



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



## Appearances

For Government: Andrew Henderson, Esq., Department Counsel  
For Applicant: *Pro se*

03/03/2025

## Decision

BENSON, Pamela C., Administrative Judge:

Applicant did not mitigate the security concerns under Guidelines H (drug involvement and substance misuse) and J (criminal conduct). Eligibility for access to classified information is denied.

## **Statement of the Case**

On March 25, 2024, the Defense Counterintelligence and Security Agency (DCSA) Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H and Guideline J. The DCSA CAS acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

In Applicant's April 5, 2024 response to the SOR (Answer), he admitted all the SOR allegations (SOR ¶¶ 1.a through 1.k, and 2.a). He did not provide additional documentation with his Answer. He requested a hearing before an administrative judge. The case was assigned to me on September 12, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on November 4, 2024, setting the hearing

for November 21, 2024. The Microsoft Teams video-teleconference hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 and 2, and Hearing Exhibit (HE) I. Applicant testified but did not offer any documents. The proffered exhibits were admitted into evidence without objection. I held the record open for four weeks in the event either party wanted to supplement the record with additional documentation. Applicant timely submitted two documents I labeled as Applicant Exhibits (AE) A and B, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on December 6, 2024, and the record closed on December 19, 2024.

### **Findings of Fact**

Applicant is 27 years old. He attended college from 2015 through 2018 without earning a degree. He then attended a technical school and earned a trade certificate in June 2020. In 2021, he earned an associate degree. He married in May 2024, and he does not have any children. In April 2022, he began working for a federal contractor and his job title is supply chain technical coordinator. This is his first application for a DOD security clearance. (GE 1; Tr. 14-15)

### **Substance Misuse and Drug Involvement**

Applicant attributes his past involvement with illegal drugs due to immaturity, growing up in a high crime community, and from traumatic experiences he suffered in his past. At the age of 5, he was molested by an older male neighbor for about a year. He was too young to understand what was happening and too scared to tell anyone. This issue caused him to have feelings of disgust with himself in later years, and he became rebellious. Other traumatic events included his best friend committed suicide when he was 16 years old, and his girlfriend of three years was killed by an impaired driver when he was 19 years old. At the age of 21, his second girlfriend was diagnosed with cancer. When he was approximately 23, Applicant decided he wanted to change his life. He moved to a new location, made new friends, and participated in counseling. (Answer)

SOR ¶ 1.a alleges Applicant used marijuana, with varying frequency, from about April 2016 to about March 2023. He admitted he used marijuana more frequently while in college, and use occurred primarily on the weekends; however, in 2017, he used almost daily 7. He had a medical marijuana card for approximately one year to help him deal with stress, physical back pain, and grief from losing his girlfriend in the 2017 car accident. He continued to use marijuana, with less frequency, as he grew older and after he was hired by his employer in April 2022. He was aware his employer had a “zero tolerance” policy on the use of marijuana, but he was not thinking about the policy when he smoked marijuana with friends. He would let his guard down after having a couple of alcoholic drinks with his friends, smoke marijuana with them, but claimed he only took a couple of puffs and no more. He stated he was very remorseful for making poor decisions by using marijuana. (Tr. 16-21; GE 1, 2)

SOR ¶ 1.b alleges Applicant used psilocybin mushrooms with varying frequency from about December 2016 to about February 2023. He admitted he used psilocybin mushrooms more frequently during college, and less frequently as he aged. He only used it with friends. He admitted he used it after he had been hired by his employer in April 2022. (Tr. 21-26; GE 1, 2)

SOR ¶ 1.c alleges Applicant used and purchased lysergic acid diethylamide (LSD) on one occasion in about December 2016. Applicant admitted this occurred on only one occasion after the death of his friend. (Tr. 26; GE 1, 2)

SOR ¶ 1.d alleges Applicant used ecstasy with varying frequency from about 2016 to about May 2021. He admitted he had used ecstasy with friends on about six to eight occasions. He was aware it was an illegal drug. (Tr. 26-30; GE 1, 2)

SOR ¶ 1.e alleges Applicant used the prescription medication, Xanax, not prescribed to him, from about April 2019 to about February 2020. He admitted his mother had a prescription for Xanax, and she gave it to him when he was feeling upset. For example, she gave it to him because he was nervous about flying on an airplane, and on another occasion after his grandfather was placed in hospice care. (Tr. 30-32, 48-49; GE 1, 2)

SOR ¶ 1.f alleges Applicant misused the prescription medication Adderall from about July 2016 to about August 2021. He was prescribed this medication at a young age, but the first time he misused his medication was in July 2016 when he no longer had an active prescription. He stated at the hearing, that although his prescription had expired earlier, he would occasionally purchase Adderall from a friend so he could focus. (Tr. 32-36; GE 1, 2)

SOR ¶ 1.g alleges Applicant used cocaine with varying frequency from about July 2020 to about May 2022. He admitted he used this illegal drug with friends, to include in May 2022, a month after he was hired by a federal contractor. (Tr. 36-39; GE 1, 2)

SOR ¶ 1.h alleges Applicant purchased and sold marijuana from about April 2016 to about September 2022. He admitted this misconduct. He sometimes purchased marijuana from someone he labeled a “drug dealer,” and then he sold it to his friends in exchange for money. This misconduct occurred after he had been hired by his employer in April 2022. (Tr. 25-26, 39-40; GE 1, 2)

SOR ¶ 1.i alleges Applicant distributed Adderall from about September 2016 to about June 2019. He admitted he distributed and sold his prescribed Adderall to friends, whenever he had a valid prescription. (Tr. 40; GE 1, 2)

SOR ¶ 1.j alleges Applicant purchased, manufactured, and sold psilocybin mushrooms from about December 2016 to about April 2021. Applicant admitted this

misconduct, and he acknowledged he had attempted to grow psilocybin mushrooms, but his efforts were not successful. (Tr. 24-25, 40-41; GE 1, 2)

SOR ¶ 1.k alleges Applicant purchased cocaine from about October 2020 to about January 2021. He admitted he purchased cocaine from a drug dealer. (Tr. 39, 41; GE 1, 2)

Applicant admitted he used drugs on many occasions while he was drinking alcohol. In an effort to be more responsible, he and his wife have cut back on their consumption of alcohol. During the hearing, he admitted he used marijuana, cocaine, and psilocybin mushrooms after he was hired by a federal contractor and was fully aware his employer had a zero-tolerance drug policy. He does not believe he needs counseling for his drug use. He regrets his bad decisions, and it is his intention to never use illegal drugs again. (Tr. 16-18, 41-45; Answer)

### **Criminal Conduct**

SOR ¶ 2.a cross-alleged that information as set forth in subparagraphs SOR ¶¶ 1.a. through 1.k., above.

### **Character Evidence**

Applicant submitted character reference letters from two coworkers at his current place of employment. Both coworkers state Applicant is hardworking, intelligent, and levelheaded. They recommend Applicant be granted security clearance eligibility so he can contribute to classified programs at work. (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(c), 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 EO 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 EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### **Guideline H: Drug Involvement and Substance Misuse**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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 record evidence established proof of the following disqualifying conditions under AG ¶ 25: (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.

The burden shifted to Applicant to prove mitigation of the resulting security concerns. AG ¶ 26 provides conditions that could mitigate security concerns in this case:

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

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.

AG ¶¶ 26(a) and 26(b) are not fully established. Applicant failed to show that recurrence is unlikely, given his long history with illegal drugs. He used marijuana, cocaine, and psilocybin mushrooms after he was hired by his employer in April 2022. He admitted he was fully aware of the federal contractor's zero-tolerance drug policy, but he nonetheless chose to use these illegal drugs from May 2022 to March 2023. His recent poor choices cast doubt on Applicant's reliability, trustworthiness, and good judgment. I find more time of abstinence is needed to demonstrate rehabilitation and that his illegal drug use is unlikely to recur. Applicant did not mitigate the drug involvement and substance misuse security concerns and failed to establish mitigation under AG ¶ 26.

## **Guideline J: Criminal Conduct**

The concern under this guideline is set out in AG ¶ 30: "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 relevant:

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.

AG ¶ 31(b) is established by Applicant's admissions and the record evidence.

The following mitigating conditions are potentially relevant:

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

AG ¶ 32(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.

There is no evidence of additional misconduct. Applicant's criminal conduct is related to his illegal drug use, possession, purchase, cultivation, and sales. He failed to provide sufficient evidence that recurrence is unlikely, given his long history with illegal drugs. Although he has abstained from illegal drug use for almost two years, which is evidence of mitigation, it is insufficient to overcome the issues raised by his long and varied drug history. I cannot find Applicant is rehabilitated given his continued illegal drug use after he was hired by his current employer. AG ¶¶ 32(a) and 32(d) do not 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 Guidelines H and J and the factors in AG ¶ 2(d) in this whole-person analysis and considered his letters of recommendation.

I am unable to reach a positive conclusion pertaining to Applicant's eligibility for a security clearance. His choice to use marijuana, cocaine, and psilocybin mushrooms from May 2022 to March 2023, despite being aware of his employer's drug policy, requires more time of responsible behavior before I can find he is rehabilitated. His illegal drug history raises unmitigated questions about his reliability, trustworthiness, and ability to follow laws, rules, and regulations.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more effort towards establishing a track record of good decisions, and a better record of behavior consistent with his obligations, he may well be able to demonstrate persuasive evidence of his security clearance worthiness.

I have carefully applied the law, as set forth in *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988), 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 criminal conduct 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 through 1.k:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Pamela C. Benson  
Administrative Judge