



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



Appearances

For Government: Sakeena Farhath, Esq., Department Counsel,
For Applicant: *Pro se*

03/13/2025

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the personal conduct security concern but he did not mitigate the criminal conduct and drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 8, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline J (criminal conduct), Guideline H (drug involvement and substance misuse), and Guideline E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant submitted an undated response to the SOR (Answer) and requested a hearing before an administrative judge. The case was assigned to me on April 1, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice on April 5, 2024, scheduling the matter for a video conference hearing on May 1, 2024. I attempted to convene the hearing as scheduled but continued it due to Applicant's difficulties accessing the Microsoft Teams platform. DOHA issued another notice on May 17, 2024, rescheduling the matter for a video conference hearing on June 4, 2024. I convened the hearing as rescheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1-5. Applicant testified, did not call witnesses, and submitted documentation I marked collectively as Applicant's Exhibit (AE) A and admitted in evidence without objection. At Applicant's request, I kept the record open until June 18, 2024, to enable him the opportunity to submit additional documents. By that date, he submitted documents I marked collectively as AE B and admitted in evidence without objection. DOHA received the hearing transcripts on May 13, 2024 (Tr. 1) and June 14, 2024 (Tr. 2).

SOR Amendment

I granted Department Counsel's motion at the hearing to amend SOR ¶ 2.a, pursuant to ¶ E3.1.17 of the Directive, to conform to the evidence. SOR ¶ 2.a was amended to strike "about June 2021" and replace it with "at least February 2022." SOR ¶ 2.a now reads: "From about June 1993 to at least February 2022, you used marijuana with varying frequency, including while employed in a sensitive position at [name of employer]."

Findings of Fact

In his Answer, Applicant admitted SOR ¶¶ 1.a-1.e and 2.a-2.b and denied SOR ¶ 3.a. He is 44 years old. He married in April 2014, separated in August 2021, and divorced in August 2022. He has three children from his marriage, ages 17, 11, and 7, with whom he shares custody with his ex-spouse. He has been in a relationship since late 2023. He has lived in state A since Nov 2021, and he previously lived in state B. (Tr. 2 at 8, 15, 29-30, 36-37, 81-82, 85; GE 1-2; AE A)

Applicant obtained his high school diploma in 1997. He received his automotive certification in 2011 and attended some college between 2019 and 2020 but did not earn a degree. He was taking college courses as of the date of the hearing. He worked as an auto technician for various non-defense contractors between January 2012 and May 2013, with periods of unemployment from November 2012 to March 2013 and May 2013 to October 2013. He has since worked as a painter for his employer, a defense contractor. He previously held a security clearance from October 2002 to June 2006, when his clearance eligibility was revoked by DOD. As of the date of the hearing, he has held a security clearance since approximately December 2015. (Tr. 2 at 6, 8-9, 16, 30-31, 77-78, 84-86; GE 1; AE A)

Guideline J: Criminal Conduct

In June 2021, Applicant was arrested and charged with assault in the third degree, strangulation in the third degree, risk of injury to a minor, and unlawful restraint in the second degree. The arrest warrant application reflects Applicant and his then-spouse got into an argument while in bed and Applicant straddled his then-spouse, put both hands around her neck, yelled at her, dragged her off the bed, and threw her into a wall, which he denied at the hearing. He testified that he and his then-spouse got into a disagreement,

a “bit of a scuffle,” he held her on the bed by her shoulders, and he pushed her on the floor. He entered a pretrial diversion program consisting of 26 sessions of a therapy program for men, wherein they would discuss ways of avoiding similar situations in the future. Following his arrest, a protective order was issued and he moved out of their home. (SOR ¶ 1.a; Tr. 2 at 31-60, 82-84; GE 1-5)

In November 2021, Applicant was arrested for criminal violation of a protective order. He was upset at his then-spouse about arrangements for a mental health therapist for one of his children, and he sent her berating text messages in violation of the protective order. The protective order remained in place. (SOR ¶ 1.b; Tr. 2 at 31-60, 82-84; GE 1-5)

In January 2022, Applicant was arrested for criminal violation of a protective order in December 2021. He admitted he got into an argument with his then-spouse and her then-boyfriend, who was at her residence, in violation of the protective order. He pled guilty in February 2023 to misdemeanor disorderly conduct and was sentenced to 90 days in jail, suspended, and placed on one year probation. The protective order remained in place. He served four weeks in jail and successfully completed probation in February 2024. (SOR ¶¶ 1.c, 1.e)

In August 2022, Applicant was arrested for two counts of harassment in the second degree and two counts of criminal violation of a protective order. (SOR ¶ 1.d) He wrote his then-spouse a check for child support and alimony with “dirtbag” written under her name. (Tr. 46) He also sent her an email from a parenting application in which he addressed her as “dirtbag.” (Tr. 47) He maintained he did not knowingly refer to her as “dirtbag” on these occasions. He was convicted of violating the protective order and his then-spouse consequently obtained a 60-year protective order against him. As of the date of the hearing, the order remained active, he has not had any violations, and he intends to continue to comply with it. (Tr. 2 at 31-60, 82-84; GE 1-5)

All these incidents of domestic violence/abuse involved Applicant’s then-spouse and their turbulent relationship. He testified, “I just have nothing to do with her now.” (Tr. 49) He stated they communicate primarily through a parenting app. He has not had any arrests or police involvement since August 2022, and he completed the one-year probation ordered in his February 2023 conviction in February 2024. He has seen a therapist since 2019 to deal with life’s stressors in a more productive way, and he voluntarily attended a four-hour online anger management course in May 2024. (Answer; Tr. 2 at 31-62, 84-86; AE A-B; GE 1-5)

He stated in his Answer:

I have received intensive therapy, been to court mandated anger management. I’ve worked aggressively on behavior skills, and learned sufficient coping skills, as well as learned my triggers/buttons, and have worked and am continuing to work to create a more aligned belief system of core values.

Guideline H: Drug Involvement and Substance Misuse

Applicant used marijuana with varying frequency from approximately June 1993 to February 2022, including while employed in a sensitive position. He disclosed his marijuana use on his SCA, and he discussed it during his November 2022 and December 2022 background interviews. He marked "Yes" to the question in section 23 of his SCA that inquired whether he used marijuana while possessing a security clearance and noted he held a security clearance from October 2002 to June 2006. He also testified he has held a security clearance and access to classified information since 2015. As a clearance holder, he was aware at the time of his marijuana use, that marijuana is federally illegal, and he was prohibited from using illegal drugs. (SOR ¶ 2.a; Tr. 2 at 61-69, 78-79; GE 1, 5)

In February 2021, Applicant received a one-year medical marijuana certificate from state B. He purchased marijuana from state B medical marijuana dispensaries, and he used marijuana on occasion to help him sleep and cope with his anxiety and anger during his turbulent marriage. He has not renewed his medical marijuana card since its expiration in February 2022 and he does not have any future intentions of renewing it. He stated he has not purchased or used marijuana since February 2022. (Tr. 2 at 61-69; GE 1, 5; AE A)

Applicant also used psychedelic mushrooms in about December 2020 while employed in a sensitive position. (SOR ¶ 2.b; Tr. 69-71; GE 5) He discussed his use of psychedelic mushrooms during his December 2022 background interview when the interviewer confronted him about it. (Tr. 2 at 76-77; GE 5) He stated the psychedelic mushrooms were given to him by a friend. He used psychedelic mushrooms for the same reasons he used marijuana. He was also aware, at the time of his use, that psychedelic mushrooms were federally illegal, illegal in state B, where he lived at the time, and that he was prohibited from using them as a clearance holder. He stated he has not used psychedelic mushrooms since 2020. (Tr. 2 at 69-71; GE 5)

