



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



## **Appearances**

For Government: Nicholas Temple, Esq., Department Counsel,  
For Applicant: *Pro se*

03/21/2025

## Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse security concern. Eligibility for access to classified information is denied.

## **Statement of the Case**

On September 14, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). 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 a response to the SOR (Answer) on October 1, 2023, and she requested a hearing before an administrative judge. The case was assigned to me on May 3, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice on July 30, 2024, scheduling the matter for a hearing on September 4, 2024. I convened the hearing as scheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1-5. Applicant testified, did not call any witnesses, and submitted documentation I marked as Applicant Exhibit (AE) A and admitted in evidence without objection. At Applicant's request, I kept the record open until September 18, 2024, to allow Applicant the opportunity to submit additional documentation. She timely submitted additional documentation that I marked as AE B and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on September 13, 2024.

### **Findings of Fact**

Applicant admitted both SOR allegations in her Answer. She is 42 years old. She has never married and she does not have children. She has owned her home in state A since September 2022. (Tr. 7, 29, 49; GE 1-3)

Applicant graduated from high school in 2001. She earned an associate degree in 2001 and a bachelor's degree in 2006. She has worked for her employer, a DOD contractor, since April 2006. She worked in state A from April 2006 to September 2017, and then she worked in state B from September 2017 to April 2022, when she returned to state A. As of the date of the hearing, she was a manager of contracts and pricing. She has held a security clearance since 2006. She was denied a security clearance by another U.S. Government agency in 2022, due to her use of illegal drugs while holding a security clearance, as further discussed below. (Tr. 5, 7-9, 29-30, 32-35, 45-46; GE 1-5; AE A)

Applicant used marijuana, with varying frequency, from about June 2014 until at least January 2022, while holding a security clearance. She also used cocaine on three occasions from about November 2020 until at least November 2021, while holding a security clearance. She disclosed this information on her September 2014, March 2022, and January 2023 security clearance applications (SCAs) and during her October 2014 background interview. (SOR ¶¶ 1.a-1.b) Tr. 15-18, 27-28, 33; GE 1-3, 5)

Applicant first used marijuana in June 2014. She experimented with it while at a music festival with close friends. She had a security clearance at the time. She stated in her September 2014 SCA that she had no intention of using marijuana again in the future. (Tr. 15-17, 30, 36-37, 43, 47, 55-56; GE 3, 5)

Applicant used marijuana approximately 12 times from November 2017 to January 2022. She also used cocaine three times between November 2020 and November 2021. She held a security clearance during this period when she used marijuana and cocaine. She lived in state B at the time and she used both drugs recreationally, in social settings. She attributed her use of marijuana to "social settings, new people, recent relaxation and decriminalization of that at the state level in [state B]." (Tr. 38) She acknowledged she knew then that marijuana was federally illegal. She used marijuana in "extremely small amounts, maybe a part of a gummie, maybe a drop of a tincture for experimental purposes only, and for recreational use only, for a feeling of relaxation." (Tr. 31) She experimented with cocaine with "people that I knew for a long period of time, and I felt I was in a trustworthy, safe environment, and my decision at the time to ingest that small amount

during those three instances again was for experimentation purposes . . . ." (Tr. 32) She also knew then that cocaine is an illegal drug. She stated in her March 2022 SCA she did not like the effects of cocaine and she did not intend to use it in the future. Although she stated in her March 2022 SCA she might use marijuana again in the future, she stated in her January 2023 SCA and maintained at the hearing that she had no intention of using either substance again. (Tr. 30-32, 37-42, 45-47, 49-60; GE 1-2, 4)

Applicant attributed her use of marijuana and cocaine from 2017 to 2022 to experimentation. (Tr. 30, 40, 42-49) She stated:

During that time, that was the first time I had truly lived away from where I was born, and bred, and grew up. With the exception of the one instance . . . of a single marijuana usage . . . [in 2014], I had not experimented with drugs. I did not have that time in my 20s let's say where that was something that I did. In college I played tennis. I was on the collegiate tennis team, and that just left no time to be able to do anything else, and I was very active in the community, and it was just not something that was a part of my life." (Tr. 30)

Applicant acknowledged she had an active security clearance when she used marijuana and cocaine. She understood, as a clearance holder, that she was prohibited from illegal drug use but she did not think about her clearance when she used illegal drugs. Having gone through this process, she stated that her clearance is at the forefront of her mind and she did not intend to do anything to jeopardize it. Despite her admissions in her Answer, she maintained she was not actually utilizing her clearance in any way during the period in which she used illegal drugs. (Tr. 15-16, 30, 32-33, 35-36, 38, 57-61; GE 2; AE B) She stated:

I was not utilizing my clearance. I did not have access to classified information. I have never had badge access or code access to any SCIF or classified room, or safe, or have never had a network access to a computer. Anything that I've ever had a need to know is just basic information for contacts of a particular contract transaction. I did not have access to any of that information, nor did I support any classified contracts during the time of usage. However, I recognize that I held a clearance during that time frame, and that is a grave misgiving on my part and I recognize that responsibility. (Tr. 30-31)

Applicant expressed remorse for her past illegal drug use while holding a security clearance. (Tr. 27, 32-33) Since moving back to state A in April 2022, she has taken on significant responsibilities at her job and as the primary caretaker of her elderly parents. (Tr. 42-49) She stated she has not used illegal drugs since January 2022 and she has disassociated from the people with whom she previously used illegal drugs. (Tr. 15-17, 31-32, 42-48, 60-62; AE B) Other than pre-employment drug testing in 2006, she has not been drug tested by her employer but believed her employer had a drug testing policy. (Tr. 57-58) On September 3, 2024, she provided a statement of intent to "not illegally use

drugs in the future and agree to an automatic revocation of clearance for any violation.” (AE B)

Applicant was rated favorably by her employer in her performance evaluations from 2017 to 2023. She stated her parents are aware of her illegal drug use. She provided letters of support from three close friends, two of whom have also been her colleagues for over 10 years. One friend-colleague was aware of her past use of illegal substances while living in state B and that she currently possesses a clearance. Another friend, who was also aware of her illegal drug use while living in state B, attributed her use to social circumstances and acclimating to an unfamiliar environment. All individuals attested to her reliability, trustworthiness, and judgment. (Tr. 15-16, 28-29, 32, 61; 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 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 2014 to 2022 and she used cocaine three times from 2020 to 2021. Her use of marijuana and cocaine during this period occurred while she had a security clearance, but she did not have access to classified information. AG ¶ 25(f) does not apply but AG ¶¶ 25(a) and 25(c) 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;
- (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.

Conduct falling under AG ¶ 25(f) reflects a heightened security concern inasmuch as individuals who have already been granted access to classified information or who hold sensitive positions are held to a higher standard than individuals not similarly situated because of the existing potential to adversely impact national security. See ISCR Case No. 23-01884 (App. Bd. Nov. 6, 2024), citing Security Executive Agent Directive 3, *Reporting Requirements for Personnel with Access to Classified Information or Who Hold a Sensitive Position* (effective June 12, 2017); ISCR Case No. 22-01661 at 3 (App. Bd. Sep. 21, 2023).

Applicant self-reported information about her illegal drug use while possessing a security clearance on her SCA's and during her background interview, and she has been candid and remorseful about her conduct since she made those disclosures. She disassociated from the individuals with whom she used the illegal drugs and she signed a statement of intent in September 2024 to abstain from illegal drug use in the future. AG ¶¶ 26(b)(1), 26(b)(2), and 26(b)(3) apply.

However, Applicant demonstrated a serious lack of judgment, reliability, and trustworthiness when she knowingly used cocaine and marijuana, both federally illegal drugs, while holding a security clearance. She knew that illegal drug use was incompatible with holding a clearance. While she described her use of these drugs as experimental, she used cocaine three times in one year and she used marijuana 12 times over the course of eight years. Only three years have passed since her last use of illegal drugs. Her drug involvement continues to cast doubt on her current reliability, trustworthiness, and judgment. She has not yet established a pattern of abstinence at this time. Her cocaine and marijuana use while holding a clearance did not happen so long ago, was not so infrequent, and did not happen under such circumstances that are unlikely to recur. Her drug involvement continues to cast doubt on her current reliability, trustworthiness, and judgment. More time is necessary to establish her future abstinence from illegal drug use. AG ¶ 26(a) does not apply and AG ¶ 26(b) does not fully apply.

## **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 Guideline H in my whole-person analysis. I considered information about Applicant's whole person and I assessed her demeanor at the hearing. 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 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 H:

AGAINST APPLICANT

Subparagraphs 1.a-1.b:

Against 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.

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Candace Le'i Garcia  
Administrative Judge