



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



In the matter of:

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ISCR Case No. 24-00944

Applicant for Security Clearance)

Appearances

For Government:
Brittany C.M. White, Esquire, Department Counsel

For Applicant:
Pro se

03/27/2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has not mitigated the security concerns raised under the drug involvement and substance misuse adjudicative guideline. National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions on November 2, 2023 (the Questionnaire). On August 12, 2024, the Defense Counterintelligence and Security Agency (DCSA) 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 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 (AG) effective within DoD after June 8, 2017.

On October 8, 2024, Applicant responded to the SOR in writing (Answer). He requested that his case be decided on the written record in lieu of a hearing. (Item 2.) In his Answer, he admitted the single SOR allegation and provided details about his use of psilocybin mushrooms. He also submitted two documents. On November 26, 2024, Department Counsel submitted the Government's written case. A complete copy of the file of relevant material (FORM), consisting of Items 1 to 4, was provided to Applicant. He received the FORM on December 22, 2024. He elected not to respond to the FORM. The case was assigned to me on March 4, 2025. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

Findings of Fact

Applicant is 45 years old and works as a director for a U.S. Government contractor. He received a bachelor's degree in 2003 and a master's degree in 2007. Applicant and his wife separated in December 2022. As of August 2024, he expected their divorce would be finalized in December 2024. He currently lives with a "domestic partner." He is a first-time applicant for a security clearance. (Item 3 at 5, 9-11, 20, 22-23, 33; Item 4 at 4, 9)

SOR Paragraph 1, Guideline H (Drug Involvement and Substance Misuse)

Subparagraph 1.a. The Government alleged that Applicant is ineligible for a security clearance because he used psilocybin mushrooms (the Drug) with varying frequency from about March 2022 to May 2024 (the Period). I find that the following facts based upon the documentary record, including the Answer:

Applicant admitted this allegation, stating that his "instances of usage were within directed 'microdose' concentrations [of the Drug] and used recreationally, during non-working hours for its calming/relaxation properties." He claimed that he experimented with the Drug approximately five times during the Period. Applicant further stated that all of the Drugs provided to him were purchased by other parties in states where the Drug can be legally purchased under state law and is commercially available. He acknowledged, however, that his use constituted "misuse of a Federally categorized controlled substance." He indicated in the Answer that he takes full responsibility for his use of the Drug. (Item 2; Item 3 at 31-32; Item 4 at 6, 10.)

Applicant's use of the Drug preceded his submission of the Questionnaire in November 2023. He disclosed his use of the Drug in the Questionnaire by answering "Yes" to a question asking if he had "illegally used any drugs or controlled substance" in the preceding seven years. This response put Applicant on notice that he had violated federal law by using the Drug since March 2022. Applicant admitted, in his response to the Defense Office of Hearings and Appeal's interrogatories, that he used the Drug as

recently as May 2024, about six months after his submission of the Questionnaire. (Item 3 at 31; Item 4 at 6.)

Mitigation

Applicant wrote in the Questionnaire that “there is a possibility that [he] will microdose [the Drug] for therapeutic/meditative/clarity of mind purposes.” In the Answer, he expressed a change in his view on this issue and wrote, “I personally vow to abstain indefinitely from any controlled substance use and consider this document as a signed statement of intent thereof.” (Emphasis in original.) He also commented that he has dissociated from the person who provided the Drug in the past (his wife’s brother) and that his domestic partner has pledged to support his abstinence. He further claimed that she has vowed to maintain abstinence from the use or possession of any controlled substance. (Item 2 at 1; Item 3 at 31.)

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See also Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 - Guideline H, Drug Involvement and Substance Misuse

The security concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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.

AG ¶ 25 sets forth the following conditions that could raise security concerns and may be disqualifying in this case:

- (a) any substance misuse (see above definition).

The record evidence establishes AG ¶ 25(a). The burden, therefore, shifts to Applicant. AG ¶ 26 provides four conditions that could mitigate security concerns raised under this guideline. I have considered all four of the mitigating conditions under AG ¶ 26 and have concluded that the following two conditions have possible application to the facts of this case:

- (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 the 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) is not established. Applicant's use of the Drug was recent, and significantly, it continued after he submitted the Questionnaire, in which he acknowledged that his use of the Drug was in violation of federal law. His use was infrequent, but it occurred under circumstances that cast doubt on his current, reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is only partially established. Applicant has acknowledged his drug involvement and, as of May 2024, has abstained from any future use of the Drug or illegal use of other controlled substances. He wrote that he has dissociated from his associate with whom he used the Drug in the past. He also provided the equivalent of a signed statement expressing his intent to abstain from all drug involvement and substance misuse. He did not include in his "statement of intent" the language of AG ¶ 26(b)(3) regarding the consequences of any future drug involvement. AG ¶ 26(b) is only partially established because Applicant's period of abstinence, since May 2024, is too brief to "establish a pattern of abstinence" sufficient to mitigate his prior use of the Drug.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I credit Applicant's honesty in self-reporting his past drug use. However, Applicant's drug use, both before and after he submitted the Questionnaire, constitutes a significant failure to comply with federal laws and regulations. Applicant's age when he recently used the Drug evidences a lack of maturity and is inconsistent with the behavior and judgment expected of someone with his education and professional responsibilities. His actions suggest an attitude that the rules do not apply to him. Applicant has not, at this time, mitigated the drug involvement security concerns raised by his behavior. Overall, the record evidence leaves me with questions and doubts as to Applicant's present suitability for national security eligibility and a security clearance.

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

Subparagraph 1.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 interests of national security to grant Applicant national security eligibility. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge