



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



In the matter of:)
)
) ISCR Case No. 24-01326
)
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

04/29/2025

Decision

HALE, Charles C., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 17, 2020, and another SCA on November 28, 2023. On October 16, 2024, the Department of Defense (DoD) sent him a Statement of Reasons (SOR) alleging security concerns under Guidelines H and E. 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 Security Executive Agent Directive 4, National Security Adjudicative Guidelines (AG) (December 10, 2016).

Applicant submitted his Answer to the SOR on October 24, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the

Government's written file of relevant material (FORM) on November 28, 2024. Applicant received a complete copy of the FORM on January 14, 2025, and was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. He did not provide a response. The case was assigned to me on April 2, 2025.

The SOR and the Answer are the pleadings in the case. FORM Items 1 through 5 are admitted into evidence without objection. Item 3 in the electronic file was stripped of Applicant's interrogatory responses. The Government provided Applicant and myself an accurate version of Item 3. I afforded Applicant two weeks to respond, and he submitted a timely Response, which was admitted without objection.

Findings of Fact

In Applicant's Answer to the SOR, he admitted all allegations. He admitted using marijuana/tetrahydrocannabinol (THC) with varying frequency from about October 2014 to about at least April 2023 (SOR ¶ 1.a) and using hallucinogenic psilocybin mushrooms in June 2022 (SOR ¶ 1.b). During the security clearance application process in 2020 he declared he did not intend to use marijuana in the future but continued to use it until about April 2023. (SOR ¶ 1.c). The Government cross-alleged the SOR ¶¶ 1.a-1.c allegations under Guideline E, which Applicant admitted (SOR ¶ 2.a). His admissions are incorporated in my findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 28 years old. He earned his bachelor's degree in 2019. He has worked for his sponsor since 2020. He is not married and has no children. (Item 1; Item 2; Item 3.)

Consistent with Applicant's 2020 SCA and a 2019 security application for a position of public trust, Applicant admitted in a February 2020 security clearance interview that he used marijuana from September 2018 to May 2019. He estimated he smoked 50 times during this period. He noted he was also a medical marijuana patient and until September 2019, he used the marijuana to treat his anxiety and depression. Later in the interview he discussed additional marijuana use from October 2014 to May 2018, while in college. (Item 1 - Item 4; Answer; Response.)

Applicant provided his medical marijuana card (MMC) as part of his response to Government interrogatories. His MMC expires in 2026. In his Response he explained he retained the MMC card for his personal medical records. He argued the MMC did not allow him easy access to the drug as the Government alleged in its FORM. He noted the MMC was past the expiration of his provider's registration. He included further information on his state's cannabis programs by supplying hyperlinks in his Response, which I considered. During his November 2023 security clearance interview he stated it was April 2023 when he last used his MMC to facilitate his marijuana use. In his Response he noted

his state had made recreational marijuana use legal since July 2023 and he would not need an MMC for recreational use. (Item 1 - Item 4; Response.)

Consistent with his 2023 SCA, Applicant admitted in his March 2024 security clearance interview, that he continued to use marijuana “for fun and recreation purposes” until April 2023. He stated he would use marijuana twice a week and then go several months without using it. In his response to Government interrogatories, he stated he used marijuana twice a week between January 2023 and April 2023. He told the investigator in his 2024 interview he had no intentions of future use of marijuana. (Item 1; Item 3; Answer.)

Applicant confirmed in his 2024 interview his 2023 SCA admission that he ordered “magic mushrooms” in June 2022 and used them in August 2022. He purchased the mushrooms from a company via the internet because he “just wanted to see what the experience was like” but determined he had “no real reason or desire to use [mushrooms] again.” He stated an intent to no longer use illegal drugs in his 2024 security clearance interview and reiterated that statement in his response to the September 2024 Government Interrogatories. (Item 1; Item 3; Answer.)

Applicant completed a 2019 security application for a position of public trust and then completed 2020 SCA, which triggered an interview where he stated an intent to no longer use illegal drugs. He admittedly continued to consume marijuana and started to regularly use it in January 2023 through April 2023. Additionally, he also experimented with the hallucinogenic psilocybin mushrooms in the summer of 2022. Applicant in his Response characterized his illegal drug use as a “single lapse in personal judgment,” which should not be equated as a pattern of dishonesty and unreliability. (Item 1 - Item 4; Response.) Applicant stated in his Response:

[T]hroughout the clearance process, I have, and will continue to be open and honest with the government about my personal history with drugs. I want to reiterate that I have never encountered legal or financial trouble as a result of drug use, and have not demonstrated a continued pattern of substance abuse. I do not associate with users of illegal drugs and I continue to organize my life such that drugs do not play a part in it. I have never been addicted to drugs, and I intend to maintain my personal commitment to continue drug abstinence irregardless of the decisions made on my clearance status.

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 and the record establish the following disqualifying conditions under this guideline, as detailed in 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.

Applicant admitted using controlled substances between 2014 and April 2023 (SOR ¶¶1.a-1.c) and after giving assurances in 2020 he would stop his drug involvement and substance misuse. AG ¶¶ 25(a), 25(c) and 25(g) apply.

The following mitigating conditions are potentially applicable as detailed in 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) is not established. Applicant's drug misuse was frequent, longstanding, and recent, and it did not occur under circumstances unlikely to recur. He admittedly used marijuana from 2014 until April 2023, and he used hallucinogenic mushrooms in 2022. By his own admission he was using marijuana prior to its recreational use being legalized. His continued marijuana use and purchase of hallucinogenic mushrooms, all after he had completed his 2020 SCA and had given assurances he would discontinue his substance misuse, cast doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is not established. Applicant admitted his drug use, and he has recently changed his behavior. He gave similar assurances in 2019 and 2020 but continued his drug use. He has abstained from knowing illegal drug use since April 2023 and has stated he does not intend to use any illegal drugs in the future. However, insufficient time has passed to mitigate his lengthy history of substance abuse involving illegal drugs. The security concern regarding his drug involvement is not mitigated.

Guideline E, Personal Conduct

SOR ¶ 2.a cross-alleges the Applicant's previous drug involvement alleged in SOR ¶¶ 1.a-1.c. 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 raises the following disqualifying condition, under AG ¶ 16:

(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.

SOR ¶ 2.a. cross-alleges Applicant's drug use as detailed in SOR ¶¶ 1.a - 1.c as a personal conduct security concern. His drug use after completing his security clearance application in 2020 raises disqualifying conditions under both Guidelines E and H. See AG ¶ 16(e). However, I find "For Applicant" with respect to SOR ¶ 2.a because his illegal drug use is more appropriately and fully addressed under Guideline H. Duplicative coverage of his illegal drug possession and use in my findings under Guideline E is not

warranted in this case.

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 and E in my whole-person analysis and have 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. Insufficient time has passed since his last use of illegal drugs to overcome the extent and seriousness of his conduct. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

After weighing the disqualifying and mitigating conditions under Guidelines H and E, and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his conduct under Guideline H.

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 E:	FOR APPLICANT
Subparagraph 2.a:	For 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