



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



In the matter of:)
)
) ISCR Case No. 24-00519
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2026

Decision

HYAMS, Ross D., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. He failed to mitigate psychological conditions and personal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On September 30, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines I (psychological conditions), H (drug involvement and substance misuse), and E (personal conduct). Applicant answered the SOR on October 20, 2024, and requested a hearing before an administrative judge.

The case was assigned to me on August 26, 2025. The scheduling of the hearing in this case was delayed when all administrative judges were furloughed from October 1, 2025, through November 12, 2025, during a federal government shutdown due to a lapse in federal funding.

The hearing convened on January 21, 2026. Department Counsel submitted Government Exhibits (GE) 1-8, which were admitted in evidence without objection. Department Counsel also requested that I take administrative notice of six portions of the fifth edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM 5), an FDA

publication regarding Kratom, and a Department of War (DOW) dietary supplement database regarding Kratom. Administrative Notice exhibits (AN) I-VIII were admitted without objection. Applicant did provide any documentation for consideration.

Amendment to the Statement of Reasons

At the start of the hearing, Department Counsel moved to withdraw SOR ¶ 3.c. The motion was granted without objection.

Findings of Fact

Applicant denied all of the SOR allegations with explanation. Based on my review of the pleadings, evidence submitted, and testimony, I make the following findings of fact.

Applicant is 33 years old. He married in 2017 and has two minor children. He earned a bachelor's degree in 2015 and has recently started a master's degree program. He served as an officer in the Marine Corps from 2015-2020. He was a reservist on active-duty status for part of that time. During his service, he earned the rank of Captain (O-3) and went on two overseas deployments. (Tr.14-19; GE 1)

In Applicant's first year in the Marine Corps, he developed substantial back pain. During that time, he saw a physical therapist, chiropractor, and physical trainers. His training was hard on his back. Vigorous exercise and carrying heavy loads intensified the problem. In researching treatment options, he discovered Kratom and learned that it was supposed to have anti-inflammatory qualities. He also determined it would not cause him to test positive on mandatory drug testing. After taking it, he found that Kratom worked to address his back pain and allowed him to perform at high levels. He used Kratom from 2015 to December 2019. (Tr. 20-44)

Applicant stated he did not use Kratom while deployed overseas. On his last deployment, in 2017, he worked six days a week and it was stressful. He reported that he experienced hypomania during this time. He was not sleeping, became hyper-focused, and reported he was in and out of suicidal ideation. When he returned home in February 2018, he left active duty and moved with his wife to State A. He restarted using Kratom for his back pain. He reported that his Kratom use went from addressing back pain to just feeling normal. He continued to experience hypomania. Over time, he felt depressed, struggled with his marriage and performing normal daily activities, and did not want to be alive. During a family intervention in late 2019, his wife and parents told him he needed to get mental health treatment. (Tr. 20-44)

From mid-December 2019 to early February 2020, Applicant attended in-patient treatment at Facility M. He received treatment for trauma, depression, suicidal ideation, and opiate use disorder for his use of Kratom. The treatment included one-on-one counseling, psychiatry, and group therapy. During his treatment, he was given medication for depression, attention-deficit/hyperactivity disorder (ADHD), and fibromyalgia – which they thought caused his back pain. He was also given medication to eliminate opiate

cravings. Upon discharge, he was told to seek intensive outpatient and medical treatment. However, he did not agree with their treatment plan and did not seek the intensive treatment. (Tr. 20-44)

Applicant reported that when he returned from treatment at Facility M in 2020, he was given a month of medication and needed to find a job and place to live, as his wife would not let him return home. After about three weeks, he started seeing a psychiatrist, Dr. H. He told Dr. H about a grandiose plan that he was going to become a doctor and solve the problem of addiction, and that he had found a cure for cancer. Dr. H diagnosed him with bipolar disorder and thought he was in a hypomanic episode. He prescribed him a mood stabilizer, which started to make him feel more normal. (Tr. 20-44; GE 5, 7)

After he started to see Dr. H, Applicant had a more severe hypomanic episode and experienced intense suicidal ideations. He was given a new medication, which helped him, but it took him several months to stabilize. A new job, and eventual career training helped him further stabilize over time. His relationship with his wife also improved. He saw Dr. H for about a year, until he moved to State B. (Tr. 20-81)

Applicant reported he received an honorable discharge from the Marine Corps in 2020 in exchange for signing an agreement that he violated Uniform Code of Military Justice Article 92 (Failure to obey an order or regulation) by using Kratom, a banned substance. He stated he intends to challenge his discharge. He claimed that Kratom was not on the banned substance list at the time of his discharge and is not a controlled substance. He also asserted that it was policy that if a Marine voluntarily sought help for a substance abuse issue, administrative action would not be taken against them. He claims this policy was not applied appropriately to him. (Tr.14-19)

According to the U.S. Food and Drug Administration (FDA), Kratom is a substance prepared from the leaves of the Kratom tree in Southeast Asia. There are currently no drug products containing Kratom or its two main chemical components that are legally on the market in the United States, nor has the FDA approved any prescription or over-the-counter drug products containing Kratom or its two main chemical components. Since the FDA has not received any requests for legal use, Kratom has not been formally studied and there have been no FDA evaluations of the safety and efficacy of Kratom or its components in the treatment of any medical conditions. (AN VII)

The FDA states that Kratom is not appropriate for use as a dietary supplement. It does not have adequate information to determine if Kratom presents a significant or unreasonable risk of illness or injury. The FDA has determined that Kratom, when added to food, is an unsafe food additive. Therefore, Kratom is not lawfully marketed in the U.S. as a drug product, dietary supplement, or a food additive in conventional foods. (AN VII)

Unapproved drug products in the market are a challenge for the FDA. A complex network of distributors and retailers, many of which are unregistered, exists outside of the control of the FDA. At times, Kratom products shipped to the U.S. have been mislabeled as potpourri or incense, which caused them to escape inspection. (AN VII)

The FDA has warned consumers not to use Kratom because of the risk of serious adverse events including substance use disorder. Inappropriate use caused cravings for more Kratom, including use despite adverse consequences, an unhealthy tolerance causing the need for greater consumption, and physical dependence and withdrawal symptoms. The chemical compounds found in Kratom may produce classic opioid-related effects such as sedation, physical dependence, withdrawal, and respiratory depression that could lead to death. (AN VII)

At the hearing, Applicant acknowledged his use of Kratom was problematic and he had other mental health conditions he was dealing with at the same time. He stated he attends therapy on a weekly basis with a counselor he started seeing about one and a half years ago. He reported seeing other counselors prior to the current one. He stated he sees a psychiatric nurse practitioner (Provider P) on a monthly basis. He has seen her for about two and a half years. She is treating him for diagnoses of Bipolar 2, ADHD, PTSD, and panic disorder. She prescribes him three medications for bipolar disorder, which also help with depression. He stated he takes the medications as prescribed. He reported his baseline is a depressive state, but it is not as low as it has been in the past. He reported his last hypomanic episode was about a year ago. He claimed his mood was more stable and his other medications help with his focus, organization, and anxiety symptoms. He stated his last concerning mental health episode was in 2023, when purchasing a house. (Tr. 20-81; GE 6, 8)

Applicant reported he periodically sees a marriage counselor, has a professional mentor, and a spiritual mentor. He regularly attends bible study. He reported he has a regimented lifestyle that keeps him on track. He reported that in times of high stress, he must be hypervigilant with sleep, exercise, and eating. (Tr. 20-81)

Applicant reported that he drinks alcohol occasionally. He has about 1-2 drinks a weekend and occasionally gets intoxicated when being social with friends. In June 2025 he was arrested for a suspected DUI. He claimed his blood work showed .08 which is at the legal limit. His case was put in a diversion program, where he had to complete 100 hours community service, an alcohol class, a traffic class, \$125 fine, monthly psychiatry, and weekly therapy with reports every 6 months for 2 years. He has never had a DUI arrest prior to this event. He stated he will continue to consume 1-2 alcoholic drinks a weekend. He was told by his mental health providers not to get intoxicated because of adverse effects with the medication he is taking. This DUI arrest was not alleged in the SOR and is not considered as a factor for disqualification but may be considered in the application of the mitigating factors. (Tr. 45-81; GE 2)

Applicant is getting disability from the Department of Veterans Affairs for his back problems and sees a chiropractor almost weekly. He feels like he is now in a good place and has a solid support structure around him. He stated he gets quick feedback when he slips, and he sticks to his routines. (Tr. 45-81)

Under Guideline I, the allegations are as follows:

SOR ¶ 1.a alleges in October 2023 Applicant was evaluated by a DOW consulting psychologist. After the evaluation, the psychologist, Dr. B, diagnosed him with Major Depressive Disorder, recurrent, in partial remission; Generalized Anxiety Disorder; Panic Disorder; ADHD; and a history of Polysubstance Use. Dr. B found that his prognosis was guarded given his ongoing symptoms of depression, anxiety, and because he was still being prescribed a stimulant for ADHD that is known to be abused. Dr. B also found that he was at risk for future relapse of substance/alcohol misuse, and that his ongoing mood disorders were not well managed and could lead to lapses in judgment, reliability, or trustworthiness. (GE 3, 4)

Applicant stated he disagrees with the findings of Dr. B's report, as she did not find evidence of bipolar disorder to support Applicant's diagnosis. He stated that she is a psychologist, not a psychiatrist, and is out of her professional bounds. He asserted that his treatment and diagnoses have been through the medical field of psychiatrists and does not believe Dr. B is qualified to make her findings. Furthermore, he asserted that Dr. B discounted one of his statements and then used the same statement to support one of her findings, which he thinks undermines her conclusions. He also objected to her assessment that he was not forthcoming as she never asked any clarifying or follow-up questions of him. (Tr. 20-44; GE 3, 4)

Despite Applicant's arguments and objections, he did not provide documentation rebutting Dr. B's findings. He did not provide an evaluation from a qualified mental health professional stating that he is stable and has the appropriate judgment, reliability and trustworthiness necessary to protect classified information. He did not provide documentation supporting his testimony about his current and recent mental health treatment and medication intake. (GE 2, 3, 4)

SOR ¶ 1.b alleges Applicant received inpatient treatment at Facility M from about December 2019 through early February 2020. During this period of treatment, he was diagnosed with Opioid Use Disorder (Kratom); Major Depressive Disorder, in partial remission; Generalized Anxiety Disorder; Unspecified Trauma and Stressor Related Disorder; Tobacco Use Disorder; ADHD; and Cluster B Personality Traits. Upon discharge, it was recommended he attend Intensive Outpatient Therapy. His prognosis upon discharge was guarded based on his unwillingness to attend the recommended level of care, recent bouts of poor emotional expression surrounding grief and anger, as well as his pending return to current life stressors. (Tr. 20-81; GE 5)

Applicant argued Kratom is not an opioid, so he could not have had an opioid use disorder as diagnosed at Facility M. However, the FDA says Kratom may produce addiction and classic opioid-related effects. He was also prescribed medication specifically to reduce his opiate cravings. He stated he did not agree with the need for intensive care after discharge and explained the reasons this was not possible. Applicant asserted he did not neglect his mental health after discharge and continues to receive treatment. (Tr. 20-81; Answer; AN VII)

Documentation of Applicant's treatment and diagnoses at Facility M is part of the record. He claimed his follow-on treatment with Dr. H established other diagnoses. There are only about 13 pages from Dr. H in the record. It appears he saw Dr. H starting in February 2020 for about a year. This documentation shows Dr. H diagnosed him with: Other Psychoactive Substance Dependence, uncomplicated; Bipolar 2 Disorder; ADHD; and Bipolar Disorder, current episode mixed, moderate. (Tr. 20-81; GE 5, 7)

There are also records for mental health treatment with Provider P in the record that show periodic visits from May 2022 to June 2024. These records show Applicant was diagnosed with ADHD; Bipolar 1 Disorder; Generalized Anxiety Disorder; and Chronic Post Traumatic Stress Disorder. He was also prescribed about six medications to treat these conditions. (GE 6, 8)

Under Guideline H, the allegations are as follows:

SOR ¶ 2.a alleges Applicant used Kratom with varying frequency from about 2015 to December 2019. Applicant admitted he used Kratom in this timeframe. He sought inpatient treatment for Kratom abuse, amongst other mental health issues in mid-December 2019 to early February 2020 at Facility M. During this period of treatment, he was diagnosed with Opioid Use Disorder (Kratom). (Tr. 20-81)

Applicant denies that Kratom is a controlled substance. In his Answer, he cited 21 U.S.C. § 802 – which defines the term controlled substance as (A) a substance which is the principal compound used or produced for the manufacture of a controlled substance; (B) a chemical intermediary used in the manufacture of a controlled substance; or (C) substance requiring control to prevent or limit the manufacture of a controlled substance. He asserted that Kratom is not by this definition a controlled substance, and it is not a precursor or derivative of opium. However, the FDA states that Kratom is an illegal substance. Kratom is not lawfully used in the U.S. in a drug product, dietary supplement, or a food additive in conventional foods. (Answer; AN VII)

SOR ¶ 2.b alleges Applicant has used cocaine, methylenedioxymethamphetamine (MDMA), psilocybin mushrooms, marijuana, synthetic cannabinoids, nitrous oxide, and prescription medications Ambien, Hydrocodone, Oxycodone, Xanax, and Morphine Patch that were not prescribed to him.

These allegations are supported by statements Applicant made to mental health providers captured in medical records. These records were provided to the government as part of his background investigation and are part of the record in this case. At the start of the hearing, Applicant objected to his two statements regarding drug use being considered, because they were made in confidence to providers at a mental health facility. That objection was overruled. He testified that he has not used illegal drugs, and those statements were made while he was in a grandiose hypomanic episode. (Tr. 10-11, 44; GE 2)

When Applicant sought in-patient treatment at Facility M, during his intake he reported his history of drug use which included the drugs alleged above. The records from Facility M also state that he stopped taking all drugs when he decided to go into the Marine Corps in 2015. The exception would be prescribed medications and Kratom. (GE 5)

When Applicant was treated by Dr. H in February 2020, he reported a history of use of cannabis, Adderall, opiates, pain killers, hydrocodone, and Kratom (GE 7). He testified that:

So when I talked to Dr. [H], like the statements about abuse the statements about alcohol and nicotine and kratom are true. In relation to like cannabis, Adderall, and opiates, like that was that was my first meeting with him, and that was the same meeting where he looked at me, and he was like, Hey, have you ever heard of bipolar disorder? That was also the same meeting where I told him that I was going to become a doctor and solve addiction after I solved cancer. So I was still in a very like, grandiose state, telling him that like, I had done those things. So yeah, I -- I remember telling him that... it felt like kratom was such a stupid petty thing that I almost had to like talk up and be grandiose about the reason I went to inpatient treatment because nobody knew at the time, like what kratom was. So I would tell people, and they were like, what? And so I just felt this obligation to like be this guy who was really bad, who was so bad he needed to go to treatment. And so that's why -- I didn't start using tobacco at like 13, I was like, I was between 15 and 18. And so I was just -- I don't know, I was pretending to be the person who had a lot of problems that needed to go and get help so that I didn't get laughed at because I used kratom. (Tr. 65-66)

Under Guideline E, the allegations are as follows:

SOR ¶ 3.a alleges Applicant was charged under the UCMJ with a violation of Article 92 for his use of Kratom as described in ¶ 2.a. Kratom is a prohibited substance for DOW Service Members. The Department of War Dietary Supplement Resource identifies DOW prohibited dietary supplements and ingredients and reflects that Kratom is a prohibited substance. (AN VIII)

Applicant testified that Kratom was not on the banned substance list at the time of his use and discharge. However, he did not provide documentation supporting this assertion. (Tr.14-19)

SOR ¶ 3.b alleges Applicant falsified material facts in response to interrogatories from May 2024, when responding to a drug use question, by denying he ever used Marijuana, Cocaine, Psilocybin Mushrooms, MDMA, Synthetic Cannabinoids, Nitrous Oxide, Ambien, Hydrocode, Oxycodone, Xanax, or Morphine Patch.

In his May 2024 response to interrogatories, he wrote that he “never” used any of the drugs alleged. His response contradicts reporting in his medical records, as discussed under SOR ¶ 2.b. (GE 2)

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 I, Psychological Conditions

AG ¶ 27 articulates the security concern for psychological conditions:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

I have considered the disqualifying conditions for psychological conditions under AG ¶ 28 and the following are potentially applicable in this case:

(a) behavior that casts doubt on an individual’s judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

(b) an opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness;

(c) voluntary or involuntary inpatient hospitalization; and

(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

The documentation in the record and Applicant’s testimony establish AG ¶¶ 28(a), (b), (c), and (d).

I have considered the mitigating conditions under AG ¶ 29. The following are potentially applicable:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

Applicant was forthcoming in discussing his mental health challenges. He testified about his mental health history and current treatment. The Government provided substantial evidence of Applicant's mental health issues, treatment, diagnoses, and ongoing concerns about his condition and prognosis, as well as concerns about his judgment, reliability, and trustworthiness in handling classified information. Applicant did not provide sufficient evidence to address the opinions expressed in Dr. B's evaluation and findings or the security concerns under Guideline I. He did not submit a recent evaluation and documentation from a qualified mental health professional supporting the mitigating conditions. Since this evidence is absent from the record, Applicant did not mitigate the psychological conditions security concerns.

