



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



Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

04/30/2025

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse), Guideline J (Criminal Involvement), Guideline E (Personal Conduct) and Guideline F (Financial Considerations). The Guideline E concerns were mitigated, but the remaining security concerns were not. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted security clearance applications (SCA) on August 2, 2016, and on April 3, 2024. On October 8, 2024, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H, J, E, and F. The DoD acted 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) promulgated in Security Executive Agent Directive 4, National Security Adjudicative Guidelines (June 8, 2017).

Applicant answered the SOR on November 5, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on January 29, 2025. On January 31, 2025, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He acknowledged receipt of the FORM on February 6, 2025, and provided a Response. The case was assigned to me on April 2, 2025.

The SOR, Answer, and Response are the pleadings in the case. FORM Items 2 through 7 are admitted into evidence without objection.

Findings of Fact

Applicant is 39 years old. He earned his bachelor's degree in 2008 and a doctorate in 2020. He divorced in 2018. He admits all the SOR allegations with an explanation, with the exception of SOR ¶ 3.b, which he denied. (Item 2; Item 3.)

SOR ¶¶ 1.a-1.c, 2.a, and 3.a: The SOR alleged under Guideline H that Applicant used marijuana with varying frequency from about November 2003 to about November 2023, which was cross alleged under Guidelines J and E; used psilocybin mushrooms with varying frequency from about September 2020 to about November 2023; and was arrested in about December 2021 and charged with Dangerous Drug-Possession/Use and Drug Paraphernalia Violation. In his Answer, Applicant admits these allegations with an explanation.

Applicant's response cited several reasons for his marijuana use from November 2003 to November 2023. First, as a competitive athlete he was training five days a week in "combat sports" and he had to train through the pain and needed help dealing with the injury pain and to enable him to sleep. Second, the combination of trying to be a full-time athlete and a PhD student resulted in him feeling very anxious and stressed, and he used marijuana as a form of self-medication to mask his anxiety and to allow him to focus better on completing tasks. He noted that he is now aware of studies showing consistent use of cannabis has a negative long-term effect on both anxiety and focus. (Answer; Response; Item 2; Item 3.)

Applicant in his Answer stated he "used psilocybin (mushrooms) a total of 4 times" with varying frequency from about September 2020 to about November 2023. He stated his "reasoning was primarily out of curiosity." He had heard that mushrooms could "initiate a religious experience, that they helped with anxiety, would increase creativity, and that they were safe and not addictive." He determined there was no benefit from using them and that his "last and final time was very unpleasant." He states he has no desire or intent to ever use them again. (Answer; Item 2; Item 4; Item 5.)

Applicant states he regrets the lack of judgement that led to his December 2021 arrest and being charged with Dangerous Drug-Possession/Use and Drug Paraphernalia Violation. He avers that at the time he "did not know that possession was a felony and

thought [psilocybin mushrooms] were decriminalized." He provided extensive details about the incident in his 2024 SCA. He wrote that he did not believe he had anything illegal in his car, so he consented to the search, telling the police officer where the marijuana was in his backpack, but he had forgotten his brother had given him "a small bag of psilocybin mushrooms," which was also in the backpack. In his SCA, he stated he had taken mushrooms three times prior, once to relieve anxiety, and was planning to micro-dose with these to deal with his anxiety. He notes he had no prior legal issues concerning drug use before or after his arrest and that he complied with all requirements of the court by 2022. (Answer; Response; Item 2; Item 4; Item 5; Item 6.)

Applicant in his 2024 SCA acknowledged his marijuana and psilocybin mushroom use. He acknowledged it again in his subject interview, which he adopted, and he acknowledged it again in his Answer and Response. Because of his athletic training, he is around athletes who use marijuana for injury/pain mitigation. He has stated his last use of illegal drugs was in 2023. Until 2022 his use was illegal in his state. Once recreational marijuana use was legalized in his state in 2022, he has used marijuana more regularly. (Answer; Response; Item 2; Item 4.)

Guideline E

SOR ¶ 3.b: Falsified material facts on an SCA dated April 3, 2024, pertaining to "Section 22 – Police Record, #2, Provide a description of the specific nature of the offense", you stated in part, "I had forgotten that when I got to [State Z], my brother had given me a small bag of psilocybin mushrooms and I had put them in the backpack." In truth, you purchased the psilocybin mushrooms in [State Z]. Applicant denied this allegation, on the basis he had attempted to give a full accounting of the incident on his SCA. He gave detailed and complete answers to his drug arrest, his debts, and drug use as well detailing a past security clearance application he started in "2017." The police report documented that he "stated that he had purchased the mushrooms for forty dollars in [State Z] and hadn't used any yet." His brother lives in [State Z] (Item 2; Item 5.)

SOR ¶ 3.c: Falsified material facts on an SCA dated August 2, 2016, pertaining 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? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance." You answered, "Yes", and stated that you used THC from June 2002 to September 2011. In truth, you had used marijuana more recently than September 2011, up until as recent as 2015. Applicant admits the allegation but does not remember his 2016 answers. He admitted a different timeframe on his 2024 SCA. He notes in his Answer that "if I indicated that I had not used marijuana between the time of 2011 and 2015 then this was false, and I would have been aware that it was false at the time." (Answer; Response; Item 2; Item 3; Item 4.) In his Response he describes this as:

One of the most egregious errors I have made in this regard, being counter to my values and rightfully raising doubt of my integrity, is when I provided false information on an e-QIP in 2016. This was an act of cowardice that I greatly regret. It is my hope that my growth as an individual is reflected in the difference between the e-QIP I filled out in 2016, and the e-QIP and subsequent interviews in 2024.

Applicant in his Response cites his growth as an individual for why his 2024 SCA fully detailed his past behavior and subsequent interviews. He states the difference between his 2016 SCA answers and his 2024 SCA answers is a reflection on his adherence to values of honesty and integrity. (Response.)

Guideline F

SOR ¶¶ 4.a - 4.c: Applicant admits the three alleged financial delinquencies. The three accounts charged off were credit card accounts totaling \$29,002. This large credit card debt resulted from his 2018 divorce. In 2024 SCA, he explains he took on all the marital debt and his former spouse received the savings in the divorce. In his Answer, he added he agreed to this division on the belief he would have his doctorate and get a job where he could pay off the debt quickly. When he could not handle the payments, he defaulted on his credit cards, which were eventually charged off. He states he would not make the same choices today, and he now only uses his credit card within his means and tries to maintain a zero balance. (Answer; Item 2; Item 4; Item 7.)

In his Answer, Applicant notes at one point in 2024 he had around \$24,000, which he intended to use pay off the debt. He states, "at the end of September (2024) my vehicle experienced an engine failure that was far too expensive to fix, and I need to use that money to buy a used car." He states in his 2024 SCA that he was advised that any action he took as far as payment would negatively affect his credit by restarting the date the account was active and that he should wait for the account to fall off his credit report after seven years to avoid lowering his credit score. (Answer; Item 2; Item 7.)

Policies

"[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 in his Answer to the SOR and elsewhere in the record are sufficient to raise the following disqualifying conditions under AG ¶ 25:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

The following mitigating conditions are potentially applicable under 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; and
- (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.

AG ¶¶ 26(a) and (b) are not established. Applicant completed a SCA in 2016 and continued to use marijuana. Until 2022, recreational marijuana use was illegal in his state and federally. He has used marijuana more regularly since recreational marijuana use was legalized in his state. He continued to experiment with psilocybin mushrooms even after he had been arrested for possessing them and charged with a felony. Applicant claimed he last used marijuana in February 2024, however he provided no explanation for how he intends to treat his medical conditions and sleep problem without marijuana. Given his recent marijuana and psilocybin mushroom use, insufficient time has passed to

establish a sufficient period of abstinence and demonstrate an intent to abstain from future marijuana use or further drug experimentation. There is insufficient evidence to find Applicant's drug use is unlikely to recur, and his continued use after completing two SCAs cast doubt on his current reliability, trustworthiness, and good judgment;

Guideline J: Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

Criminal 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.

The following disqualifying condition is potentially applicable in AG ¶ 31:

- (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; and
- (c) individual is currently on parole or probation;

Applicant's misconduct is documented in his SCA and by law enforcement and court records. The above disqualifying conditions apply.

The following mitigating conditions are potentially applicable in AG ¶ 32:

- (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.

AG ¶¶ 32(a) and (d) do not apply. Applicant illegally used marijuana under Federal and state law until 2022 and has increased his marijuana use since recreational use was legalized in his state. He has continued to experiment with psilocybin mushrooms despite his 2021 arrest and subsequent conviction. His recent actions cast doubt on his current reliability, trustworthiness, judgment, and willingness to comply with laws, rules, and regulations. The above mitigating conditions, individually or collectively, are insufficient to alleviate those concerns given his history of using marijuana and use of psilocybin mushrooms. He did not establish evidence of successful rehabilitation and needs a longer

record of responsible behavior and compliance with rules, regulations, and the law before his criminal conduct can be considered mitigated.

Guideline E, Personal Conduct

SOR ¶ 3.a cross-alleges the Applicant's previous drug involvement alleged in SOR ¶¶ 1.a-1.c. SOR ¶¶ 3.b and 3.c allege falsifications on his 2024 and 2016 SCAs. The security concern for personal conduct is set out in AG ¶ 15, as follows:

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.

Applicant's admitted drug use and criminal conduct raise the following disqualifying conditions, under AG ¶ 16:

- (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; and
- (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.

The following mitigating conditions, under AG ¶ 17, are potentially relevant:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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
- (f) the information was unsubstantiated or from a source of questionable reliability.

SOR ¶ 3.a. cross-alleges Applicant's drug use and criminal conduct as detailed in SOR ¶¶ 1.a - 1.c as a personal conduct security concern. His illegal drug involvement was appropriately addressed under Guidelines H and J. Duplicative coverage of his drug involvement and substance misuse and also his criminal conduct in my findings under

Guideline E is not warranted in this case. SOR ¶ 3a is found for Applicant.

AG ¶¶ 17(a) and 17(c) are established for SOR ¶¶ 3.b and 3.c and AG ¶ 17(f) is also established for SOR ¶ 3b. Applicant gave a full accounting of his drug use and arrest on his 2024 SCA. For SOR ¶ 3.c, the evidence reflects that since his 2016 SCA he has admitted his omission at subsequent opportunities: his 2024 SCA, security clearance interviews, and in his interrogatory responses regarding his drug use. He has acknowledged that his 2016 SCA was an egregious error and a falsification on his part. The discrepancy between his detailed 2024 SCA answer about his arrest and the limited notes in the 2021 police report alleged in SOR ¶ 3.b, about how he came to possess the psilocybin mushrooms, is mitigated by time and the discrepant information was not substantiated.

Guideline F: Financial Considerations

The concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The following disqualifying conditions are potentially applicable in AG ¶ 19:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

Applicant's debts are documented in his credit reports and security clearance interview. The above disqualifying conditions apply.

The following mitigating conditions are potentially applicable in AG ¶ 20:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment; and

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances.

AG ¶ 20(a) is not established. Applicant's delinquent debts are recent, numerous, and ongoing, which cast doubt on his current reliability, trustworthiness, and judgment.

AG ¶ 20(b) is not established. Applicant's divorce is a mitigating condition largely beyond his control. However, he did not provide evidence to support his assertions that he took the marital debt in the divorce. His SCA response, about waiting seven years, is inconsistent with his Answer that he had been saving money to pay off the debts and that an unplanned car expense derailed his repayment plan. He did not provide sufficient evidence showing that he attempted to establish payment plans for his debts. He failed to show he acted responsibly under the circumstances.

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 incorporated my comments under Guidelines H, J, E, and F 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 Guidelines H, J, E, and F and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the concerns raised by his drug involvement and substance misuse, criminal conduct, and financial considerations. The personal conduct security concerns are mitigated.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a – 1.c:	Against Applicant
Paragraph 2: Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraphs 3.a – 3.c:	For Applicant
Paragraph 4, Guideline F:	AGAINST APPLICANT
Subparagraphs 4.a – 4.c:	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.

Charles C. Hale
Administrative Judge