



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



In the matter of:

Appearances

For Government: Alison O'Connell, Esq., Department Counsel
For Applicant: *Pro se*

08/18/2025

Decision

BLAZEWICK, Robert B., Chief Administrative Judge:

Applicant mitigated the security concerns under Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is granted.

Statement of the Case

On October 11, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. Applicant responded to the SOR on January 8, 2025 (Answer) and requested a decision on the written record in lieu of a hearing. The Government's written case was submitted on January 21, 2025. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on February 17, 2025, and he did not respond. The case was assigned on May 30, 2025. The Government's exhibits included in the FORM are admitted in evidence without objection.

Findings of Fact

The SOR alleges that Applicant used cocaine approximately ten times from January 2020 to July 2023 (SOR ¶ 1.a); that he used hallucinogenic mushrooms approximately three times from March 2018 to March 2023 (SOR ¶ 1.b); that he used marijuana with varying frequency from October 2017 to December 2023 (SOR ¶ 1.c); that he used stimulants with varying frequency from January 2018 to December 2023 (SOR ¶ 1.d); that he used depressants in December 2017 (SOR ¶ 1.e); that he used Adderall without a prescription from August 2018 to May 2023; and that he used Xanax without a prescription in December 2017. In his answer, Applicant admitted all allegations, noting for the stimulants and depressants allegations (SOR ¶¶ 1.d and 1.e), "This only includes substances listed."

Applicant is 25 years old. He has never married and does not have children. He earned a bachelor's degree in May 2023. He has been employed with a defense contractor since December 2023. He has never held a security clearance. (Item 3)

Applicant first used cocaine in college at age 20. He stopped two months after graduating. He described the frequency as a "handful of times ever," estimating ten uses. He stated on his security clearance application (SCA) that he does not intend to use this drug in the future because "I prefer to be clear headed." In an April 2024 interview with a government investigator (SI), he stated that his use was experimental, and he did not use it with anyone he was close to. (Items 3, 4)

Applicant's first use of hallucinogenic mushrooms was at the end of high school at age 18. He stopped two months before graduating college. He stated he used them three times in total, and stated on his SCA that he does not intend to use this drug in the future because "I do not enjoy putting myself in an alternate reality." In his SI, he described his use as experimental. His best friend, W, was present with him when he used, but W did not use hallucinogenic mushrooms himself. Another friend from high school was present for the first use, but Applicant is no longer in contact with that friend. (Items 3, 4)

Applicant's first use of marijuana was in high school at about age 18. He did not stop until he started working at his current employer, one month prior to completing the SCA. He stated on his SCA that he used marijuana recreationally, multiple times per week initially, then after a few years his use lessened to once a week. He stated that he does not intend to use this drug in the future "as it does not put me in a productive state of mind." In his SI, he said that he would go a few months without using marijuana and then consume it for a few months. He stated that when he used it, it would be once a day, a couple times a week. He would use it with W. During high school, Applicant would purchase it from another high school student, but once it was legalized in his state, he purchased it from dispensaries. He reaffirmed that he no longer uses marijuana. (Items 3, 4)

Applicant reported using stimulants on his SCA starting in high school at the age of 18. He did not stop until he started working at his current employer, one month prior to completing the SCA. He stated that he took stimulants frequently during college but that he would not use this drug in the future "since it is not healthy to be taking on a daily basis." Applicant also separately reported using Adderall, a stimulant, without a prescription during college to help him focus. In his SI, he stated he used Adderall frequently in college to help him focus, but that he no longer uses it and does not have contact with the person he purchased it from. (Items 3, 4)

In his SI, Applicant discussed cocaine and Adderall when asked about his stimulant use. There is no evidence he used additional types of stimulants, and the absence of that evidence is supported by his Answer, where he specifies that his use of stimulants "only includes substances listed." Although there is a slight variation in the reported dates for stimulant use and Adderall use, I conclude that Applicant double-reported his Adderall use on the SCA, and SOR ¶¶ 1.d and 1.f are duplicative. (Items 3, 4)

Applicant reported one use of depressants when he was in high school at the age of 18. He stated on his SCA that he did not intent to use this drug in the future "because it is bad to risk that being implemented into your lifestyle." Applicant also separately reported using Xanax, a depressant, without a prescription one time in December 2017. In his SI, he described this use as experimental. He obtained it from an old classmate and used it by himself. (Items 3, 4)

In his SI, Applicant only discussed Xanax when asked about his depressant use. There is no evidence he used additional types of depressants, and the absence of that evidence is supported by his Answer, where he specifies that his use of depressants "only includes substances listed." The reported date of use for depressants and Xanax is the same, therefore I conclude that Applicant double-reported his Xanax use on the SCA, and SOR ¶¶ 1.e and 1.g are duplicative. (Items 3, 4)

Applicant still socializes with W, but W does not use illegal drugs anymore. Applicant did not provide a signed statement of intent. (Item 4)

Policies

This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

"[N]o 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 applicants 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 § 2.

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, an administrative judge applies these guidelines 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 and 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 that 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 made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense 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. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

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 burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The concern under this guideline 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.

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition); and

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The following mitigating conditions are potentially applicable:

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.

Applicant's use of marijuana and Adderall was frequent and the most recent use of drugs. The key issue is whether it is mitigated by the passage of time. The first prong of AG ¶ 26(a) (happened so long ago) focuses on whether the drug involvement was recent. There are no bright-line rules for determining when conduct is recent. If the evidence shows that a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant's last marijuana and Adderall use was in December 2023¹, less than two years ago, the same month he began working as a defense contractor. However, given his candor in reporting all of his drug use, his youth, the circumstances of the use (primarily while in college), and his change in status from college student to working adult, I find that sufficient time has passed since last use of both substances that his use of marijuana and Adderall does not cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) applies to the marijuana and Adderall use.

Applicant was forthcoming with his marijuana and Adderall use. He has established a sufficient pattern of abstinence and is no longer in high school or college where drugs were used. Although he still associates with a friend with whom he used drugs in the past, that friend no longer uses drugs. AG ¶ 26(b) is established for the marijuana and Adderall use.

Applicant's use of cocaine, hallucinogenic mushrooms, and Xanax were all infrequent use, before and during college, and ceased over two years ago. Given his youth and change in status from college student to working adult, I find that sufficient time has passed such that those uses do not cast doubt on Applicant's current reliability, trustworthiness, or good judgment. Furthermore, he has acknowledged his use of the drugs, established a pattern of abstinence, and is no longer in high school or college where drugs were used. Although he still associates with a friend with whom he used drugs in the past, that friend no longer uses drugs. AG ¶¶ 26(a) and 26(b) are both established for the cocaine, hallucinogenic mushrooms, and Xanax use.

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

¹ Applicant reported a last use date of December 2023 for stimulants and a last use date of May 2023 for Adderall. Given my previous finding that these allegations were duplicative, I am using the later date of reported use in order to account for the fullest extent of the use.

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 incorporated my comments under Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised under Guideline H, drug involvement and substance misuse.

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:

FOR APPLICANT

Subparagraphs 1.a-1.g:

For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is granted.

Robert B. Blazewick
Chief Administrative Judge