



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



In the matter of:

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

08/11/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, Drug Involvement and Substance Misuse. Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 26, 2023, in connection with his employment in the defense industry. On February 1, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued him a Statement of Reasons (SOR) detailing security concerns under Guideline H. The DCSA issued the SOR 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on February 20, 2024, and requested a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The case was assigned to me on December 9, 2024. On March 26, 2025, following consultation with the parties, DOHA issued a notice scheduling the hearing for May 13, 2025. The hearing was to take place virtually through an online platform.

The hearing convened as scheduled. Department Counsel submitted Government's Exhibits (GE) 1 and 2, which were admitted without objection. Applicant testified and submitted Applicant Exhibits (AE) A through L, which had been submitted with his Answer to the SOR. All these exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on May 22, 2025.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

Findings of Fact

In Applicant's SOR response, he admitted all of the SOR allegations. Applicant's admissions are accepted as findings of fact.

Applicant is a 24-year-old employee of a DOD contractor. This is his first time applying for a security clearance. He has no military service. In May 2023, he graduated from college with a Bachelor of Science degree. He has worked for his current employer since August 2023. He is single and has no children. (Tr. 27; GE 1)

The SOR alleges under Guideline H that Applicant used tetrahydrocannabinol (THC or marijuana) with varying frequency from about June 2015 to about September 2022 (SOR ¶ 1.a: GE 1 at 30-32; GE 2 at 29); he used lysergic acid diethylamide (LSD) with varying frequency from approximately June 2016 to approximately August 2020 (SOR ¶ 1.b: GE 1 at 32-35; GE 2 at 2, 9); he sold LSD on various occasions from about June 2016 to about June 2021 (SOR ¶ 1.c: GE 1 at 34-36; GE 2 at 39); he purchased LSD on various occasions from about June 2016 to October 2019 (SOR ¶ 1.d: GE 1 at 34; GE 2 at 3, 9); he purchased THC on various occasions from about June 2015 to about August 2022 (SOR ¶ 1.e: GE 1 at 35-36; GE 2 at 3, 9); and he misused Adderall and Vyvanse, prescription medications that were prescribed to him on various occasions from about January 2017 to about June 2023. (SOR ¶ 1.f: GE 1 at 37; GE 2 at 14)

MARIJUANA USE

Applicant started using marijuana in approximately June 2015, when he was 14-years-old. He started using marijuana to be popular in his high school. He claimed that his marijuana use varied in high school from once a day to once a week. He used marijuana by smoking it or ingesting edibles. In the state where he grew up, marijuana

was illegal under both state and federal law. He did not sell marijuana in high school. (Tr. 29-31, 44; GE 1 at 31; GE 2 at 9)

Applicant attended college in a state where marijuana was legal under state law but remained illegal under federal law. Under the state law, you had to be 21 to use and purchase marijuana. From approximately 2019 to 2022, his marijuana use varied. Between his sophomore and senior year, he would use marijuana to unwind before he went to bed. He realized as he matured that marijuana was a time waster. He realized he could not get a lot done while using marijuana. He last used marijuana in September 2022 when he was 21. He started applying for jobs during his junior year and realized marijuana use was an obstacle to future employment. (Tr. 31-32) After Applicant turned 21, he purchased marijuana from the local dispensaries and gave it to his friends who were underage on several occasions. (Tr. 31-32, 45; GE 1 at 31, 35; GE 2 at 2-3, 9)

LSD USE

Applicant started using LSD at age 15. He describes his LSD use as the next step for him aside from marijuana use. He researched psychedelics and thought the effect on the mind and healing properties was interesting. Through his research, he learned that purchasing LSD from local dealers increased the risk of dangerous chemicals being mixed in the LSD which may result in a lethal overdose. As a result, he purchased LSD on the dark web using crypto currency. He estimated that he purchased LSD about three or four times from approximately 2016 to September 2019. (Tr. 35-39; GE 1 at 33-34; GE 2 at 2-3, 9)

Applicant estimates he used LSD no more than 30 times. In high school, his peak frequency was once a month. In college, he estimates he used LSD three times – twice during his freshman year 2019 to 2020, and once during his sophomore year. The last time he used LSD was in September 2020. (Tr. 35-39; GE 1 at 33; GE 2 at 2, 9)

From approximately June 2016 to approximately April 2021, Applicant sold LSD. In high school, he gave or sold LSD to his high school friends. His interest was not in becoming a drug dealer, rather he believed the use of LSD could help his friends. At the most, he sold LSD in high school on a weekly basis, and it gradually was reduced to a monthly basis. One dose of LSD would cost him \$1, and he would sell it to his friends for \$10. He did not need the money because he grew up in a privileged household. He would donate the money to high school fundraisers. During college, he estimates he sold LSD during his freshman year about 15 times. After freshmen year, he stopped selling LSD with the exception of one occasion in 2021. He was aware that LSD was illegal under federal and state law and when he used, purchased and distributed LSD. (Tr. 37- 42, GE 1 at 35; GE 2 at 3, 9)

Applicant has never had drug counseling or attended drug education classes because he did not think he needed it. He admits to being psychologically addicted to marijuana when he was younger. He was never addicted to LSD. He has never been arrested on drug-related charges. (Tr. 46 -48)

ADDERALL and VYVANSE

When he was twelve, Applicant was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD). He was prescribed medication for his condition when he was 14. He was prescribed both Adderall and Vyvanse. When he was in college, there would be shortages of one of his ADHD medications. During this time period, he would use more of the ADHD drug than prescribed during the times he was unable to fill his other prescription. For example, if he was unable to fill his Vyvanse prescription, he would take more of the Adderall prescription to make up for it. He admits that in the past, he took his ADHD medications during the same time he was using marijuana and LSD. He admits that he made a lot of decisions that were unwise. (Tr. 23-24, 48-50; GE 1 at 37; GE 2 at 14)

Applicant has no intent to use illegal drugs again. He signed a Statement of Intent to abstain from all illegal drugs. He acknowledged that any future involvement with illegal drugs or substance misuse would likely be grounds for revocation of his security clearance and national security eligibility. (AE A) He is passionate about his job and does not want to risk losing his position. Currently, Applicant does not socialize with anyone who uses illegal drugs. He often socializes with his coworkers who he describes as very smart and responsible people. (Tr. 27, 51, 54)

On February 26, 2024, E.M., a licensed clinical professional counselor (LCPC) and a licensed clinical alcohol and drug counselor (LCADC), evaluated Applicant for substance abuse. She acknowledged his ADHD diagnosis at age 12 and that he currently takes 60 mg Vyvanse in the morning and 15 mg of Adderall XR later in the day. Applicant told her that he is often unable to fill his prescription for Vyvanse. When that happens, he sometimes takes 15 mg of Adderall XR three times a day. E.M. summarized Applicant's history of drug use to include LSD during high school and the beginning of his freshman year in college. He used LSD once every other month in high school and eventually it decreased to once a year. He sold LSD in high school and college. He last used LSD in June 2020. Applicant used cannabis often in high school and college. He smoked it once a day during this time. He last used cannabis in September 2022. He occasionally drinks alcohol, on average twice a month. E.M. agrees with the diagnosis of ADHD. She would not give any other diagnoses. Applicant's brief mood survey and therapeutic interview did not reveal any mood issues. He does not currently use any drug other than his ADHD medications. She concludes Applicant is not dealing with addiction issues at present and she does not see a need for additional therapy. (AE B)

On February 23, 2024, Applicant provided a hair sample which was negative for amphetamines, barbiturates, benzodiazepines, cocaine, opiates, PCP, or cannabinoids. (AE C)

Whole-Person Factors

C.P. is one of the project leads where Applicant works. He has worked closely with Applicant for six months. He notes Applicant has “demonstrated exceptional technical aptitude and drive.” He has “a unique combination of excellent technical aptitude and enthusiastic team-building skills.” He is the first person he thinks of when a project needs something done. (AE F at 1)

M.N., a task lead, states Applicant works very well independently and generally does not require a ton of direction. He does not hesitate to ask a lot of questions if he does not know something. He is a quick learner who seeks out answers. (AE F at 2) C.F., another task lead, describes Applicant as “always willing to help and has a strong desire to contribute to projects.” He notes he is a quick learner. (AE F at 3)

K.E. worked closely with Applicant at another business. He enthusiastically recommends him. When they worked together, Applicant consistently demonstrated a strong work ethic. He approached every task with diligence and attention to detail. He effectively managed time and resources under challenging circumstances. He is a great communicator which greatly contributed to the team’s cohesion and productivity. He consistently demonstrates integrity, honesty, and reliability in all of his interactions. He is an asset to any organization. (AE G)

Several of Applicant’s close friends have said similar favorable things about him. (AE H; AE I). Applicant’s parents each wrote a letter of support for their son. (AE J; AE K)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988). The adjudicative 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(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 access to classified information 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 applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director of National Intelligence issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

On December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to*

Classified Information or Eligibility to Hold a Sensitive Position. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement and substance misuse under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse; and

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The record evidence shows Applicant used, purchased and distributed marijuana on various occasions from at least June 2015 to September 2022. He also used, purchased and distributed LSD on various occasions from approximately 2016 to approximately June 2021. AG ¶ 25(a) and ¶ 25(c) apply.

I find SOR ¶ 1.f for Applicant. When completing his SCA in March 2023, he indicated that he has been prescribed ADHD medication since age 12. He indicated that at times he does not follow the correct dosages of his ADHD medication. He later explained in his response to interrogatories and in testimony during the hearing that on occasion, one of his ADHD medications (Adderall or Vyvanse) has supply issues. As a result, he is unable to fill his prescription. When that happens, he takes a little more of the ADHD medication that he has in his possession. It does not appear he is abusing his

ADHD medication. Rather, he adjusts the dosage as a result of the shortage. I find that Applicant was not abusing his ADHD medications.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (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. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

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 on 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) applies. While not condoning Applicant's history of illegal drug involvement, he fully disclosed his illegal drug involvement during his security clearance investigation. Applicant's last use of illegal drugs occurred in September 2022, when he used marijuana for the last time. It has been close to three years since his last use of marijuana. He last used LSD in 2020 and last sold LSD in 2021. More than five years have lapsed since his last use of LSD and more than four years have lapsed since his last sale of LSD. Applicant realized that his illegal drug involvement was not compatible with future employment prospects, and he stopped all illegal drug involvement during his junior year in college. Applicant has matured and his illegal drug involvement is unlikely to occur.

AG ¶ 26(b) applies. Applicant acknowledged his past illegal drug involvement and substance abuse. He established a pattern of abstinence. He last used marijuana three years ago. He last used LSD almost five years ago and he last sold LSD four years ago. He sought a drug and alcohol evaluation from E.M., an LCPC and LCDAC. The evaluation concluded that he did not have an illegal substance abuse problem and no additional

therapy was recommended. Applicant no longer associates with his friends from high school and college with whom he used drugs. He is not aware of any illegal drug use among his current friends. He signed a Statement of Intent to abstain from all drug involvement and substance misuse acknowledging the potential loss of his security clearance should any future illegal drug involvement or substance misuse be discovered. He stopped his illegal drug use when he was a junior in college. AG ¶ 26(b) applies.

While Applicant's history of substance misuse is concerning, it is noted that the majority of his illegal drug involvement occurred during high school. While he used and sold illegal drugs during his early years in college, he realized that his illegal drug involvement would be an obstacle for future employment and quit all illegal drug use in September 2022. He fully disclosed his past substance misuse during his security clearance background investigation. It has been close to three years since the last time he was involved with illegal drugs. For these reasons, Applicant mitigated the security concerns raised under Drug Involvement and Substance Misuse.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 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 Guideline H and the AG ¶ 2(d) factors in this whole-person analysis.

Applicant was candid, sincere, remorseful, and credible at the hearing. I considered that he has been employed by a DOD contractor since August 2023. I considered the favorable statements made by his superiors and coworkers. I considered the statements provided by his parents. I considered Applicant provided full disclosure

about his illegal drug use on his March 2023 SCA, during his background investigation interview, and in response to interrogatories. I considered that he expressed his intent to abstain from all illegal drug involvement on his SCA and during his background investigation interview. I considered that he submitted a formal statement of his intent to refrain from all illegal drug involvement. I considered Applicant made the decision to abstain from all illegal drug involvement on his own accord. He made a lot of unwise decisions while in high school and early in his college education. He realized that any illegal drug involvement would likely be an obstacle for future employment prospects and stopped all illegal drug involvement his junior year in college. He has demonstrated that he is serious about his intention to refrain from illegal drug involvement in the future. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude that Applicant mitigated the security concerns raised by his conduct under Guideline H. He is warned that future illegal drug involvement will likely result in the revocation of his security clearance and national security eligibility.

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: FOR APPLICANT

Subparagraphs 1.a – 1.f: For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

Erin C. Hogan
Administrative Judge