



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



In the matter of:)
)
) ISCR Case No. 24-02143
)
 Applicant for Security Clearance)

Appearances

For Government: George Hawkins, Esq., Department Counsel
For Applicant: *Pro se*

12/17/2025

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant mitigated the security concerns under Guidelines B (foreign influence); however, she did not mitigate the security concern under Guideline H (drug involvement and substance misuse). Eligibility for access to classified information is denied.

Statement of the Case

On December 20, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and B. Applicant responded to the SOR on February 4, 2025, and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on February 25, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. This included a request for Administrative Notice for both Taiwan and China. Applicant received the FORM and submitted a response. The Government's exhibits included in the FORM as well as the Applicant's response are admitted in evidence without objection.

Department Counsel requested that I take administrative notice of certain facts about Taiwan and China. Without objection, I have taken administrative notice of the facts contained in the request. The facts are summarized in the written request and will not be repeated verbatim in this decision. Of particular note is that China has continued to increase diplomatic, political, and military pressure against Taiwan and that it will continue to expand its global intelligence posture to advance its interests.

Findings of Fact

Applicant is a 28-year-old employee of a defense contractor. She earned dual bachelor's degrees in 2018 from the University of California, Irvine. She is married with no children. She is applying for a security clearance for the first time. (Item 3)

In her interrogatory response, Applicant admitted marijuana use daily from April 2013 to about May 2024, a period of over 10 years. In her response to the SOR, she admitted to purchasing marijuana with varying frequency from about April 2013 to about July 2018. She also admitted to using lysergic acid diethylamide (LSD) with varying frequency between February 2015 to about April 2023 and using methylenedioxymethamphetamine (MDMA) twice. In her interrogatory response, Applicant stated that she did not intend to use any illegal drug in the future, but that she still associates with those who use illegal substances and attends events where they are present. (Items 2-4)

In her Answer, Applicant admitted her parents and brother are citizens of Taiwan, and that her grandmother is a citizen and resident of Taiwan. Applicant's parents and brother are permanent residents of the U.S., and she last had contact with them in August of 2024. She has contact with her grandmother once a month via video chat. "In her Answer, Applicant stated that she is loyal to the United States and that my family does not pose as a conflict of interest to my loyalty to the United States. . . . Currently my brother and my mother are going through the US citizenship process, and my father has plans to pursue citizenship in the future as well." (Item 4, Applicant's Answer)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for national security eligibility will be resolved in favor of the national security."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is set out in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner

inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, "*Adherence to Federal Laws Prohibiting Marijuana Use*," which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that require them to use a "whole-person concept." This requires adjudicators to carefully weigh a number of variables in an individual's life to determine whether that individual's behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant

mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

Applicant admitted having used marijuana daily from about April 2013 to about May 2024. She also admitted to purchasing marijuana and using LSD with varying frequency and MDMA twice. AG ¶¶ 25(a) and (c) are applicable.

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

(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

(1) disassociation from drug-using associates and contacts;

(2) changing or avoiding the environment where drugs were used; and

(3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

There is no evidence of any illegal drug use after May 2024. Applicant stated she did not intend to use illegal drugs in the future even though she still associates with those who do and attends events where drugs are used. Her intent not to use illegal drugs in the future is a positive step. However, Applicant used marijuana daily for over ten years, which is over 3,600 times and purchased it with varying frequency for over five. She has also used LSD with varying frequency over a nine-year period of time and used MDMA twice. There is no "bright-line" rule for when conduct is recent. 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.” With additional time without illegal drug use, Applicant may warrant a security clearance. I am not convinced that she is there yet. None of the mitigating conditions are sufficiently applicable to overcome concerns about Applicant’s drug use, reliability, trustworthiness, and judgment.

Guideline B, Foreign Influence

The security concern 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. The following are potentially applicable in 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.

Applicants' parents and brother are citizens of Taiwan, and her grandmother is a citizen and resident of Taiwan. Applicant's relationship with both creates a potential conflict of interest and, given the country's heightened risk of foreign exploitation, inducement, manipulation, pressure, and coercion, AG ¶¶ 7(a) and 7(b) are applicable.

Conditions that could mitigate foreign influence security concerns are provided under AG ¶ 8. The following are potentially applicable:

- (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; and
- (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.

Applicants' parents and brother may be citizens of Taiwan, but they are permanent U.S. residents. Her brother and mother are in the process of applying for U.S. citizenship and her father plans on doing so in the future. Applicant communicates with her grandmother who is a citizen and resident of Taiwan once a month by video chat. Based on the developed record of evidence in this case, it is unlikely she 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. AG ¶¶ 8(a) and 8(b) are applicable.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of the applicant's conduct and all relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

- (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and recency of the conduct; (4) the individual's age and maturity at the time of the conduct; (5) the extent to which participation is voluntary; (6) the presence or absence of rehabilitation and other permanent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I 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 B in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. Even though Applicant did mitigate the security concerns under Guideline B (foreign influence), she did not mitigate the security concerns under Guideline H (drug involvement and substance misuse).

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
Subparagraph 1.a -1. d:	Against Applicant
Paragraph 2, Guideline B:	For Applicant
Subparagraph 1.a -1. c:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge