



respond. Items 1 through 4 are admitted into evidence. The case was assigned to me on March 15, 2018.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in Paragraph 1 of the SOR, with no explanations. (Item 2, 4) He did not supplement the record to support his request for eligibility for a security clearance.

Applicant is 27 years old, unmarried, and has no children. He has a bachelor's degree in electrical engineering. After graduating from high school in 2008, he worked and obtained an undergraduate degree in 2015. (Item 5) He reported no military service. He has worked for a defense contractor since August 2015. (Item 3)

The SOR alleges that Applicant used marijuana with varying frequency from June 2004 to July 2017 (SOR 1.a); used mushrooms with varying frequency from June 2007 to August 2014 (SOR 1.b); illegally purchased marijuana from June 2007 to July 2017 (SOR 1.c); used cocaine in December 2014 (SOR 1.d); used prescription medication Adderall, not prescribed to him, from approximately December 2010 to March 2015 (SOR 1.e); and illegally purchased Adderall from December 2010 to March 2015.

Applicant acknowledged that he received some counseling for depression while in college. He was prescribed an anti-depressant in 2015. He has not had any other counseling in the past few years. (Item 5)

He admitted using marijuana for relaxation and typically spent \$50-\$60 for an eighth of an ounce. He denied using drugs while he was employed in a position directly affecting public safety. (Item 5) During his subject interview, he stated that his use of marijuana was hundreds of times. He stated that he did not intend to use these illegal drugs in the future. Applicant stated that he has never been ordered to seek drug counseling or treatment. (Item 5) He stated that he used mushrooms as a means of experimentation as late as 2014, no more than six times in total. (Item 3) As to Adderrall and other stimulants, Applicant used them for study aids. He believes that it was two dozen times total. He stated that he knows now that it is a felony and would never use the drug in the future to jeopardize his job. (Item 3) Applicant stated that he used cocaine once against his better judgment. He believes he is more responsible now. Applicant told the investigator that he used the illegal drugs to reduce stress and get him through difficult times at school. He stated that he has no desire to use other illegal drugs in the future, but he does not know when he will stop using marijuana. (Item 5)

### **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 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. Three conditions are established:

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

Appellant has a long history of illegal drug use. He smoked and bought marijuana until 2017; from 2007 to 2014, he used mushrooms; and he used cocaine once in 2014. He continued to use marijuana after being hired by his current employer in 2015, after completing his e-QIP in 2016, and after his security clearance interview in 2017. Applicant also purchased and used Adderall without a prescription from 2010 to 2015. He continued to use marijuana despite his statement during his investigative interview that he had the intention to cease his use. Therefore, AG ¶ 25 (a), (c), 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's long history of illegal drug misuse well into adulthood and after accepting his current employment, and throughout the security clearance process demonstrates poor judgment and raises questions about his ability or willingness to comply with laws, rules, or regulations. None 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 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. Applicant made poor decisions to continue to use marijuana and other illegal drugs for a long period of time. He has not

shown a period of abstinence, nor a credible claim that he will stop using drugs in the future, especially marijuana. He has presented little or no evidence to show he has the requisite reliability and judgment required of security clearance holders. My comments regarding each guideline are incorporated here also.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his drug involvement and substance abuse.

### **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:	AGAINST APPLICANT
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Subparagraphs 1.a-1.f:	Against Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Noreen A. Lynch  
Administrative Judge