallucinogenic drug (LSD) in about July 2023 (SOR ¶ 1.b: Item 3 at 2, 13); he used cocaine with varying frequency from about July 2015 to September 2016 (SOR ¶ 1.c: Item 3 at 2); he used marijuana with varying frequency from about May 2010 to October 2023 (SOR ¶ 1.d: Item 3 at 2); and he used hallucinogenic mushrooms (also known as psilocybin) in about November 2023. (SOR ¶ 1.e: Item 3 at 2)

The SOR also alleges under Guideline E that Applicant falsified material facts on an Electronic Questionnaire for Investigations Processing (e-QIP) executed by him on June 24, 2024, in response to the following question – Section 23 – Illegal use of Drugs or Drug Activity – Illegal Use of Drugs or Controlled Substances, “In the last seven (7) years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, or experimenting with or otherwise consuming any drug or controlled substance?” He answered, “Yes” and listed his illegal use of ecstasy/MDMA as alleged in SOR ¶ 1.a and his illegal use of LSD as alleged in SOR ¶ 1.b. He deliberately failed to disclose the full extent of his illegal use of drugs or controlled substances by omitting his use of marijuana and psilocybin

mushrooms, as set forth in subparagraphs 1.d and 1.e of the SOR dated March 27, 2025. (SOR ¶ 2.a: Item 2 at 39-40)

### **Guideline H - Drug Involvement and Substance Abuse**

Applicant began to use illegal drugs starting in May 2010, when he used marijuana. He used marijuana on various occasions from May 2010 and about October 2023. He would estimate the average amount of marijuana use occurred between zero to five times a year. He abstained from marijuana use at least four years between May 2010 and October 2023 because he did not like the effects of marijuana. He used marijuana with friends and with his brother. Marijuana was legal in the state where he previously resided, though it remains illegal under federal law. Marijuana laws are more stringent in the state where he currently resides and works. He does not intend to use marijuana in the future. (Item 1, Response to SOR at 3; Item 3 at 2)

From approximately July 2015 to approximately September 2016, Applicant used cocaine on two occasions. On each occasion, he was offered cocaine from an acquaintance. He does not intend to use cocaine in the future. (SOR ¶ 1.c: Item 1, Response to SOR at 2-3; Item 3 at 2)

From approximately October 2015 to approximately May 2024, Applicant used ecstasy and MDMA with varying frequency. He first used ecstasy at a music festival with friends. He used it again in 2017 with a friend while they were at a nightclub. He has not seen this friend since 2018. The last time he used ecstasy/MDMA was at a music festival with his girlfriend around May 2024. They were offered the drug by friends who were with them at the music festival. He does not intend to use ecstasy/MDMA in the future. (SOR ¶ 1.a: Item 1, Response to SOR at 1-2; Item 3 at 2,13)

In approximately July 2023, Applicant and his girlfriend experimented with LSD while away for the weekend with three other couples. Some were his girlfriend's former co-workers who worked in the medical field. One couple acted as caretakers and guides for the individuals who wanted to try LSD. Each person received a dose of LSD in a safe and controlled setting. He has not seen any of the participants in over a year. He and his girlfriend moved out of the area and no longer have contact with any of the participants. Applicant says his LSD use was an experimental one-time use. Neither he nor his girlfriend intend to use LSD in the future. (Item SOR ¶ 1.b: Item 1, Response to SOR at 2; Item 3 at 2,13)

In November 2023, Applicant used psilocybin while on a trip with his girlfriend to another country where psilocybin use for medicinal purposes is legal. He and his girlfriend researched this on the internet. After checking into their hotel, they found a local dispensary and inquired about how to obtain a prescription for psilocybin. A nurse employed at the dispensary provided Applicant a list of symptoms that could be treated

with psilocybin. He checked off “anxiety” on the list. He was deemed eligible for medical therapy. His girlfriend was also deemed eligible. They asked advice from the nurses about what to purchase for their first dose. His girlfriend purchased one gram of psilocybin, for about 10 US dollars. They took it back to their hotel room and split the dosage. They each took approximately 0.5 grams of psilocybin. They then watched movies and walked around the city. Applicant describes his psilocybin use as isolated. He does not intend to use it in the future. (Item SOR ¶ 1.e: Item 1, Response to SOR at 3-4; Item 3 at 2)

Applicant stated that he intends to abstain from all illegal drug use and acknowledged that any future involvement or misuse would be grounds for denial or revocation of his security clearance in both his response to interrogatories and in his response to the SOR. He indicates his drug usage was recreational and occurred in safe social settings. He claims that his illegal drug use was so infrequent that he did not develop any habits or cravings. He is now in a stable and secure financial situation. He and his girlfriend agreed that the misuse of illegal drugs does not have a place in their future. They hope to have children someday. He has become involved in his local community. His current friends are non-drug users. (Items 1 and 3)

## **Guideline E – Personal Conduct**

In response to Section 23 - Illegal Use of Drugs or Drug Activity on his security clearance application dated June 24, 2024, Applicant answered, “Yes.” He listed his use of ecstasy/MDMA at raves and clubs once every 3-5 years on 3 separate occasions from October 2015 to May 2024. He also listed his one-time use of LSD in July 2023. He did not list his use of marijuana on various occasions from approximately May 2010 to about October 2023 and his one-time use of psilocybin in about November 2023. The Government alleged that he deliberately falsified his security clearance application by deliberately omitting his illegal use of marijuana and psilocybin.

In his response to the SOR, Applicant denied this allegation. He believed that he did not need to list his use of marijuana and psilocybin because he used both drugs in a jurisdiction where use of each drug was legal at the time he used it. He did not realize that he had misread the question in section 23 until he received the SOR. He realizes that he made a mistake. It is noted that he listed his use of marijuana and psilocybin in response to DOHA interrogatories, dated February 27, 2025. He also listed a two-time use of cocaine from approximately July 2015 to approximately September 2016. He was not required to list his cocaine use on his security clearance application because the use occurred more than seven years before he completed the security clearance application. In the same response to the interrogatories, he indicated that he first became aware that marijuana was federally illegal in February 2025, during his security clearance background investigation. (Item 2, Item 3)

## **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).

The adjudicative 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(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 access to classified information 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

## **DOD and Federal Government Policy on Marijuana Use**

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence 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 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.

## Analysis

### **Guideline H: Drug Involvement and Substance Misuse**

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement and substance misuse under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse; and

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Both AG ¶¶ 25(a) and 25(c) apply. Applicant has a history of illegal drug use. He admits to using marijuana on various occasions over a 13-year period starting approximately in May 2010 to about October 2023. While marijuana was legal in the jurisdiction where he resided, it remained illegal under federal law. He also used cocaine on two occasions between July 2015 and September 2016; LSD on one occasion in July 2023; and psilocybin on one occasion in November 2023. He also used ecstasy/MDMA on several occasions from about October 2015 to May 2024.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

AG ¶ 26(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

AG ¶ 26(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence on 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.

AG ¶ 26(a) applies with respect to Applicant's use of cocaine in the 2015-2016 time-frame. (SOR ¶ 1.c) His cocaine use was experimental (only two times) and more than nine years have passed since his last use of cocaine. There has been a significant passage of time to conclude his cocaine use is not an issue. AG ¶ 26(a) does not apply to the remaining SOR allegations because of Applicant's history of illegal drug abuse and his continued illegal use of drugs after becoming employed by a DOD contractor in December 2022. His usage of ecstasy/MDMA, LSD, marijuana and psilocybin while employed with a DOD contractor raises questions about Applicant's judgment, trustworthiness, and reliability.

AG 26(b) partially applies in that Applicant has fully admitted his illegal drug use and has expressed his intent to abstain from all illegal drug involvement and use in the future. He acknowledged that any future illegal drug use is ground for revocation of access to classified information. This mitigating condition is given less weight because his illegal drug involvement continued after his employment with a DOD contractor and his illegal drug involvement continued to at least May 2024, less than two years ago. Not enough time has passed to conclude that his intentions to refrain from illegal drug use will be successful.

## **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. 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.

AG ¶ 16: Conditions that could raise a security concern and may be disqualifying include:

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.

I find for Applicant under the personal conduct concern. While he omitted his marijuana use and psilocybin use on his June 2024 security clearance application in response to Section 23 – Illegal Use of Drugs or Drug Activity – Illegal Use of Drugs or Controlled Substances, his omission was an oversight. AG ¶ 16(a) only applies if the

omission is deliberate. I find Applicant's explanation that he misread the language in Section 23 – Illegal Use of Drugs or Drug Activity – Illegal Use of Drugs or Controlled Substances on his June 2024 security clearance application to be plausible. He fully disclosed his use of ecstasy/MDMA and LSD on the June 2024 security clearance application. In response to interrogatories, he listed all of his illegal drug use to include his use of marijuana and psilocybin. He did not intend to deliberately mislead the government by omitting his marijuana use and one-time use of psilocybin in his response to Section 23 on his June 2024 security clearance application. The Personal Conduct security concern is found for Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 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. I have incorporated my comments under Guidelines H and E and the AG ¶ 2(d) factors in this whole-person analysis. Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. Insufficient time has passed since his last use of illegal drugs to overcome the extent and seriousness of his conduct. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I considered Applicant's employment with a DOD contactor since December 2022. I considered that he is applying for a security clearance for the first time. I considered that while he omitted his one-time use of psilocybin and his history of marijuana use on his June 2024 security clearance application, his explanation that he misread the questions in Section 26 is plausible. I considered he provided full disclosure about his illegal drug use, to include marijuana and psilocybin, in his response to interrogatories in February

2025. I considered that his last use of an illegal drug (ecstasy/MDMA) occurred in May 2024. It has been only 18 months. Considering his history of illegal drug abuse, not enough time has passed to conclude he is serious about his intention to refrain from illegal drug use. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his conduct under Guideline H.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards maintaining a drug-free lifestyle, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a, 1.b, 1.d, 1.e:	Against Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

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Erin C. Hogan  
Administrative Judge