



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-00744

Appearances

For Government:

John Renehan, Esquire, Department Counsel

For Applicant:

Pro se

02/11/2025

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant failed to mitigate the security concerns raised by his past drug involvement. National security eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions (Questionnaire) on September 14, 2023. On May 23, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) 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 June 10, 2024, Applicant responded to the SOR allegations (Answer) and admitted with explanations two of the four SOR allegations and admitted in part and denied in part the other two allegations. Applicant also requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on August 29, 2024. The case was assigned to me on September 5, 2024. DOHA issued a Notice of Hearing on September 19, 2024, scheduling the case to be heard via Microsoft Teams video teleconference on October 16, 2024.

I convened the hearing as scheduled. Department Counsel offered three documents marked as Government Exhibits (GE) 1 through 3, which I admitted into the record without objection. Applicant testified at the hearing. I left the record open until October 23, 2024, to give Applicant the opportunity to supplement the record. Applicant timely submitted two exhibits, which I marked as Applicant Exhibits (AE) A and B. Department Counsel raised no objection to Applicant's exhibits, and I admitted both into the record. DOHA received the transcript of the hearing (Tr.) on October 23, 2024. (Tr. at 13-15, 56-57.)

Findings of Fact

Applicant is 30 years old. He has never married and has no children. He has lived with his girlfriend since February 2023. Applicant earned a bachelor's degree in May 2018. He has worked for a U.S. defense contractor since April 2019, first as a contract employee and then as a full-time employee beginning in February 2020. Applicant received a Secret security clearance in May 2020 and has held that clearance since then. (Tr. at 17-21; GE 1 at 5, 12-15, 19-20; GE 3 at 1.)

The Government alleged in the SOR that Applicant is ineligible for a security clearance because he used illegal drugs at various times, including a period when he held a sensitive position, *i.e.*, one in which he held a security clearance. The facts developed at the hearing and detailed in the documentary record are as follows:

SOR ¶¶ 1.a and 1.b. Purchase and use of marijuana (August 2022 to July 2023) while holding a sensitive position. Applicant admits that during the time alleged (the Period), he used marijuana daily to cope with stress in his life and to help him sleep. He purchased marijuana legally at a dispensary. Marijuana use is legal under state law in the state where he resides. Applicant also acknowledged that he held a security clearance at that time. He first disclosed his illegal drug purchases and use during the Period in his Questionnaire. He asserted that the stress he experienced related to housing and financial issues. He was moving from place to place, and then he bought and renovated a house. Applicant wrote, "I was having trouble sleeping due to thinking about how I could

financially support myself and find a more permanent place to live." (Tr. at 24; GE 1 at 34-38; Item 2 at 6, 13.)

In his Answer, Applicant made no mention of any housing concerns. He wrote that he was having difficulty sleeping due to stress created by a number of family members and circumstances. He mentioned that his parents were divorced, that his stepmother had terminal cancer, that he was obligated to take care of his much younger half-brother, and that he had disagreements with another brother and his mother. (Answer at 1.)

In his Questionnaire, Applicant wrote, "I only smoke at night to fall asleep." He disclosed additional uses of marijuana in his response to the Government's interrogatories. He wrote that he used marijuana at "social functions" once every month or two during the Period. At the hearing, he described the frequency of his social use of marijuana as "a couple of times." (Tr. at 11, 32-33; GE 1 at 34; GE 2 at 13.)

Applicant testified about his decision in August 2022 to use marijuana while holding a sensitive position with a security clearance. He started using marijuana to help him sleep because of stress caused by family members and his obligation to take care of their needs. He did not seek professional counseling for his drug use or to help him manage his stress and family relationships. (Tr. at 11, 12, 26.)

Applicant stopped using marijuana when his supervisor advised him that he was being considered for a significant promotion that required a Top Secret clearance. He felt that this promotion would give him the opportunity he wanted to be able to "provide for my family." He testified that the promotion and the requirement for a higher clearance would give him "the reason I need to stop" and would be "the easiest decision in the world." He wanted to do "the right thing." His last use of marijuana was in July 2023, two months before he submitted the Questionnaire at his company's request to apply for a Top Secret clearance upgrading his May 2020 Secret clearance. (Tr. at 11, 26-27, 46; GE 1 at 34; GE 2 at 13; GE 3 at 1.)

Applicant admitted using marijuana while he held a Secret clearance. He was worried about using marijuana under those circumstances, but he testified that he "leaned" on the advice of co-workers who used marijuana and held clearances. He understood at that time possessing and using marijuana violated federal law and rules. Although he disclosed his past drug use in the Questionnaire, Applicant has not disclosed this information to his supervisor or any other more senior personnel at his company. (Tr. at 25, 27-29, 31-32, 38.)

Some of Applicant's friends continue to use marijuana socially when he is present and some do not. He attends social events every month or two when marijuana is used by friends. He testified that in his state "it is hard not to come across [marijuana]," but he does not feel pressure to use it. He initially testified that his girlfriend does not use marijuana, and then at the end of his testimony, he admitted that she uses it "infrequently." (Tr. at 34-35, 47.)

SOR ¶¶ 1.c and 1.d. Purchase and use of ecstasy while holding a sensitive position (July 2022). Applicant admitted that he used Ecstasy in July 2022 while he was visiting Las Vegas with his cousins. This was his first and only use of ecstasy. He denied purchasing the drug, claiming that one of his cousins purchased it for the two of them. He claims that he has reluctantly taken the drug at first and has regretted his actions ever since. As discussed above, he started using marijuana the next month, August 2022, even though he held a security clearance. Aside from marijuana and this one-time use of ecstasy, he has never used any other illegal drugs. (Tr. at 41-45; GE 1 at 35; GE 2 at 6, 13.)

Mitigation

Applicant was asked by his employer to apply for an upgrade of his clearance so that he could be promoted. He claims this is the result of his work ethic and performance. He wrote that he has “been recognized as a top performer” in his state and “nationwide for my efforts.” (Tr. at 26-27; AE A at 1-2.)

Applicant has become involved with his church and its community. He asserted in a post-hearing submission that he no longer associates with “several drug using contacts.” He also claimed that his “lifestyle choices have also become much healthier.” He asserted that the circumstances that caused him stress and to turn to marijuana to help him sleep will not recur. Using marijuana is not as important to him as pursuing his career and being in a position to support his family. He can give up his drug use easily and has done so. (Tr. at 55; AE A at 1-2.)

After the hearing, Applicant chose to document his decision to abstain from illegal drugs in the future by submitting a signed, sworn statement in which he declared that intent. He acknowledged that any future involvement or misuse of drugs would be grounds for the revocation of any national security eligibility granted to him. He further committed to “avoid any situations or environments that may encourage drug use.” (AE B.)

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

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 condition that could raise security concerns and may be disqualifying in this case:

- (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.

In his Answer to the SOR, Applicant admitted all of the allegations except the purchase of Ecstasy in July 2022. These admissions, his testimony at the hearing, and the other evidence in the record established the disqualifying conditions set forth in AG ¶¶ 25(a) and 25(c). He used marijuana daily for about one year for stress and sleep, and, on occasions, he used marijuana socially. He also purchased marijuana. The record, however, did not establish that Applicant purchased ecstasy. Marijuana and ecstasy are controlled substances under federal law.

Significantly, Applicant used illegal drugs while holding a sensitive position. Under the authority of ISCR Case No. 22-01661 at 4 (App. Bd. Sep. 21, 2023), Applicant held a sensitive position at the times he used marijuana and ecstasy because his position with his employer required that he have national security eligibility for access to classified information, *i.e.*, eligible for a security clearance. In fact, he held a Secret clearance at the time of his drug use. Accordingly, AG ¶ 25(f) is also established.