Applicant stated he is no longer in a turbulent relationship with ex-spouse, he has learned other ways to deal with life's stressors and his insomnia, such as exercising. He stated he does not intend to use illegal drugs in the future. He stated he does not associate with drug users. He also stated his employer has a policy prohibiting illegal drug use. He further stated he has never tested positive for illegal drugs, and he has never received drug-related counseling, treatment, or a diagnosis. In April 2024, he was randomly drug tested and he tested negative for marijuana. He signed a statement of intent in June 2024 to abstain from any federally illicit drug use, to include marijuana, and acknowledged that any future involvement or misuse is grounds for revocation of his security clearance eligibility. (Answer; Tr. 2 at 61-73, 79-81, 84-86; GE 5; AE A-B)

Guideline E: Personal Conduct

The SOR also alleged Applicant falsified his response to “**Section 23 – Illegal Use of Drugs or Drug Activity . . . In the last seven (7) years**, have you illegally used any drugs or controlled substances?” Although he answered “Yes” and disclosed his marijuana use from 1993 to 2021, as well as his use of cocaine from July 1999 to July 2009, the SOR alleged he deliberately failed to disclose his 2020 use of psychedelic mushrooms as set forth in SOR ¶ 2.b. (Tr. 2 at 73-; GE 1)

Applicant maintained his failure to list his 2020 use of psychedelic mushrooms on his SCA was unintentional. He stated he had forgotten about it when he completed his SCA. (Answer; Tr. 2 at 73-80; GE 1) He testified, “Well, it slipped my mind. I was under a great deal of stress. Trying to keep a job alive, trying to keep kids alive, trying to go to court all the time, things slipped my mind.” (Tr. 2 at 75) He acknowledged he should have taken more time to complete his SCA and to ensure he did not omit anything when he completed it. (Tr. 2 at 73-80)

When asked why he did not voluntarily disclose his 2020 use of psychedelic mushrooms to the investigator during his background interview, Applicant also stated he forgot about it. (Tr. 2 at 73-80; GE 5) He stated, “I don’t know. I must have forgotten it. Perhaps I didn’t want to, you know, involve – to lose my security clearance. . . .” (Tr. 2 at 76) He stated, “I don’t recall the exact reason, but I -- it could have been either one of them.” (Tr. 2 at 76-77) He reiterated he should have taken more time to complete his SCA to ensure he did not omit any relevant information. (Tr. 2 at 77-78)

Applicant provided letters of support from individuals attesting to his reliability, trustworthiness, judgment, and willingness to comply with rules and regulations. One such individual, who is Applicant’s supervisor, described him as an asset throughout the shipyard. (AE A-B)

Policies

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(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.”

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 Exec. Or. 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 Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern pertaining to criminal conduct as: “[c]riminal activity creates doubt about a person’s judgment, reliability, and trustworthiness. By its very nature, it calls into question a person’s ability or willingness to comply with laws, rules, and regulations.”

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. I considered the following disqualifying condition relevant:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual’s judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

As previously discussed, Applicant was arrested four times between June 2021 and August 2022 for criminal incidents involving his then-spouse. He was convicted in

August 2022 of protective order violation and in February 2023 of misdemeanor disorderly conduct. AG ¶¶ 31(a) and 31(b) are established.

AG ¶ 32 provides the following relevant mitigating conditions:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

All four criminal incidents involved Applicant's then-spouse and their turbulent relationship. He has not had any arrests or police involvement since August 2022, and he completed the one-year probation ordered in his February 2023 conviction in February 2024.

However, Applicant did not take responsibility at the hearing for his June 2021, arrest and charges. He denied the information contained in the arrest warrant application that he put both of his hands around his then-spouse's neck and threw her into a wall. In addition, because of his last protective order violation in August 2022, his then-spouse obtained a 60-year protective order against him. Although he has not had any violations, the order remained active as of the date of the hearing. I find that not enough time has elapsed since Applicant's criminal behavior and without recurrence of criminal activity, and the record evidence continues to cast doubt on his reliability, trustworthiness, and judgment. AG ¶¶ 32(a) and 32(d) are not established.

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 the following applicable conditions that could raise security concerns under AG ¶ 25:

- (a) any substance misuse . . . ;
- (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.

Applicant used marijuana with varying frequency from approximately 1993 to February 2022, to include while employed in a sensitive position. His use of marijuana from February 2021 to February 2022 occurred while he had a one-year medical marijuana certificate from state B. He also used psychedelic mushrooms in December 2020, while employed in a sensitive position. As a clearance holder, he was aware at the time of his use of marijuana and psychedelic mushrooms, that both substances are federally illegal, and he was prohibited from using illegal drugs. AG ¶¶ 25(a), 25(c), and 25(f) apply.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

- (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;
- (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; 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.

In addition, in October 2014, noting the recent decriminalization of marijuana use in several states and the District of Columbia, the Director of National Intelligence issued a memorandum titled, "Adherence to Federal Laws Prohibiting Marijuana Use." It reminded agency heads that such changes to state marijuana laws do not alter the

existing National Security Adjudicative Guidelines and asserting that an individual's disregard of federal marijuana law remains adjudicatively relevant in national security determinations.

Subsequently, on December 21, 2021, however, particularly in response to the increasing number of state and local governments legalizing or decriminalizing marijuana use, the Director of National Intelligence Security Executive Agent issued 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 (Clarifying Guidance). It instructs that "prior recreational marijuana use by an individual may be relevant to adjudications but not determinative," and reiterates the requirement that agencies utilize the Whole-Person Concept "to carefully weigh a number of variables in an individual's life to determine whether that individual's behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination."

Applicant has not used psychedelic mushrooms since 2020 or marijuana since 2022. He was candid about his use of psychedelic mushrooms at the hearing and after he was confronted about it by the background investigator. He was also candid about his use of marijuana while employed in a sensitive position on his SCA, during his background interviews, and at the hearing. He held a medical marijuana card during the period in which he used marijuana from February 2021 to February 2022, and he does not intend to renew it.

Applicant stated he does not have any future intent to use illegal drugs and he has disassociated from individuals who use illegal drugs. He also provided a signed statement of intent to abstain from all drug involvement and substance misuse and acknowledged that any future involvement or misuse is grounds for revocation of his security clearance eligibility. However, Applicant knowingly used marijuana and psychedelic mushrooms while employed in a sensitive position. He held a security clearance from October 2002 to June 2006 and since 2015, yet he used marijuana from 1993 to February 2022 and he also used psychedelic mushrooms in 2020. As a clearance holder, he was aware at the time of his use that both substances are federally illegal and he was prohibited from using illegal drugs. I find that AG ¶¶ 26(a), 26(b)(1), and 26(b)(3) are not established.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

- (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.

Applicant was credible in his testimony that he did not intentionally fail to disclose his 2020 use of psychedelic mushrooms on his SCA. He voluntarily disclosed his use of marijuana and cocaine on his SCA, and he credibly testified he forgot to list his use of psychedelic mushrooms. As such, AG ¶ 16(a) is not established for SOR ¶ 3.a and I find that allegation in Applicant's favor.

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 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. I have incorporated my comments under Guidelines J, H, and E in my whole-person analysis. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the personal conduct security concern but he did not mitigate the criminal conduct and drug involvement and substance misuse security concerns.

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 J: Subparagraphs 1.a - 1.e:	AGAINST APPLICANT Against Applicant
Paragraph 2, Guideline H: Subparagraphs 2.a - 2.b:	AGAINST APPLICANT Against Applicant
Paragraph 3, Guideline E: Subparagraph 3.a:	FOR APPLICANT For 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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge