



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-00798

**Appearances**

For Government: Rhett Petcher, Esq., Department Counsel

For Applicant: *Pro se*

05/02/2025

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**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H, Drug Involvement and Substance Misuse. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SCA) on February 10, 2023. The Defense Counterintelligence & Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) on September 24, 2024, detailing security concerns under Guideline H. DCSA CAS 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.

Applicant timely 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 November 13, 2024, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 3. Applicant received the FORM on December 19, 2024. 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 February 28, 2025, and assigned to me on April 2, 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 admitted SOR ¶¶ 1.a and 1.b but denied the allegation in SOR ¶ 1.c. Applicant's admissions are accepted as findings of fact. (Item 1)

Applicant is 25 years old. He has been employed by a DOD contractor since May 2022 and is applying for a security clearance for the first time. His highest level of education is a bachelor's degree. He is single and has no children. (Item 2)

The SOR alleges under Guideline H that Applicant used marijuana (THC) with varying frequency from approximately February 2018 to about February 2022 (SOR ¶ 1.a: Item 2 at 37; Item 3 at 5, 10); he used lysergic acid diethylamide (LSD) once in approximately August 2023 (SOR ¶ 1.b: Item 3 at 6); and he used LSD while holding a sensitive position, *i.e.*, one which required a security clearance. (SOR ¶ 1.c)

Applicant listed his illegal marijuana use on his February 2023 SCA in response to Section 23 - Illegal Use of Drugs or Drug Activity. He used it about once or twice a month from February 2018 to February 2022. In response to a question about whether intends to use marijuana in the future, he responded:

I don't intend to use this drug in the future due to it being federally illegal and knowing that it could jeopardize my security clearance. (Item 2 at 37)

Applicant also listed on his SCA that he used psilocybin (hallucinogenic mushrooms) on one occasion in June 2021. He again mentioned that he does not intend to use psilocybin in the future because it is federally illegal and such use could jeopardize his security clearance. (Item 2 at 37-38) His use of psilocybin was not alleged in the SOR. As a result it will not be considered under the disqualifying conditions. It will be considered under matters of extenuation and mitigation.

On December 21, 2023, Applicant was interviewed in conjunction with his security clearance background investigation. He told the investigator that he began using marijuana in February 2017 to February 2018. His methods of use were by edibles or smoking marijuana. He did not feel dependent on the drug. He said he used psilocybin on two occasions either on October 2019 or November 2020. He also mentioned that he used LSD on one occasion in August 2023. He continues to associate with his friends with whom he used illegal drugs. (Item 3 at 10-12)

In response to DOHA Interrogatories dated, June 25, 2024, Applicant reviewed a summary of his December 2023 personal subject interview. He made corrections and verified after the corrections that the summary of the personal subject interview was accurate. He also listed his illegal drug use, which was consistent with the drug use he disclosed during his personal subject interview. (Item 3 at 4-5)

In his Response to the SOR, Applicant acknowledged that he used illegal substances in the past. He has made no attempts to hide his use. He admits using marijuana from February 2018 to February 2022 and LSD in August 2023. He denied using LSD while holding a sensitive position requiring a security clearance. He stopped using marijuana several months before he was hired by his employer in May 2022. He claims that when he used LSD in August 2023, he did not hold an interim security clearance; he had not signed any nondisclosure agreements (NDA) involving any program that has sensitive information; and he did not have access to sensitive information in August 2023. He states that he has refrained from any illegal drug use since August 2023. He has distanced himself from many of his former drug-using associates, and is willing to provide a signed statement of intent to abstain from all drug involvement and substance misuse. (Item 1)

I find for Applicant with respect to SOR ¶ 1.c because there is nothing in the file which indicates the status of Applicant's security clearance or access to sensitive information in August 2023.

## 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 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.

The record evidence shows Applicant occasionally used marijuana on a recreational basis from approximately February 2018 to February 2022. He used marijuana in a state where marijuana is legal. He is aware the use and possession of marijuana remains illegal under federal law. He also used LSD in August 2023. LSD is illegal under both state and federal law. AG ¶¶ 25(a), and 25(c) apply.

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.

More than three years have passed since Applicant's last use of marijuana. He intends to abstain from marijuana because it is not compatible with his employment with a DOD contractor and with possessing a security clearance. AG ¶¶ 26(a) and 26(b) apply with regard to Applicant's marijuana use. I find SOR ¶ 1.a for Applicant.

Applicant's use of LSD in August 2023 remains a security concern. Applicant chose to use LSD after becoming an employee of a DOD contractor. He used LSD after he completed his SCA in February 2023. He even indicated on his SCA that he was aware that marijuana use remained illegal under federal law and could jeopardize his security clearance. He should have been on notice that the use of any illegal drug could jeopardize his security clearance. Despite this knowledge, he illegally used LSD in August 2023. His conduct makes me question his judgment, trustworthiness, and reliability. Not enough time has passed to conclude Applicant's use of LSD is mitigated.

This decision should not be construed as a determination that Appellant cannot or will not attain the state of reform necessary for award of a security clearance in the future.

With more effort towards establishing a drug-free lifestyle, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

### **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 Guideline H 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 that Applicant has been an employee with a DOD contractor since May 2022. I considered he provided full disclosure about his illegal drug use on his February 2023 SCA, his background investigation interview and in response to interrogatories. I considered that he used marijuana in a state where marijuana use is legal. I considered that Applicant did not possess a security clearance during the time he used marijuana. I considered he stopped using marijuana more than three years ago and has no intention to use marijuana in the future. However, his decision to use LSD in August 2023, after submitting his SCA indicates he does not fully understand the responsibilities of working for a DOD contractor and the standards required to possess a security clearance. 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.

### **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:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	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