



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



In the matter of:

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ISCR Case No. 24-00598

Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esquire, Department Counsel
For Applicant: *Pro se*

01/13/2025

Decision

CEFOLA, Richard A., Administrative Judge:

On August 22, 2019, and on December 7, 2022, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIPs). On June 13, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H (Drug Involvement and Substance Misuse) and J (Criminal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective June 8, 2017.

Applicant answered the SOR in writing on June 24, 2024, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on August 12, 2024. I received the case assignment on August 12, 2024. DOHA issued a Notice of Hearing on August 16, 2024, and I convened the hearing as scheduled on September 26, 2024. The Government offered

Exhibits (GXs) 1 through 6, which were received into evidence without objection. Applicant testified on his own behalf. He also asked that the record be kept open until October 25, 2024, for the receipt of additional documentation. Applicant submitted Exhibits (AppXs) A through D, which were received into evidence without objection. DOHA received the transcript of the hearing (TR) on October 8, 2024. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations. He denies the alleged drug involvement “while granted access to classified information and employed in a sensitive position.” This denial is contrary to Applicant’s admissions on his on his December 2022 SCA. (GX 2 at pages 29~31.) Applicant admits the factual allegations in Paragraph 2 of the SOR.

Applicant is 23 years old, unmarried, and has no children. He worked for a defense contractor as a summer intern each year from June of 2019, until he became a full-time employee in June of 2022. (GX 1 at page 11, and GX 2 at pages 5, 11 and 18.) Applicant was granted a Secret security clearance on March 4, 2020. (GX 4.)

Guideline H – Drug Involvement and Substance Misuse & Guideline J - Criminal Conduct

1.a. and 2.a. Applicant used Tetrahydrocannabinol (THC) edibles, about 12 times, over a period of more than two years, from about February 2020 to about November 2022. (TR at page 14 line 21 to page 17 line 19.) His usage after March 4, 2020, was after having been granted a security clearance. This usage also constitutes criminal conduct.

1.b. and 2.a. Applicant used Lysergic Acid Diethylamide (LSD), once in February 2020. (TR at page 17 line 20 to page 18 line 2.) His usage constitutes criminal conduct.

1.c. and 2.a. Applicant used psychedelic mushrooms, about four times, over a period of about ten months, from about January 2022 to about October 2022. (TR at page 18 lines 3~21.) His usage was after having been granted a security clearance. This usage also constitutes criminal conduct.

1.d. and 2.a. Applicant used Cocaine, about 20 times, over a period of about two years, from about November 2020 to about November 2022. (TR at page 18 line 22 to page 19 line 24.) His usage was after having been granted a security clearance. This usage also constitutes criminal conduct.

1.e. and 2.a. Applicant used Methyleneoxymethamphetamine (MDMA), about three times, over a period of about one year, from about November 2021 to about

November 2022. (TR at page 20 lines 11~18.) His usage was after having been granted a security clearance. This usage also constitutes criminal conduct.

1.f. and 2.a. Applicant used Adderall without a prescription, about six times, over a period of about eleven months, from about January 2022 to about November 2022. (TR at page 21 lines 1~12, and at page 22 lines 2~6.) His usage was after having been granted a security clearance. This usage also constitutes criminal conduct.

1.g. and 2.a. Applicant used Ketamine without a prescription, about six times, over a period of about nine months, from about February 2022 to about October 2022. (TR at page 21 line 13 to page 22 line 1.) His usage was after having been granted a security clearance. This usage also constitutes criminal conduct.

Applicant has signed a statement of intent to abstain from all drug involvement and substance misuse in the future. (AppX C.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2 describing 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “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, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Three conditions are established:

- (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
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Appellant used THC, LSD, psychedelic mushrooms, Cocaine, MDMA, and Adderall and Ketamine without prescriptions. He had a security clearance for his job at that time. Therefore, AG ¶ 25 (a), (c), and (f) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be applicable:

(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.

Although Applicant has signed a letter of intent against future drug usage, his extensive usage ended in December 2022, only about two years ago. It is too soon to determine whether his past usage is not of present security significance. This should not dissuade Applicant from applying for a security clearance in the future, however, for now Drug Involvement and Substance Misuse is found against Applicant.

Guideline J - Criminal Conduct

The security concern relating to the guideline for Criminal Conduct 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 guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions apply, as discussed below:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in

combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(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.

Applicant's extensive use of illegal substances occurred from February of 2020 to November of 2022, a period of nearly three years. This evidence raises security concerns under these disqualifying conditions, thereby shifting the burden to Applicant to rebut, extenuate, or mitigate those concerns.

The guideline in AG ¶ 32 contains four conditions that could mitigate criminal conduct security concerns:

(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;

(b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) no reliable evidence to support that the individual committed the offense; 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.

None of these apply. Sufficient time has not passed since Applicant's last act of criminal conduct: use of THC, Cocaine and Adderall in November 2022. Although he provided some evidence of rehabilitation, including a history of successful work with his employer (AppX A), that evidence does not outweigh the fact that he demonstrated a two-plus year history of disregarding the law from 2020 to 2022. The evidence does not establish mitigation under any of the above conditions. Criminal Conduct is found against Applicant.

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 an 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.

AG ¶ 2(b) requires each case must be judged on its own merits. 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. Applicant is respected by his manager in the workplace. (AppX A.) However, overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his Drug Involvement and Substance Misuse, and his related Criminal Conduct.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H: **AGAINST APPLICANT**

Subparagraphs 1.a~1.g: 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, it is not clearly consistent with the national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge