



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



In the matter of: )  
 )  
 ) ISCR Case No. 24-00666  
 )  
Applicant for Security Clearance )

## **Appearances**

For Government: John C. Lynch, Esq., Department Counsel  
For Applicant: *Pro se*

05/30/2025

## Decision

HALE, Charles C., Administrative Judge:

Applicant did not mitigate security concerns raised under Guidelines H (drug involvement and substance misuse) and E (personal conduct). Eligibility for access to classified information is denied.

## **Statement of the Case**

On June 6, 2024, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H and E. Applicant responded to the SOR on June 12, 2024, and requested a hearing before an administrative judge. The case was assigned to me on January 13, 2025.

The hearing was convened as scheduled on February 18, 2025. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. The Government's disclosure letter, dated July 31, 2024, and exhibit list were marked as Hearing Exhibits (HE) I and II, respectively. Applicant testified and offered Applicant Exhibits (AE) A-E. The record remained open until March 4, 2025, and he timely submitted AE F, which was

admitted without objection. The Defense Office of Hearings and Appeals (DOHA) received the transcript (Tr.) on February 28, 2025.

## **Findings of Fact**

Applicant is a 26-year-old employee of a defense contractor in cybersecurity. He has worked for his current employer since June 2023. He attended college from 2016 to 2018 but did not earn a degree. He started attending community college in 2018 and earned an associate degree. He is single and lives with his parents. He is seeking to enlist in the U.S. Air Force. (GE 1; Tr. 18-21, 30.)

Applicant fully disclosed his conduct on his security clearance application (SCA). (GE 1.) In Applicant's Answer to the SOR, he admitted the five Guideline H allegations. SOR ¶ 1.a alleged that he purchased and used cocaine with varying frequency from about June 2017 through January 2021. He detailed his cocaine use in his testimony. He tried cocaine in 2017 but did not use it with any regularity until 2021, when he needed an energy boost at work. He stated he last used cocaine in December 2022. (Answer; GE 1; Tr. 22-24, 69-72.)

SOR ¶¶ 1.b and 1.e alleged that Applicant purchased and used marijuana with varying frequency from about February 2015 through May 2022 and that in March 2018 he was charged with use or possession of drug paraphernalia and possession of cannabis/marijuana. He stated in his SCA that he paid a fine and had to complete a Narcotics Anonymous program as part of his plea agreement. Between 2016 through 2019, while he was living out of state for college, he used marijuana almost every day. He confirmed that May 2022 was the last time he used marijuana. He bought his marijuana in various places from multiple dealers. While his charges were pending, he stated he was "too scared" to use drugs. (GE 1; Tr. 22, 25-34, 69.)

SOR ¶ 1.c alleged that Applicant purchased and used LSD and hallucinogenic mushrooms with varying frequency from June 2017 until March 2018. He estimated he purchased the drugs about nine times. He listed he used LSD seven times and mushrooms twice for experimentation purposes. He bought the LSD and mushrooms from a "guy" he did not know in his home state and the rest at school from a fellow classmate who was running an operation out of his dorm. In his Government interrogatory response, he described the drugs as having positively changing his outlook on life. (GE 1; GE 2; Tr. 34-36.) He explained:

[I]n a sense, the bad experiences led me to see, to take -- to not take life for granted. To not be, it was just, it was very harrowing, so it was just, like I cherished life more and I took things more seriously and I kind of understood that I need to be more positive. If that makes sense. (Tr. 36.)

SOR ¶ 1.d alleged that Applicant purchased and used MDMA and the prescription medications Xanax, Percocet, codeine syrup, and morphine, none of which were prescribed to him. He stated he last used drug without a prescription in approximately

2017. He only used MDMA once, and he described MDMA as having the best effect on him. He used the drugs while living out of state for school and in his home state. He tried a codeine syrup, Lean, at a “hotel party with some random people.” Lean is a prescription drug which he mixed with Sprite. He also experimented with Percocet once or twice, which he bought from an acquaintance. He tried a weaker form of morphine called “morphone” once, which he stated was not a fun experience. He stole morphine from his father and used it. On his SCA, he explained that Xanax did not make him feel good at all. It made him feel like his actions had zero consequences and had “retarded” his logical thinking. He described that he kissed a girl while both were under the influence of the drug, which was a decision he would not have made but for being on Xanax. He described his use of MDMA and the prescription medications Xanax, Percocet, codeine syrup, and morphine as single uses for experimentation purposes. (GE 1; Tr. 22, 36-42.)

SOR ¶ 2.b cross-alleges the SOR ¶¶ 1.a through 1.e, which Applicant admits. The underlying facts were discussed above under Guideline H. I applied those facts discussed above to SOR ¶ 2.b. Applicant would buy his cocaine from a dealer by texting him. He described the process as, “I would just text him and say hey, can I buy some? And he would say yes, and then we would meet at, like, a parking lot. And then I would do the transaction there.” He would go to a house and various other places to buy his marijuana from different dealers. He could also get drugs from someone’s dorm room during the time he lived out of state for college. (Tr. 25, 68-70.)

Applicant admits SOR ¶ 2.a, that he was arrested and charged with public intoxication in about December 2021 in Virginia and pled guilty in February 2022. The record evidence indicates he contested the charge and was found guilty. He testified he had a few drinks at his place of employment off the clock. He was drinking with a patron who was buying him drinks. The patron got into an altercation with other members of the patron’s party who wanted the patron to leave. Applicant tried to stop them from fighting. When law enforcement arrived, Applicant stated he “pled the Fifth” and was arrested. He said the police officer testified that he smelled alcohol on Applicant. Applicant writes he “invoked [his] 5th amendment rights and was promptly arrested.” He was found guilty and sentenced to a \$25 fine and court costs. (GE 1, GE 3, GE 6; Tr. 49-56.)

Applicant listed two persons on his SCA with whom he had previously used drugs. Both individuals no longer use drugs. One is an active duty servicemember stationed in another state, and the other person works as a senior network engineer. Applicant’s life now revolves around preparing for his potential enlistment. During his free time, he plays online games. He testified he passed all his pre-employment drug tests and drug tests that were part of his enlistment package. (GE 1; GE 2; Tr. 22, 28-29, 65-67, 73-74.)

Applicant states in his SCA that he is a good person. In the Additional Comment section of his SCA, he notes that he had made mistakes in the past when he was young, and that he “can be much more of a boon to the United States by being a protector of secrets.” (GE 1.) He offered AE A – E to show that he was responsible by having a clean driving record (AE A); how he had bettered himself by earning a degree (AE B); that his cyber security certifications showed his seriousness about security (AE C); and his Armed

Services Vocational Aptitude Battery (ASVAB) score (AE D) demonstrated his intelligence. (Tr. 16-18.)

## 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.

Applicant admitted he purchased and used marijuana, cocaine, LSD, hallucinogenic mushrooms, MDA, and the unprescribed prescription medications, Xanax, Percocet, codeine syrup, and morphine. AG ¶¶ 25(a) and 25(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.

The evidence establishes that Applicant knew throughout the periods of time alleged that his use and purchases of marijuana were prohibited under Federal law. He continued to purchase and use marijuana until May 2022. He last used cocaine in December 2022. He experimented with LSD, hallucinogenic mushrooms, MDA, and the unprescribed prescription medications Xanax, Percocet, codeine syrup, and morphine. This behavior raises substantial questions about Applicant's judgment, reliability, and willingness to comply with laws, rules, and regulations. See ISCR Case No. 20-02974 (App. Bd. Feb. 1, 2022). Applicant's expressed intent not to use illegal drugs in the future does not mitigate the scope of these security concerns. Nor does the passage of a little over two years since he last used cocaine and marijuana. None of the mitigating conditions are applicable to his cocaine and marijuana use or his use and possession of marijuana conviction (SOR ¶¶ 1.a, 1.b, and 1.e).

The passage of time is significant from Applicant's period of experimentation, 2017-2018. He no longer resides or lives in the state where he principally experimented with the other drugs listed on the SOR and those remaining friends from that period have turned their own lives around. AG ¶ 26(a) and AG ¶ 26(b) are applicable to SOR ¶¶ 1.c and 1.d.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

- (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse

determination, but which, when combined with all available information, 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. This includes, but is not limited to, consideration of:

- (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or government protected information;
- (2) any disruptive, violent, or other inappropriate behavior;
- (3) a pattern of dishonesty or rule violations; and
- (4) evidence of significant misuse of Government or other employer's time or resources.

Applicant admitted the conduct. AG ¶ 16(d) is applicable to SOR ¶¶ 2.a and 2.b.

The following mitigating conditions under AG ¶ 17 are potentially applicable:

- (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;
- (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;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

None of the mitigating conditions are fully established for SOR ¶¶ 2.a or 2.b. Applicant has been candid throughout the security clearance process about his conduct. However, Applicant's prolonged drug use, even after being convicted, demonstrates his unreliability. He has taken some positive steps recently by living with his parents, and he has limited associations with persons from his past to alleviate the stressors, circumstances, or factors that contributed to his untrustworthy, unreliable, or other inappropriate behavior. Additionally, those primary individuals with whom he associated

appear to have also turned their own lives around. Given Applicant's long history of drug use and willingness to experiment with drugs, as well as his conviction and continued drug use thereafter, I am not fully satisfied of Applicant's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

### **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 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. Applicant was candid throughout the process. He was commended by the Government for disclosing information that was otherwise inaccessible unless he reported it on his SCA. (Tr. 28.) I considered his exhibits in my analysis and his thoughtful testimony and his strong desire to serve his country. I have incorporated my comments under Guideline H and Guideline E in my whole-person analysis.

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

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guidelines H and E.

### **Formal Findings**

I make the following formal findings on the allegations in the SOR:

Paragraph 1: Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.b, 1.e:	Against Applicant
Subparagraphs 1.c-1.d:	For Applicant

Paragraph 2: Guideline H: AGAINST APPLICANT

Subparagraphs 2.a-2.b: Against Applicant

**Conclusion**

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

Charles C. Hale  
Administrative Judge