The evidence establishing AG ¶¶ 25(a), 25(c), and 25(f) shifts the burden to Applicant to mitigate the security concerns raised by his conduct. AG ¶ 26 of this guideline provides conditions that could mitigate security concerns. I have considered all the mitigating conditions under AG ¶ 26 and conclude 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.

Applicant's illegal drug use was not so long ago, was frequent, and did not occur under such circumstances that it is not likely to recur. Moreover, his illegal drug use while holding a sensitive position casts significant doubt on his current reliability, trustworthiness, and judgment. His last use of an illegal drug while holding a sensitive position was just two months before he submitted his Questionnaire seeking to upgrade his security clearance from Secret to Top Secret. His last use was also just about 18 months ago. The circumstances that caused him to resort to illegal drugs for his stress and sleep concerns were not unusual. He experienced family pressures and could not adequately manage them, so he resorted to an illegal drug. He will undoubtedly encounter stressful situations in the future and be unable to sleep. He has not sought any professional drug counseling or other counseling to learn how best to handle stress in his life. Under the circumstances, I cannot conclude at this time that future use of an illegal drug is unlike to recur.

Applicant's justification for deliberately violating the law against drug use and his violation of his duty as a person holding a sensitive position and a security clearance was merely that he was not the only one acting contrary to the Government's requirements. This excuse raises the issue whether Applicant is sufficiently trustworthy to be compliant with other Government rules regarding classified information if he sees others violating such rules. His behavior also raises serious questions about his independence from the influence of others, judgment, and maturity.

These concerns are reinforced by Applicant's inconsistent, or at best, incomplete description of the circumstances that caused him stress in 2022 and 2023. In his Questionnaire, he wrote that the stress was caused by housing insecurity and related financial problems. In the rest of the record, he maintained that his stress was due to family issues. Similarly, Applicant's testimony about his girlfriend's use of marijuana was contradictory. He also provided inconsistent information about the frequency of his social use of marijuana. Applicant testified that he has only used marijuana socially a couple of times. He disclosed in his interrogatory responses, however, that he used marijuana socially every month or two during the 12-month Period. These inconsistencies in Applicant's disclosures raise doubts about his candor, maturity, reliability, and trustworthiness.

Applicant's case in mitigation rested on his assertion that he can be trusted because he changed his attitude and behavior once he was offered a promotion. He provided no supporting evidence, such as statements or testimony by his supervisor, friends, or colleagues or from a therapist who might have helped him learn how to manage stress in his life and illegal drug use. Overall, Applicant failed to establish mitigation under AG ¶ 26(a).

Applicant has also not provided sufficient evidence under AG ¶ 26(b) to mitigate fully the security concerns raised by his recent illegal drug use. He has not fully dissociated himself from drug-using friends nor has he fully changed the environment where drugs are used. He did provide a written statement of intent under AG ¶ 26(b)(3) to abstain from illegal drug use in the future, and he testified sincerely that he does not intend to use illegal drugs again. However, his abstinence has been brief and was only triggered by a job promotion offer and his improved career prospects. His primary motivation for changing his past illegal drug habits is not that he now appreciates that using drugs violates federal law and that compliance with the law is important in the context of the safeguarding national security. Under the circumstances of this case, Applicant's evidence is inadequate to establish mitigation under AG ¶ 26.

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 knowing that the disclosure might affect his clearance eligibility. However, his evidence supporting mitigation is limited to his personal statements. He offered no testimony or documentation from his employer, colleagues, friends, or a therapist that would convincingly evidence

the changes he claims he has made. His actions of using illegal drug while holding a sensitive position seriously undercut the mitigation value of his testimony. In view of the recency of Applicant's illegal drug use, Applicant has not, at this time, mitigated 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

Subparagraphs 1.a through 1.d:

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. Eligibility for access to classified information is denied.

JOHN BAYARD GLENDON
Administrative Judge