



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



In the matter of:
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Applicant for Security Clearance)

ISCR Case No. 23-01439

Appearances

For Government: Brittany C. White, Esq., Department Counsel
For Applicant: Sean D. Rodgers, Esq.

03/27/2025

Decision

DORSEY, Benjamin R., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On January 22, 2024, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement and substance misuse. Applicant responded to the SOR on February 6, 2024 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on October 28, 2024.

After one continuance, the hearing was convened as rescheduled on February 25, 2025. I admitted Government Exhibits (GE) 1 and 2 and Applicant Exhibits (AE) A through S in evidence without objection. I received a transcript (Tr.) of the hearing on March 4, 2025.

Findings of Fact

Applicant is a 37-year-old employee of a public university for whom he has worked since about September 2022. He earned an undergraduate degree in August 2011, a master's degree in December 2019, and a doctorate degree in August 2022. He has never married and has no children. With the exception of about four years between 2011 and 2016, he was a full-time student between 2002 and 2022. His grade point average (GPA) throughout his undergraduate and postgraduate education was outstanding, resulting in a 3.9 GPA and a 3.7 GPA, respectively. (Tr. 16-18, 22-24, 30-31; Answer; GE 1, 2; AE F-H, K-M)

From about January 2002 until about November 2022, Applicant used marijuana with varying frequency (SOR ¶ 1.a). He used marijuana about three times during high school and estimated that he used it about 20 times overall. At all times relevant to this security clearance investigation, marijuana (products containing at least .3 percent THC) purchase and possession (and therefore its use) has been illegal under federal law. On January 2, 2023, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (SCA). He voluntarily disclosed his marijuana involvement. He also voluntarily disclosed a 2006 arrest and conviction for marijuana possession and driving without a valid license. He successfully completed the terms of his sentence. The last use that he listed on the SCA was a cannabidiol (CBD) chocolate that may or may not have had a level of tetrahydrocannabinol (THC) in it to be considered illegal. He has no intent to use marijuana in the future and provided 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. He testified that he will not be using any products advertised as having CBD in them, as he is aware that they might contain enough THC to be illegal. (Tr. 18-19, 33-36, 43-46, 54, 57-59; Answer; GE 1, 2; AE I)

From about January 2005 until June 2022, Applicant used hallucinogenic mushrooms (SOR ¶ 1.b). At all times relevant to this security clearance investigation, hallucinogenic mushroom purchase and possession (and therefore its use) has been illegal under federal law. He used hallucinogenic mushrooms about three times while in high school and then did not use them again until 2022. He decided to try them again about four times between January 2022 and June 2022, after reading about studies about their use as treatment for depression and anxiety. He was interested in their potential therapeutic properties for those issues from which he suffered. The city where he resided had also "decriminalized" their use. He divulged this hallucinogenic mushroom use in the SCA. (Tr. 18-19, 31-33, 43-46; Answer; GE 1, 2; AE C, R)

From about October 2010 until about March 2020, Applicant used cocaine with varying frequency (SOR ¶ 1.c). During this timeframe, he used it about five to eight times in party settings or social gatherings. He used it once while an undergraduate student. He has no intent to use cocaine in the future because he knows it is illegal and is risky from a health standpoint. He divulged this cocaine use in the SCA. (Tr. 20-21, 43-46; Answer; GE 1, 2)

From about July 2015 until about March 2016, Applicant misused the prescription medication Adderall (SOR ¶ 1.d). During this timeframe, he misused it by taking more of it than his doctor prescribed. He volunteered this information in the SCA. After working for about four years, he went back to school to obtain his master's degree and became overly reliant on Adderall. He thought he needed more of it than he was prescribed to help him focus and study. After a time, he realized that he needed some help with his Adderall use, so he went to a psychiatric emergency room, where the staff advised him to seek recovery treatment for his Adderall issues. He took a medical leave of absence from his graduate program and underwent inpatient recovery counseling from a licensed substance-abuse-care facility from April 9, 2016, until he completed it on April 20, 2016. He then underwent outpatient recovery counseling at the same facility from April 21, 2016 until May 18, 2016, and from May 24, 2016 until November 15, 2016. While receiving outpatient treatment, he lived in a transitional sober living house where he was required to attend 12-step meetings, perform community service, and undergo random drug tests. He has not been prescribed Adderall since his recovery began and did not feel he needed it after he completed his treatment. (Tr. 24-31, 43-54; Answer; GE 1, 2; AE D, E, H)

In the SCA, Applicant wrote that he may sign up for a university sanctioned study at the university where he works to examine the use of mushrooms on depression and their therapeutic value. The Government alleged in SOR ¶ 1.e that he intended to use hallucinogenic mushrooms in the future. Applicant claimed that he does not have that intent. He claimed that his statement merely contemplated the possibility of being involved in a clinical study in a controlled setting for scientific purposes, that he assumed would be legal in nature. He claimed that as he now understands this setting might not be legal, he no longer entertains that possibility. (Tr. 37-39, 43-46; Answer; GE 1, 2; AE I, J, O, P, Q)

All of Applicant's aforementioned substance misuse occurred prior to his knowing that he would be applying for security clearance eligibility. Applicant has undergone multiple drug tests after his aforementioned uses and has received negative results. From about December 2022 until October 2024, he received weekly treatment from a psychiatric mental-health nurse practitioner (NP). After October 2024, he has seen the NP monthly. The NP has prescribed him medication for depression, anxiety, and post-traumatic stress disorder (PTSD). He also began receiving weekly psychotherapy treatment in October 2024. None of these mental health providers have given him anything other than a favorable prognosis. He testified that he has a strong support network that includes his girlfriend, his longtime friends, and his family. None of his associates use or are involved with illegal substances. His 2024 fiscal year performance evaluation reflects that he largely exceeded expectations. (Tr. 37, 40-46, 55-56; Answer; AE J, O, P, Q, R, S)

Applicant's longtime friend, his father, and his live-in girlfriend testified during his case in chief. They are aware of Applicant's substance misuse and his efforts to overcome his issues with Adderall. His longtime friend is a licensed professional counselor who opined that Applicant took the appropriate steps to deal with his issues with Adderall. They all testified that Applicant is honest, forthcoming, and straightforward, and he should

be entrusted with a security clearance. He also provided several character-reference letters from colleagues, friends, and family, who all opine that he is honest, trustworthy, focused, resilient, and hardworking. To the extent they offered an opinion, these writers believe he should be entrusted with a security clearance. (Tr. 60-67, 71-77, 79-85; Answer; AE M)

Policies

This case is adjudicated under Executive Order (EO) 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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 the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶ 2(c), 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."

Under Directive ¶ E3.1.14, the Government must 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." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information.

Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 for drug involvement and substance misuse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable 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
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant possessed and used marijuana, hallucinogenic mushrooms, and cocaine, all illegal drugs, with varying frequency between 2002 and November 2022. He also misused the prescription drug, Adderall, in about 2016. In the SCA, he indicated that he might use hallucinogenic mushrooms in the future. The above listed disqualifying conditions are established.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially 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.

It has been about two and one-half years since Applicant last used an illegal drug. I find his substance misuse is unlikely to recur, and that he has established a sufficient pattern of abstinence. I base my opinion on his honest reporting, his extended period of abstinence as corroborated by his negative drug test results, his substance abuse and mental-health treatment, and his positive and solid support network made up of individuals who are not involved with illegal substances. He provided the signed statement of intent to abstain from future drug use as contemplated in AG ¶ 26(b)(3). I also note that his statement in the SCA about using hallucinogenic mushrooms in the future was limited in scope to a scientific study, and he has subsequently convincingly disavowed it. AG ¶¶ 26(a) and 26(b) fully apply.

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 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 clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. I have incorporated my comments under Guideline H in my whole-person analysis. I have also considered Applicant's advanced education with an excellent GPA, his positive work performance, his positive character references, his open and honest reporting about derogatory information, and his willingness to seek treatment when he needed it.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the drug involvement and substance misuse security concerns.

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.e: For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Benjamin R. Dorsey
Administrative Judge