Guideline H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern regarding drug involvement:

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.

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

- (a) any substance misuse (see above definition); and
- (d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance use disorder.

Applicant argued that Kratom does not fall under the definition of “controlled substance.” He is correct. However, the Guideline H concerns are not limited to controlled substances but extend to “other substances that cause physical or mental impairment. . .” Kratom is such a substance, and is an illegal substance for consumption according to the FDA. AG ¶ 25 (a) and (d) apply.

I have considered the mitigating conditions under AG ¶ 26. 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;
- (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 is grounds for revocation of national security eligibility; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) applies. Even if Applicant used the illegal drugs he reported at intake at Facility M and to Dr. H, that drug use was not recent. The medical records from Facility M state that Applicant stopped taking all drugs when he decided to go into the Marine Corps in 2015. The exception would be prescribed medications and Kratom. Applicant credibly testified he has not used Kratom since December 2019. Over the last six years, he has established a pattern of abstinence from illegal drug or substance use. Illegal drug or substance use is unlikely to recur.

I considered Applicant’s reporting about his alcohol consumption, suspected DUI, and placement in a DUI diversion program in relation to his history of drug use. Alcohol

consumption is legal, he has never had a prior DUI, and this experience has caused him to make changes to the way he consumes alcohol and socializes with friends. His medical providers have warned him as well about intoxication. Applicant has young children and understands the needs to be a good role model. He has learned his lesson from this incident. I do not think this incident or light alcohol consumption will induce him to reuse Kratom or another illegal drug or substance.

AG ¶ 26(b) does not fully apply because Applicant did not provide a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement is grounds for revocation of national security eligibility.

AG ¶ 26(d) does not fully apply because Applicant did not provide evidence of satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Guideline E, Personal Conduct

AG ¶ 15 details the personal conduct security concern:

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. . . .

I have considered the disqualifying conditions under AG ¶ 16 and the following are applicable:

(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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person

assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

I have considered the mitigating conditions under AG ¶ 17. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

AG ¶¶ 17(c) and 17(d) apply to SOR ¶ 3.a relating to his use of Kratom. I found for Applicant regarding his Kratom use under Guideline H for similar reasons. He has not used Kratom since December 2019. He obtained in-patient treatment for abusing Kratom. Any future use of Kratom is unlikely to recur. He also recognized that he exercised poor judgment in his use of Kratom and has worked to overcome that addiction.

None of the mitigating conditions apply to SOR ¶ 3.b. In Applicant's May 2024 response to interrogatories, he denied use of all the drugs listed on the form, writing "never." The source for the drugs listed in the interrogatory came from Applicant's reporting in his medical records – once at Facility M, and a more limited disclosure to Dr. H.

Applicant argued that statement in the medical record from Facility M was untrue, and he made it while he was in a grandiose hypomanic episode. He asserted he also overstated his drug use history to Dr. H, albeit a smaller list of drugs, because he felt seeking treatment for Kratom also was "such a stupid petty thing" that he had to talk up and be grandiose about the reason he went to inpatient treatment. He also objected to these statements being considered because they were made in confidence to medical

providers. However, an individual is likely to be more forthcoming in a medical setting with providers when it is impactful to their health.

The government provided substantial evidence that Applicant made accurate statements regarding past illegal drug use while seeking mental health treatment, and that he denied all illegal drug use in his May 2024 interrogatory response. The burden shifts to Applicant to provide sufficient evidence to rebut or mitigate these security concerns. While Applicant's explanation is plausible, it is also self-serving. He did not provide any documentation or other reliable evidence to find that any of the mitigating conditions apply.

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 I, H, and E in my whole-person analysis.

Applicant is intelligent, skilled, dedicated to his career, and a patriotic veteran. He has experienced some significant mental health challenges in the last ten years. While his condition has improved, he needs to establish a longer track record of stability and documented compliance with treatment, to mitigate the government's security concerns.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. I conclude that Applicant has not mitigated the psychological conditions and personal conduct security concerns. The drug involvement and substance misuse security concerns are mitigated.

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 I:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	For Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Withdrawn

Conclusion

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

Ross D. Hyams
Administrative Judge