



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



In the matter of:)
)
) ISCR Case No. 24-01153
)
Applicant for Security Clearance)

Appearances

For Government: Nicole A. Smith, Esq., Department Counsel
For Applicant: Samir Nakhleh, Esq.

03/31/2025

Revised Decision

HARVEY, Mark, Administrative Judge:

Security concerns arising under Guidelines H (drug involvement and substance misuse) and E (personal conduct) are not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

On November 2, 2023, Applicant completed and signed an Electronic Questionnaires for Investigations Processing (e-QIP) or security clearance application (SCA). (Government Exhibit (GE) 1) On August 23, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a statement of reasons (SOR) to Applicant. The SOR was issued under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry*, February 20, 1960; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive), January 2, 1992; and Security Executive Agent Directive 4, establishing in Appendix A the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AGs), effective June 8, 2017. (Hearing Exhibit (HE) 2)

The SOR detailed reasons why the DCSA did not find under the Directive that it is clearly consistent with the interests of national security to grant or continue a security

clearance for Applicant and recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked. Specifically, the SOR set forth security concerns arising under Guidelines H and E. (HE 2) On September 24, 2024, Applicant provided a response to the SOR and requested a hearing. (HE 3) On October 30, 2024, Department Counsel was ready to proceed.

On November 4, 2024, the case was assigned to me. On November 8, 2024, the Defense Office of Hearings and Appeals (DOHA) scheduled the case for hearing on December 9, 2024. (HE 1) The hearing was held as scheduled, using the Microsoft Teams video teleconference system. The Government provided two exhibits and Applicant provided five exhibits. (Tr. 12-15; GE 1-GE 2; Applicant Exhibits (AE) K-AE O) Applicant's exhibits AE A-AE J were provided as part of the SOR response. (Transcript (Tr.) 8-9) All exhibits were admitted into evidence. (Tr. 13, 15) On December 23, 2024, DOHA received the transcript of the hearing. There were no post-hearing exhibits. (Tr. 58)

The decision issued on March 26, 2025, in this case inadvertently contained information from another case. The decision issued on March 26, 2025, is rescinded and replaced with this decision.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

In Applicant's SOR response, he admitted the allegations in SOR ¶¶ 1.a and 2.b with clarifications. He also provided extenuating and mitigating information. His admissions are accepted as findings of fact. Additional findings follow.

Applicant is a 23-year-old part-time employee of a DOD contractor. (Tr. 16, 20-21) He is engaged to be married, and he does not have any children. (Tr. 16) In 2022, he received an associate degree. (Tr. 18; AE F) At the time of Applicant's hearing, he expected to receive a bachelor's degree in computer engineering on December 21, 2024. (Tr. 17-18) He has been on the dean's list at his university. (Tr. 20; AE D) He held an interim secret clearance from December of 2023 to around August of 2024. (Tr. 23) He had access to controlled unclassified information (CUI), and he did not have access to classified information. (Tr. 22-24) His resume provides additional information about his professional background. (AE E)

Drug Involvement and Substance Misuse

SOR ¶ 1.a alleges from about July 2023 to about January 2024, Applicant used mushrooms (psilocybin) on various occasions. He used mushrooms at his apartment with friends four times over this six-month period while working for the government contractor. (Tr. 24, 26) He used mushrooms because "My friends asked me if I wanted to do it and I said sure. It's college, I wanted to try something new and I wanted to have some fun with my friends just hanging out and that's what they asked. And I said sure." (Tr. 40)

In April 2023, he had a drug test before beginning his employment with the government contractor; however, the purpose of the government contractor's drug testing to Applicant was unclear. (Tr. 24-25, 38-39) He conceded he would "probably not" have been hired if he tested positive for an illegal drug. (Tr. 39) Applicant said:

But from my understanding, and from really the lack of what I was told it didn't really seem like it was too cared about. I didn't have, you know [a follow-up drug test] nothing like that. It seemed like it was more of, you know, if you cause a workplace accident, we're going to drug test you and things of that nature. (Tr. 25)

Applicant acknowledged that the government contractor would not want employees to use drugs while working; however, he said he was unsure "if they care about what [he did on his] own time." (Tr. 39)

Applicant denied that his employer provided any training or education about using illegal drugs being prohibited. (Tr. 25) He does not have any illegal drugs at his residence. (Tr. 27) He denied using any illegal drugs before July of 2023. (Tr. 38) He avoids people who might use illegal drugs and places where illegal drugs might be used. (Tr. 27-28) He provided a statement of his intention to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility. (Tr. 26; AE A) On September 17, 2024, he completed an online class on illegal drugs. (Tr. 27; AE B) After he completed his SCA, he did not believe using illegal drugs was a problem because he was not an addict, and he did not believe he would give in to an extortion attempt. (Tr. 43, 45)

On November 22, 2024, Applicant received a drug test, which was negative for illegal substances. (Tr. 26; AE K)

Personal Conduct

SOR ¶ 2.a alleges that Applicant's November 2, 2023 SCA asked in the last seven years have you illegally used any drugs or controlled substances? Applicant answered, "No," to this question, and he did not disclose his involvement with mushrooms (psilocybin) around July 2023.

Applicant admitted that his answer on his November 2, 2023 SCA was incorrect. (Tr. 29-30) For his omission on his SCA, he said:

For the e-QIP I had only used once before that and that was in the summer. I had just genuinely forgotten about it. And you only do something once how many times does that happen that you just forget. It wasn't anything crazy, it was just me and a few friends. You know, we hangout all the time so I just forgot about the instance.

* * *

No, I did not deliberately do it. I forgot. I didn't mean, if I would have remembered I would have answered yes to it. But I had forgotten to do it. I have forgotten about the instance and didn't answer it correctly. (Tr. 31-32)

He said he had a "terrible memory," and he forgets things. (Tr. 41)

On February 5, 2024, an Office of Personnel Management (OPM) investigator interviewed Applicant about his history of illegal drug use. (Tr. 30; GE 2) The OPM report states, "Subject was asked if in the last seven years did subject use illegal drugs. Subject responded, no." On February 6, 2024, Applicant sent a text to the OPM investigator indicating he wanted to disclose additional information. (Tr. 30; AE C) On February 6, 2024, he admitted that he used mushrooms once or twice over the summer. (GE 2) He said he omitted his mushroom use because he was nervous, and he forgot about using mushrooms. (Tr. 32, 46; GE 2)

Applicant concluded his hearing stating:

I realized I made a mistake. I'm not proud of it, I'm not happy about it. I'm not here to lie anymore. I think that's been pretty obvious today. I feel like I've been pretty truthful on my end on what's happened.

I made the mistake, I rectified the mistake, I've moved on. That's not who I am anymore. And I've been really fighting this entire time to prove that that person that made those mistakes isn't me. You know, I'm trying to be, I'm doing my best to be better.

Obviously there are mistakes that I still make in my daily life. Not with drugs. I'm never going to do that again. I know that was a mistake and I'm never going to be doing that again.

I also realize I need to ask for help when things like this happen. You know, I don't understand a question on a questionnaire or I don't understand something about reporting I need to ask that question. And I need to find the appropriate person to ask the question to.

I have learned from my mistakes I am not that same person. And that's all I want to really get across is I can be trusted. I'm not going to be doing anything to put secrets of this country at risk. (Tr. 48-49)

Character Statements

Applicant's fiancée, high school wrestling coach, roommate, supervisor, and friends provided character statements and a performance evaluation. (Tr. 35-37; AE G; AE H; AE I; AE L; AE O) The general sense of their statements is that Applicant is responsible, diligent, loyal, conscientious, helpful, dedicated, mature, and passionate.

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information.” *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicant’s eligibility for access to classified information “only upon a finding that it is clearly consistent with the national interest to do so.” Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. 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 about potential, rather than actual, risk of compromise of classified information. Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See Exec. Or. 10865 § 7. Thus, nothing in this decision should be construed to suggest that it is based, in whole or in part, on any express or implied determination about applicant’s allegiance, loyalty, or patriotism. It is merely an indication the applicant has not met the strict guidelines the President, Secretary of Defense, and Director of National Intelligence have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan*, 484 U.S. at 531. “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. See ISCR Case No. 95-0611 at 2 (App. Bd. May 2, 1996).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the

facts. Directive ¶ E3.1.15. An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his [or her] security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). The burden of disproving a mitigating condition never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; see AG ¶ 2(b).

Analysis

Drug Involvement and Substance Misuse

AG ¶ 24 provides the security concern arising from drug involvement and substance misuse stating:

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.

AG ¶ 25 provides conditions that could raise a security concern and may be disqualifying 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.

From about July 2023 to about January 2024, Applicant used mushrooms (psilocybin) four times at his apartment with friends. AG ¶¶ 25(a) and 25(c) are established. Additional discussion of the disqualifying conditions is in the mitigation section, *infra*.

AG ¶ 26 lists four conditions that could mitigate security concerns:

- (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; (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;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(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.

In ISCR Case No. 10-04641 at 4 (App. Bd. Sept. 24, 2013), the DOHA Appeal Board concisely explained Applicant's responsibility for proving the applicability of mitigating conditions as follows:

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. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991). After the Government presents evidence raising security concerns, the burden shifts to the applicant to rebut or mitigate those concerns. See Directive ¶ E3.1.15. The standard applicable in security clearance decisions is that articulated in *Egan, supra*. "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the national security." Directive, Enclosure 2, [App. A] ¶ 2(b).

Possession of Schedules I, II, and III controlled substances is a federal criminal offense (Schedule III substances may be possessed with a lawful prescription). Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. § 812(c). Psilocybin is a Schedule I controlled substance.

Applicant knowingly possessed and used mushrooms or psilocybin four times from about July 2023 to about January 2024. He said he refrained from illegal drug use after January 2024. He expressed his intention not to use illegal drugs in the future. He avoids people that use illegal drugs and places where illegal drugs are used.

None of the mitigating conditions fully apply. Applicant falsified his November 2, 2023 SCA, which is damaging to his credibility and shows a lack of rehabilitation. Applicant might decide to use illegal drugs in the future. I am not convinced Applicant's psilocybin use "happened under such circumstances that it is unlikely to recur [and] does not cast doubt on his current reliability, trustworthiness, [and] good judgment." A concern remains that he will use psilocybin in the future. More time without illegal drug use is necessary to fully mitigate Guideline H security concerns.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern stating:

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 provides one personal conduct condition that could raise a security concern and may be disqualifying in relation to his provision of inaccurate information on his SCA:

(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 denied that he possessed and used illegal drugs on his November 2, 2023 SCA. He knowingly possessed and used mushrooms or psilocybin around July 2023. Applicant said he did not deliberately and intentionally provide false information in his SCA because he forgot that he used mushrooms or psilocybin.

"Applicant's statements about his intent and state of mind when he executed his Security Clearance Application were relevant evidence, but they [are] not binding on the Administrative Judge." ISCR Case No. 04-09488 at 2 (App. Bd. Nov. 29, 2006) (citation omitted). In ADP Case No. 17-03932 at 3 (App. Bd. Feb. 14, 2019), the Appeal Board recognized the importance of circumstantial evidence of intent in falsification cases:

When evaluating the deliberate nature of an alleged falsification, a Judge should consider the applicant's *mens rea* in light of the entirety of the record evidence. See, e.g., ADP Case No. 15-07979 at 5 (App. Bd. May 30, 2017). As a practical matter, a finding regarding an applicant's intent or state of mind may not always be based on an applicant's statements, but rather may rely on circumstantial evidence. *Id.*

AG 16(a) is established. I do not believe Applicant forgot about using psilocybin or mushrooms before he completed his SCA. He deliberately and intentionally provided false information on his SCA.

AG ¶ 17 lists the conditions that could mitigate personal conduct security concerns:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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

(f) the information was unsubstantiated or from a source of questionable reliability.

None of the mitigating conditions fully apply. Applicant was not honest when he said in his SCA that he had not possessed or used illegal drugs in the previous seven years. His subsequent false denial of his drug involvement during his OPM interview on February 5, 2024, was mitigated when he disclosed his involvement with psilocybin or mushrooms on February 6, 2024. Applicant's ultimate disclosure of his illegal drug possession and use to the OPM investigator and at his hearing is praiseworthy; however, his false claim at his hearing that he forgot he used mushrooms at the time he completed his SCA undermines this mitigation. Personal conduct security concerns are not mitigated.

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 the 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), “[t]he ultimate determination” of whether to grant a security clearance “must be an overall commonsense judgment based upon careful consideration of the guidelines” and the whole-person concept. My comments under Guideline H are incorporated in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline but some warrant additional comment.

Applicant is a 23-year-old part-time employee of a DOD contractor. In 2022, he received an associate degree. At his hearing, he said he expects to receive a bachelor’s degree in computer engineering on December 21, 2024. He has been on the dean’s list at his university. He held an interim secret clearance from December of 2023 to around August of 2024. He admitted his possession and use of psilocybin or mushrooms during his February 6, 2024 OPM interview and at his hearing. He promised not to use illegal drugs in the future.

The evidence against reinstatement of Applicant’s security clearance is more persuasive. Applicant knowingly possessed and used mushrooms or psilocybin four times from about July 2023 to about January 2024. He lied about his history of drug involvement on his November 2, 2023 SCA and again during his February 5, 2024 OPM interview. His decisions to repeatedly possess and use mushrooms or psilocybin, which is illegal under federal law, and then lie about his illegal drug use, are indications he lacks the qualities expected of those with access to national secrets.

It is well settled that once a concern arises regarding an applicant’s security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont*, 913 F. 2d at 1401. “[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant’s eligibility for access to classified information.” ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

I have carefully applied the law, as set forth in *Egan*, Exec. Or. 10865, the Directive, the AGs, and the Appeal Board’s jurisprudence to the facts and circumstances in the context of the whole person. Applicant failed to mitigate drug involvement and substance misuse and personal conduct security concerns.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual’s eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under his current circumstances, a clearance is not warranted. In the future, he may well demonstrate persuasive evidence of his security worthiness.

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: Against Applicant

Paragraph 2, Guideline E: **AGAINST APPLICANT**

Subparagraph 2.a: Against Applicant

Conclusion

Considering all of the circumstances presented by the record in this case, 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.

Mark Harvey
Administrative Judge