



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



Appearances

For Government: Brittany White, Esq., Department Counsel
For Applicant: *Pro se*

02/03/2025

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not provide sufficient information to mitigate the drug involvement and substance misuse and criminal conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 17, 2023. On April 30, 2023, 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) and Guideline J (criminal conduct). Applicant answered the SOR on an unknown date and requested a hearing before an administrative judge. The case was assigned to me on September 5, 2024.

The hearing convened on October 23, 2024. Department Counsel submitted Government Exhibits (GE) 1-4, which were admitted in evidence without objection. Applicant did not have any documentation at the hearing. I held the record open for two weeks after the hearing to allow him time to submit documentation. He timely submitted Applicant Exhibits (AE) A-D, which were admitted in evidence without objection.

Findings of Fact

Applicant admitted all of the SOR allegations. His admissions are incorporated into the findings of fact. Based on my review of the pleadings, evidence submitted, and testimony, I make the following additional findings of fact.

Applicant is 40 years old. He married in 2010 and has two minor children. He earned a bachelor's degree in 2007 and a master's degree in 2012. He has worked as a program manager for a government contractor for two years. (Tr. 15-17; GE 1)

Under Guideline H, the SOR alleges Applicant used and purchased cocaine from 2018 to December 2022, while granted access to classified information (SOR ¶ 1.a). This allegation was cross alleged under Guideline J (SOR ¶ 2.a). Guideline J also alleged that Applicant was arrested in February 2022 and charged with endangerment of a child (SOR ¶ 2.b).

Applicant was first granted a security clearance in 2007. He reported that he did not have drug testing during his employment but had to take one when he switched jobs. He was aware that having a position with a government contractor and while possessing a security clearance meant that he was prohibited from using illegal drugs. (Tr. 24-49)

While in college, Applicant had used marijuana sporadically. In 2018, he was diagnosed with a serious illness and thought he was going to die. That year, he attended a party, and someone had cocaine and he decided to try it. In 2019, he contacted the person who had provided him cocaine at the party and purchased some for his personal use. (Tr. 18-57)

Applicant reported he and his wife used cocaine together and their use started off slow. In 2019, he would purchase about \$200 of cocaine a month, and they would use it about six times in a month. They would use it at home after their children went to sleep. However, by 2021, he was purchasing about \$700 of cocaine monthly and using it every weekend and holiday. Their use was habitual from 2019-2021. (Tr. 18-57)

In December 2021, after an argument, Applicant had a suicidal ideation and was taken to the hospital involuntarily. While hospitalized, cocaine was found in his system. Child protective services (CPS) checked on his children after he was released from the hospital. A hair sample was taken from the children, and one of the samples returned positive for exposure to cocaine. His arrest occurred after this test result. Applicant did not know how the cocaine appeared in the hair sample. He asserted that it was inadvertent exposure to residue, and nothing more nefarious. He is a loving father and kept his children away from the cocaine he possessed. (Tr. 18-57; GE 3)

Applicant and his wife were barred from caring for their children, and the children stayed in their home with family members. After his arrest he attended a six-month drug program. He was subjected to testing every week. He also started seeing a psychiatrist for depression, anxiety, and bipolar disorder. In 2022, he was prescribed a variety of

medications, which have helped him remain stable. After completing the drug program, Applicant sought counseling, which he did for about a year. (Tr. 18-57; AE A, C)

Applicant and his wife followed CPS requirements, took classes, and were regularly tested for drugs. He entered a pre-trial diversion program, and his charges were reduced from a felony to a misdemeanor. After successful completion of the program, the charges are expunged. (Tr. 18-57; GE 4; AE C)

Applicant reported that he feels like he is on the right medications now. The scare of losing his children woke him up. He understands that he made some horrible choices but feels he has more to offer and is redeemable. (Tr. 18-57)

Applicant submitted two character letters that state he is reliable, trustworthy and possesses good judgment. He also provided nine professional certificates of achievement showing that he was an outstanding and accomplished employee. (AE B, D)

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

AG ¶ 24 expresses the security concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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.

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

- (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.

The Controlled Substances Act makes it illegal under federal law to manufacture, possess, or distribute certain drugs (Controlled Substances Act, 21 U.S.C. § 801, et seq. See § 844). All controlled substances are classified into five schedules, based on their

accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. §§811, 812. Cocaine is classified as a Schedule II controlled substance based on its high potential for abuse, with use potentially leading to severe psychological or physical dependence. §812(b)(2).

I have considered the mitigating conditions under AG ¶ 26. 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;
- (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 is grounds for revocation of national security eligibility; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶¶ 26 (a), (b), and (d) do not apply. Applicant used cocaine while possessing a security clearance and having access to classified information. Applicant and his wife had a serious cocaine problem and temporarily lost custody of his children. While he has made respectable efforts to treat his mental health issues and be drug free, not enough time has passed to find that this behavior is unlikely to recur. There is not yet enough evidence to find that he has taken sufficient actions to overcome this problem and there is not a long enough pattern of abstinence. He did not provide documentation that included a favorable prognosis.

Applicant has made good strides in his effort of recovery and living drug free. However, considering the seriousness of the circumstances in this case, Applicant needs a longer track record of abstinence and stability.

Guideline J, Criminal Conduct

AG ¶ 30 expresses the security concern for criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

I have considered the disqualifying conditions for criminal conduct under AG ¶ 31 and the following is applicable:

- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

I have considered the mitigating conditions under AG ¶ 32. The following are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

AG ¶¶ 32(a) and (d) apply to the child endangerment charge in SOR ¶ 2.b. Applicant is a loving father. His assertion that the cocaine exposure in his child's hair sample was unintentional is believable. He completed a drug treatment program, therapy, classes, and CPS requirements, and his children have been returned to his and his wife's custody. These circumstances causing him to endanger and lose his children are unlikely to recur.

The mitigating conditions do not yet apply to SOR ¶ 2.a. Possession, use, and purchase of cocaine is criminal conduct, and Applicant engaged in this conduct for at least three years. Applicant needs to establish a longer track record of being drug free to find that this behavior is unlikely to recur. He also did not provide enough current documentation of successful rehabilitation, as most of his work accomplishment certificates predated the cocaine use and arrest.

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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered his character letters, work certificates, and his service to the government as a contractor. I have incorporated my comments under Guidelines H and J in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility for a security clearance. At this time, there is insufficient evidence to mitigate all of the drug involvement and substance misuse and criminal conduct 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge