



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 22-02228

**Appearances**

For Government:

Tara Karoian, Esquire, Department Counsel

For Applicant:

Ryan C. Nerney, Esquire  
Tully Rinckey, PLLC

March 7, 2024

**Decision**

ROSS, Wilford H., Administrative Judge:

**Statement of the Case**

Applicant submitted her most recent Electronic Questionnaires for Investigations Processing (e-QIP) on May 19, 2022. (Government Exhibit 1.) On November 18, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review*

*Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on February 24, 2023, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 28, 2023. The case was assigned to another administrative judge on May 15, 2023. The case was reassigned to me on July 25, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 26, 2023. I convened the hearing as scheduled on September 7, 2023. The Government offered Government Exhibits 1 through 4, which were admitted without objection. Applicant testified on her own behalf, called one witness, and submitted Applicant Exhibits A through P. Applicant's exhibits were admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 15, 2023.

### **Findings of Fact**

Applicant is a 28-year-old industrial engineer with a defense contractor. She has worked for the company since 2018. She is single. Applicant has a bachelor of science degree. She is seeking to retain a security clearance granted in approximately March 2019 in connection with her work with the DoD. (Government Exhibit 1 at Sections 12, 13A, 17, and 25.)

#### **Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has used illegal drugs. Applicant admitted all five allegations under this paragraph with explanations.

1.a. Applicant admitted purchasing and using marijuana with various frequency from approximately 2013 to at least April 2022.

The evidence is mixed as to how many times Applicant used marijuana. She testified that she believed she used marijuana about 20 times, with the period of greatest use being between 2019 and 2022. However, she also testified that she was unclear as to the number of times she used it. (Tr. 47-48.)

Applicant later testified concerning her marijuana use, "I would say three to four times a month maybe at the most with that not being the case every month. I previously mentioned that from maybe 2020 to 2021 it was a little bit more regular just with the situation of the pandemic." She further testified that she would purchase marijuana at various legal marijuana dispensaries less than five times a year during the same period. She was unable to quantify her use of marijuana any further. (Tr. 50-51, 79-81, 88.)

In Applicant's 2022 e-QIP (Government Exhibit 1 at Section 25) she stated that she intended to continue to use marijuana in the future. She has since stated that she no longer has an intention to use marijuana or any other drugs. She further submitted a signed statement of intent not to use or be involved with illegal drugs in the future. (Applicant Exhibit I; Tr. 52-53.)

1.b. Applicant admitted using hallucinogenic mushrooms twice. Once in 2015 and the second time in 2022. (Government Exhibit 1 at Section 25; Tr. 54, 78-79.)

1.c. Applicant admitted using cocaine approximately ten times between April 2019 and March 2022. She admitted that she used cocaine after being employed and having a security clearance because, "I wanted to try it." She further testified that she did think about the fact she held a security clearance at the time she was using it, but that fact did not stop her. She indicated that she now knows her judgment was not sound at that time. Finally, she admitted about her use of cocaine, "I liked the experience." (Tr. 57-58, 78, 81-82, 88-89.)

1.d. Applicant admitted using illegal stimulants such as ecstasy about five times between February 2021 and March 2022. (Tr. 58-59, 79, 82.)

1.e. As stated, Applicant received a security clearance in March 2019. A substantial portion of drug use history as described above occurred during the period after she received her security clearance. She felt that her drug use before 2022 while holding a security clearance was not impactful on her job. She now states that this belief was wrong. (Tr. 78-79, 90-91.)

Applicant has stated that she has no intent of using marijuana or other illegal drugs in the future. She testified that one of the reasons she has stopped using drugs was, "I would say it's not worth the fun." She further stated that drug use no longer aligns with her values. She has taken several steps to assure the Government that she is being proactive in preventing a future problem. Applicant has taken courses in drug and alcohol awareness, behavior modification, and marijuana education. She has taken several negative drug tests. (Applicant Exhibits H, J, K, L, and N; Tr. 64, 71-72, 74-75, 86, 91-92.)

Applicant received an evaluation dated February 15, 2023, from a psychologist. The report covered the area of drug abuse. (Applicant Exhibit M.) He conducted a thorough examination of Applicant that included an interview, various psychological tests, and review of relevant documentation. The psychologist opined, "Psychological testing suggested she [Applicant] is free of indicators of substance use problems and clinical interview and observation confirmed the same." (Applicant Exhibit M at 5; Tr. 64.)

As stated, Applicant has also submitted a signed statement of intent "not to use or be involved with illegal drugs in the future." The statement also declared that Applicant

understood that such involvement “may be grounds for revocation or denial of national security eligibility.” (Applicant Exhibit I.)

## **Paragraph 2 (Guideline E – Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has engaged in conduct that shows poor judgment, untrustworthiness, or unreliability. Applicant admitted both the allegations under this paragraph with explanations.

2.a. Applicant filled out her initial e-QIP in September 2018. (Government Exhibit 2.) Section 23 of the questionnaire asked about her drug use history. Specifically, the question asked whether she had used controlled substances during the previous seven years. She stated, “No.” This was a false answer to a relevant question about Applicant’s drug use history. (Tr. 77-78.)

Applicant testified that she gave a false answer because:

I was scared. I was immature, I saw that as are you a serious drug, do we have a problem, and I had barely used marijuana in the past and I had barely, I don’t think I ever felt a high. It was more of a social thing to fit in that I had done it, and so I didn’t feel the need to disclose it and have it impact me, and I was scared. And I know that was wrong. (Tr. 67.)

Applicant filled out a second e-QIP in May 2022. (Government Exhibit 1.) She was more forthcoming about her use of illegal drugs on that document and in a subsequent interview. (Government Exhibit 4.) She testified that between 2018 and 2022 she did not tell anyone at her employer about her drug use history. (Tr. 68-69.)

2.b. The Government alleges in this subparagraph that the Applicant’s drug use history after being granted a security clearance, as set forth under subparagraph 1.e, above, is also cognizable under Guideline E.

## **Mitigation**

Applicant’s direct supervisor testified on her behalf and provided a written statement. His recent evaluation of Applicant was also provided. He has known her since she began work for her employer in 2018, and has been her supervisor for a little over a year as of the date of the hearing. He has a security clearance and is knowledgeable about the allegations in the SOR. He testified that Applicant is a person of integrity and trustworthiness, that she is one of his top performers, and that he continues to have confidence in her. He recommends her for a position of trust. (Applicant Exhibits C at 2 and P; Tr. 19-42.)

Additional letters of recommendation were submitted by two coworkers and Applicant's former manager. Each of them has known Applicant for about a year. All of them have knowledge of the allegations in this case. They all state that Applicant is trustworthy and believable. They find her to be a hard-working person of integrity and recommend her for a position of trust. (Applicant Exhibits C at 1, 3 and N.)

Applicant is viewed as an excellent performer by her employer in her most recent annual evaluation. She has repeatedly received recognition for her job performance. (Applicant Exhibit D.)

## **Policies**

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

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 national

security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

## **Analysis**

### **Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)**

The security concern relating to Drug Involvement and Substance Misuse is set forth 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (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;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant used marijuana at least 20 times between 2013 and 2022. She also purchased it from legal dispensaries in her state of residence. She used cocaine about ten times, mushrooms once, and ecstasy about five times between 2020 and 2022. She used marijuana, cocaine, mushrooms and ecstasy while she was employed in the defense industry and held a security clearance. In her 2022 e-QIP she indicated that continued use of drugs was her intention. All of the stated disqualifying conditions apply.

The following mitigating conditions under AG ¶ 26 have also been considered:

(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 drug use is considerably troubling because of the time period in which she was doing it. Specifically, her serious drug usage, which included cocaine and ecstasy in addition to hallucinogenic mushrooms and marijuana, occurred in the very recent past after she had held a security clearance for at least a year. It only ended because she was being submitted for a higher security clearance and was required to complete a new e-QIP. Her recent statements that she will not use drugs in the future, sincere though they appear to be, have to be weighed against the lack of time of total abstention. I have considered the fact that she has submitted a signed statement of intent. Viewing her drug use in the context of the whole person, Applicant has not mitigated the security significance of her past drug involvement. Paragraph 1 is found against Applicant.

## **Paragraph 2 (Guideline E – Personal Conduct)**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

- (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; 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.

Applicant intentionally submitted false material information about her drug use history on a Government personnel security questionnaire in 2018. She was subsequently granted a security clearance based, in whole or in part, on her false representations. She used illegal drugs including cocaine, marijuana, ecstasy and mushrooms, after being granted a security clearance in early 2019. She used them until 2022. Both of the disqualifying conditions have application in this case. The burden of proof shifts to Applicant to mitigate those concerns.

The following mitigating conditions under AG ¶ 17 are possibly applicable to Applicant's conduct:

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

Applicant did not come forward in a prompt manner to correct the falsehoods in her 2018 questionnaire. Rather, four years later, facing a new questionnaire, she decided to reveal her past drug use. Her drug use only stopped within a month or two of completing the questionnaire. Four years might seem enough time to show mitigation. However, one must also view the continuing drug use up to the point of completing the 2022 questionnaire. Subsequent to receiving the SOR Applicant has taken positive steps to overcome her drug-use issues. They are insufficient at this point in time. None of the mitigating conditions fully apply to the facts of this case under either subparagraph. Guideline E is found against Applicant.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has not mitigated her drug use and the falsification of her 2018 security clearance application. She has not minimized or eliminated the potential for pressure, coercion, or duress. Overall, the record evidence does create substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

### **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
Subparagraphs 1.a through 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 2.b:	Against Applicant

### **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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge