



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



In the matter of:)
))
[Redacted])) ISCR Case No. 23-02402
))
Applicant for Security Clearance)

Appearances

For Government: Andrea M. Corrales, Esq., Department Counsel
For Applicant: Carl Anthony Marrone, Esq.

02/27/2025

Decision on Remand

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse) and E (Personal Conduct). Clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 30, 2023. On November 23, 2023, the Defense Counterintelligence and Security Agency (DCSA) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines H and E. The DCSA 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 the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on January 12, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 1, 2024, and the case was assigned to me on August 5, 2024. On August 22, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled

to be conducted by video teleconference on September 24, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified, presented the testimony of four witnesses, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I held the record open until October 7, 2024, to enable Applicant to submit additional documentary evidence. At her request, I extended the deadline until October 9, 2024. She timely submitted AX G, which was admitted without objection. DOHA received the transcript (Tr.) on October 3, 2024. The record closed on October 9, 2024.

On October 22, 2024, I denied Applicant's application for security clearance eligibility. She appealed the decision, contending that I failed to sufficiently analyze the Guideline H concerns and failed to properly apply the Guideline H and Guideline E mitigating conditions. On February 19, 2025, the Appeal Board remanded the case.

On February 25, 2025, Applicant filed a request to reopen the record "for the presentation of additional testimony and evidence to address the Appeal Board's identified errors listed in its order to remand the matter." Department Counsel objected to the request on the ground that adding new evidence would be beyond the scope of the remand. On February 26, 2025, I denied the request to reopen the record on the grounds stated by Department Counsel.

Findings of Fact

Under Guideline H, the SOR alleges that Applicant used marijuana with varying frequency from about September 2007 to about February 2023 (SOR ¶ 1.a); that she used cocaine with varying frequency from about June 2012 to about January 2023 (SOR ¶ 1.b); that she misused the prescription medication Adderall from about September 2007 to about March 2022 (SOR ¶ 1.c); that she purchased marijuana from about December 2011 to about November 2021 (SOR ¶ 1.d); and that she wrongfully sold her prescription medication Adderall between March 2021 and November 2021. Under Guideline E, SOR ¶ 2.a cross-alleged the conduct alleged under Guideline H.

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.e, with explanations. She denied the allegation in SOR ¶ 2.a. Her admissions are incorporated in my findings of fact.

Applicant is a 31-year-old help desk technician employed by a federal contractor since April 2023. She earned an associate degree in May 2017, and she enrolled in a bachelor's degree program in August 2022. (AX B). She has never married. She has a five-year-old daughter. She has never held a security clearance.

During the summer when Applicant was between the eighth grade and ninth grade, she had sexual intercourse with a boy who was a high school senior. She thought it was a serious relationship, until the boy shared his experience with his friends on social media. As a result, she became a target of social media messages, primarily from girls. After the abusive messages continued for two years, she transferred to another school. Before she transferred schools, she became friends with a group of girls who were marijuana users. She felt comfortable with this group and started using marijuana to help her cope with the

abusive social media. After Applicant changed schools, her school environment improved, but she continued to receive bullying on social media. By this time, her marijuana use became “more of a social thing.” (Tr. 18-24)

Applicant began taking Adderall at age 14. She had a prescription for “daily extended release” of Adderall for use as needed. (Tr. 38) She admitted that there were times when she ran out of Adderall but obtained it from family members who also had a prescription. At the time, she did not realize that using someone else’s prescription was illegal. (Tr. 39) She stopped taking Adderall when she found out that she was pregnant. (Tr. 40)

Applicant continued to use marijuana after graduating from high school. She either purchased it or received it from others. (Tr. 24) She stopped using marijuana when she was 25 years old because she learned she was pregnant. (Tr. 29) Her daughter was born in February 2019. (GX 1 at 30) She abstained from using marijuana for about two years after the birth of her daughter, because she was breast feeding and did not want her daughter to have “anything she did not need in her system.” (Tr. 31)

In December 2019, Applicant was assaulted by the father of her daughter after she confronted him about his alcohol use, and he grabbed her by the neck and threw her against a wall. She retreated into her daughter’s room, locked the door, and called 911. The police arrested him, and she obtained a protective order. (Tr. 32-33)

At some time in 2021, an acquaintance from high school contacted Applicant on social media and offered to buy Adderall from her. The acquaintance apparently remembered that Applicant used Adderall while they both were in high school. Applicant was working full time but decided that she could use some extra income. She sold it to her high school acquaintance “a few times” during two or three months. They never met face-to-face. Instead, the buyer sent money to Applicant via social media and Applicant would hide it somewhere outside her apartment. Applicant earned a “couple hundred bucks” from the sales. (Tr. 42-45)

In January 2023, Applicant was sexually assaulted after going out to dinner with a male friend. She believed that the friend put something in her drink. She reported the incident but does not believe any action was taken. (Tr. 35) In February 2023, Applicant was in a “really dark place,” and a female friend came to her home to comfort her. The friend offered her marijuana, and she accepted it. (Tr. 36-37) Another friend also visited her and offered her cocaine, and she accepted it. (Tr. 46-48)

Applicant testified that she has used cocaine three times. The first was when she was about 18 years old, when she was working at a restaurant and her friends at the restaurant offered it and she accepted it. The second time was when she was cohabiting with the father of her child and a friend of the father. The friend of the father had cocaine, and the friend shared it with Applicant. The third time was in February 2023, after the sexual assault in January 2023, when a friend offered it to her.

Applicant testified that she is determined to refrain from further drug involvement, based on several factors. She has started to attend church and read the Bible regularly.

She has received spiritual counseling through her church, and a church official attested to her candor, reliability, and unwavering commitment to personal growth. (AX F at 1) She is in a committed relationship with a kind and caring man, who encourages her and supports her. She has started working on physical fitness, which reduces her stress level. (Tr. 52-56)

Applicant testified that she no longer associates with drug users, except for her three younger siblings, who use marijuana. (GX 2 at 6) She was asked during the hearing how she would react if she was at a Thanksgiving dinner with her family and her siblings started using marijuana. Without hesitation, she stated, “I would leave. I would let my [facility security officer] know about it.” (Tr. 74)

Applicant was evaluated by a certified alcohol and drug counselor on April 23, 2024, and was diagnosed with mild cannabis use disorder in remission and mild alcohol use disorder in remission. The counselor made no diagnosis or prognosis regarding cocaine use. (AX A) Applicant underwent hair follicle tests on March 4 and August 29, 2024, and tested negative for cocaine, opioids, phencyclidine, amphetamines, and marijuana. (AX B)

In Applicant’s answer to the SOR and in response to DOHA interrogatories, she stated that she was willing to sign a statement of intent to refrain from use of illegal drugs and to acknowledge that any illegal drug use would result in revocation of any security clearance. She submitted a statement of intent, but her statement did not include a specific acknowledgment that any future illegal drug use is grounds for revocation of national security eligibility. (GX 2 at 8; Answer to SOR at 5)

One of Applicant’s coworkers, who has known her for about a year and is aware of the issues set out in the SOR, testified that Applicant is a driven, hardworking individual. She also is charismatic, sociable, and kind. The coworker believes that she is “one of the best techs on her floor” that other technicians rely on for advice and assistance. (Tr. 80)

Applicant’s stepmother, who has known Applicant since she was six years old, testified that she believes Applicant has “completely grown out of her troubled childhood and adolescence” and has become a “very responsible, trustworthy, and genuine member of society.” (Tr. 84-85)

Applicant’s coworker and current boyfriend has known her for almost two years. Based on his observations and close relationship with Applicant, he testified that “it’s completely just mind-blowing how many steps she’s taken to be just this mother, this girlfriend, and this person at work, who, in my opinion, just exemplified somebody of character.” (Tr. 94-95)

Another coworker, who has known Applicant for about a year and a half and is familiar with her past, testified that he was surprised when she told him about her past. He testified that she has demonstrated “nothing but optimism and trustworthiness.” (Tr. 98-99)

A friend who was introduced to Applicant seven years ago has seen a “marked change” in her life during the past two years. He states that he has seen “greater focus,

with much more concern about her career and the best choices for her daughter." (AX F at 4)

A friend of Applicant's family has known her since she was 18 months old. She recently visited Applicant and her five-year-old daughter, who has severe genetic physical limitations, and "marveled" at Applicant's devotion to her daughter. She describes Applicant as smart, hardworking, determined, and patriotic. (AX E at 3)

Applicant's work performance evaluation for 2023 rated her as "exceptional," based on her initiative in writing and setting policy for the service desk. (AX D) She received certificates of technical proficiency in April and August 2023. (AX E)

A fellow church member believes that Applicant has demonstrated responsibility, candor, reliability, trustworthiness, and dedication to self-improvement. (AX F at 1) Another church member describes her as honest, kind, mentally strong, capable, and stable. (AX F at 2) A lifelong friend who is familiar with Applicant's troubled years in high school was impressed with her ability to overcome her early years and develop into a devoted mother and a smart, determined, and patriotic person. (AX F at 3) Another coworker describes Applicant as "professional, determined, passionate, easy to get along with, and driven to be the best version of herself that she can be." (AX G)

Discussion

Guideline H, Drug Involvement and Substance Misuse

In my decision on the Guideline H allegations, I found that two disqualifying conditions were established:

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).

In evaluating the evidence in mitigation, I considered the following mitigating conditions:

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;

AG ¶ 26(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; and

AG ¶ 26(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.

I found that AG ¶ 26(a) was not established; AG ¶ 26(b)(1) was established; AG ¶ 26(b)(2) was not established; AG ¶ 26(b)(3) was not fully established; and AG ¶ 26(d) was not established.

The Appeal Board found that my analyses of AG ¶ 26(b)(1) and 26(b)(2) were conflicting and unclear. I gave credit to Applicant under AG ¶ 26(b)(1) for making new friends in her new job, which is a drug-free environment. However, I did not find that AG ¶ 26(b)(2) was established, because I was not convinced that she had severed her relationship with an older friend who is a member of the drug-using community and who had given her cocaine in February 2023.

The Appeal Board expressed concern about my description of Applicant's conduct as a "lifelong abuse of drugs," finding it "hyperbolic" and problematic in my consideration of the mitigating conditions. Upon consideration of the Appeal Board's concern, I agree that it may have been hyperbolic, but I disagree that it affected my analysis, which was based on a specific elaboration of Applicant's drug-use history.

The Appeal Board, while recognizing that piecemeal analysis of evidence is erroneous, concluded that I should have considered the differences between Applicant's state-compliant use of marijuana and her use of other illegal drugs. I disagree with this analysis for two reasons. First, her only use of marijuana after it was legalized was the single instance in February 2023, when she used both marijuana and cocaine. Secondly, and most importantly, Applicant, who was represented by an experienced attorney, did not assert that her February 2023 use of marijuana was legal, nor did she assert that its legalization had any impact on her drug use. If Applicant had asserted that her February 2023 use of marijuana was legal under state law, I would have considered that difference in my analysis.

On appeal, Applicant asserted that I failed to consider her evaluation by a certified alcohol and drug counselor on April 23, 2024, who diagnosed her with mild cannabis use disorder in remission, and reciting that she underwent hair follicle tests on March 4, and August 29, 2024, and tested negative for cocaine . . and marijuana. The Appeal Board agreed that this evidence did not satisfy AG ¶ 26(d), because it did not show that she completed a prescribed drug treatment program.

However, the Appeal Board commented that the evidence is more appropriately discussed under AG ¶ 26(b), stated that it was “significant evidence that should be discussed,” and cited ISCR Case No 05-03250 for the proposition that an administrative judge “cannot ignore, disregard, or fail to discuss significant record evidence that a reasonable person could be expected to be taken into account in reaching a fair and reasoned decision.” I did not “ignore, disregard, or fail to discuss” the evaluation by an alcohol and drug counselor. In my decision, I stated, “Although Applicant was evaluated by a drug and alcohol counselor in April 2024, she submitted no evidence of drug counseling from that counselor or any other medical professional. The drug and alcohol counselor made no diagnosis related to cocaine use and offered no prognosis.” I did not believe that the March 2024 hair follicle test warranted separate discussion, as it should have been considered by the drug and alcohol counselor in the April 2024 evaluation. The hair follicle test on August 29, 2024, was significant, but not so significant that it required separate discussion. I was convinced by the other evidence that she had abstained from drugs and alcohol up to the date of the hearing, but I was not convinced that she would not resume her drug involvement after the pressure of qualifying for a security clearance was removed.

The Appeal Board held that I erred by not holding that Applicant did not fully comply with AG ¶ 26(b)(3) because I did not give her full credit for her statement of intent to abstain from drug involvement and substance abuse. In her response to the SOR, she stated in three places, “I have provided a signed personal 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.” However, the statement attached to her SOR response omits the acknowledgment. Applicant was represented by an experienced attorney at the hearing, but she did nothing to correct this omission. Accordingly, I found that AG ¶ 26(b)(3) was not fully established. However, in my decision, I stated, “I am satisfied that she understands that any future involvement may result in revocation of any security clearance that she receives.” I gave her full credit for her statement of intent and full credit for acknowledging the result of future drug involvement or misuse. In other words, I gave her full credit for AG ¶ 26(b)(3).

Guideline E, Personal Conduct.

In my decision, I found that the following disqualifying condition was established:

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing.

In my mitigation analysis, I considered the following mitigating conditions:

AG ¶ 17(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

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

I concluded that AG ¶ 17(c) was not established for the reasons set out in my discussion of AG ¶ 26(a). I concluded that AG ¶ 17(e) was established, because Applicant disclosed her drug involvement to her current boyfriend and her employer. I concluded that this limited disclosure was sufficient to establish this mitigating condition. The Appeal Board concluded that I erred because I failed "to articulate why the information would be of interest to foreign intelligence operatives or how such actors would use it to pressure or coerce Applicant." I find this statement baffling. I gave Applicant full credit for establishing AG ¶ 17(e). If I had been concerned about this information being in the hands foreign intelligence operatives, I would have resolved AG ¶ 17(e) against her.

The establishment of some mitigating evidence does not compel a favorable security-clearance decision. ISCR Case No. 11-14784 (App. Bd. Jan. 17, 2014). While Applicant's candor with her family, her boyfriend, and her employer is a factor in her favor, it does not overcome the security concerns raised by her long history of illegal drug involvement. Hence, the reason for my conclusion that AG ¶ 17(c) was not established.

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have considered the *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* (December 2021), cited in the Appeal Board decision. I have incorporated my comments under Guidelines H and E in my whole-person analysis.

It is possible that one or two members of the Appeal Board may have disagreed with my determination that Applicant's conduct was not mitigated. However, the correct standard on appeal is not whether the Appeal Board would have come to the same decision. It is well-settled that the Appeal Board need not agree with my decision to find it sustainable. A party's disagreement with an administrative judge's weighing of the evidence, or an ability to argue for a different interpretation of the evidence, is not sufficient to demonstrate that an administrative judge weighed the evidence or reached conclusions in a manner that is arbitrary, capricious, or contrary to law." ISCR Case No. 03-11765 (App. Bd. Apr. 11, 2005).

"Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome this presumption.

After weighing the disqualifying and mitigating conditions under Guidelines H and E and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her drug involvement and personal conduct.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant

Paragraph 2, Guideline E: AGAINST APPLICANT

Subparagraph 2.a: 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.

LeRoy F. Foreman
Administrative Judge