



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



Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

03/27/2025

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Department of Defense's intent to deny his eligibility for access to classified information. Applicant has mitigated the security concerns raised by his drug involvement and substance abuse and his personal conduct. Eligibility is granted.

Statement of the Case

Applicant submitted his most recent security clearance application (SCA) on May 9, 2023. The Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) on May 23, 2024, detailing security concerns under Guideline H, Drug Involvement and Substance Misuse, and Guideline E, Personal Conduct. The DOD acted under Executive Order 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted an undated and unverified answer to the SOR (Answer) and elected a decision on the written record in lieu of a hearing by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On October 15, 2024, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Exhibits 1 through 8 (Exs.). Applicant received the FORM on December 11, 2024. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant submitted no response to the FORM. The SOR and the Answer (Exhibits 1 and 3, respectively) are the pleadings in this case. Exhibit 2 is a transmittal letter and a receipt and has no probative value. Exhibits 4 through 8 are admitted without objection. The case was assigned to me on February 21, 2025.

Findings of Fact

Applicant is 32 years old, married (December 2018), with two children, and at the time of his Answer another child was on the way. He owns his own home. He is a high school graduate (May 2011) with one year of college (August 2011 to August 2012). He served on active duty in the U.S. Navy from June 2014 until June 2017, when he was discharged under other than honorable conditions. He was granted a secret security clearance in June 2014, when he entered the Navy. From August 2017 to April 2021, he worked in retail jobs. From April 2021, he worked as a contractor for his current defense contractor, which he then joined as a full-time employee in February 2023. (Exs. 3, 5, 6.)

Under Guideline H, the SOR alleged that Applicant: **(a)** before joining the Navy in June 2014, used Lysergic Acid Diethylamide (LSD) with varying frequency; **(b)** used marijuana with varying frequency from about April 2012 through August 2012; **(c)** in August 2012, was charged with possession of marijuana and paraphernalia, convicted of possession of marijuana, sentenced to 18 months of probation, 180 days of incarceration, and assessed a fine; **(d)** in 2016, used methylenedioxymethamphetamine (MDMA) on at least two occasions while in a position requiring a security clearance; **(e)** in about January 2017, purchased and used LSD while in a position requiring a security clearance; and **(f)** as a result of drug use in subparagraphs 1.d and 1.e, received Non-Judicial Punishment (NJP) of a reduction in grade to E-2, forfeiture of half a month pay for two months, and an other than honorable discharge from the Navy. (Ex. 1.) Except for one SOR allegation, he admitted those allegations with minor immaterial comments. (Ex. 3.) One of his admissions, however, warrants discussion below. The other allegations are supported by the record. Applicant disclosed his July and August 2012 marijuana use on his May 9, 2023 SCA, even though its look-back question extended only seven years back. (Ex. 5.)

SOR ¶ 1.e alleged that in about January 2017, Applicant purchased and used LSD, while in a sensitive position, one requiring a security clearance. He said "I admit" but added:

[T]o the best of my knowledge *I did not purchase any LSD at this time*. From what I remember I was given them from my girlfriend at the time through

some friends that she had at the time. I am no longer in touch with any of these people at this time in my life. (Ex. 3.) (Emphasis added.)

Applicant's admission is, in fact, a denial that he purchased LSD in January 2017. The Government cited Exhibits 5, 6, and 7 in support of this allegation.

Exhibit 5 is Applicant's May 9, 2023 SCA, where he stated that he bought LSD in August 2016, but it does not report purchases at any other time. Exhibit 6 are his responses to Personal Subject Interview (PSI) Interrogatories. In his August 4, 2023 PSI, he said he used LSD in August 2016, but he did not say he bought any LSD. Exhibit 7 is a Naval Criminal Investigative Service (NCIS) Report of April 13, 2017. In that report, he is said to have admitted consuming LSD once while on active duty but says nothing about having bought LSD in 2017. The record does not support SOR ¶ 1.e that he purchased LSD in January 2017.

Under Guideline E, the SOR alleged that Applicant: **(a)** deliberately falsified material facts in his December 6, 2013 SCA by failing to disclose his use of LSD in paragraph 1.a; **(b)** falsified material facts during his December 23, 2013 personal subject interview (PSI) by failing to disclose his use of LSD in subparagraph 1.a; **(c)** falsified material facts during his August 4, 2023 PSI when he stated he never purchased LSD in 2016, whereas in truth, he purchased LSD as set forth in subparagraph 1.e; **(d)** falsified material facts during his August 4, 2023 PSI when he stated he never tried to purchase LSD while on active duty, whereas in truth, he tried to get LSD from a Navy service member but the purchase fell through; **(e)** falsified material facts during his August 4, 2023 PSI when he stated he had not used any drugs other than marijuana and LSD, whereas in truth, he had used MDMA as set forth in subparagraph 1.d; and **(f)** falsified material facts in his April 5, 2024 Response to Interrogatories when he stated that he had never used MDMA, whereas in truth, he had used MDMA as set forth in subparagraph 1.d. (Ex. 1.) He admitted all allegations except SOR ¶¶ 2.d. and 2.f discussed below.

SOR ¶ 2.d alleged the following:

Applicant falsified material facts during his August 4, 2023 PSI when he stated he never tried to purchase LSD while on active duty; whereas in truth, he *tried to get LSD from a Navy service member but the purchase fell through.* (Emphasis added.) (Ex. 1.)

Applicant answered as follows:

Deny, I do not *remember ever trying to buy drugs from another service member* and it falling through. I am aware this has taken place a while ago now, but I do not recall *ever trying to buy any drugs from any service member.* My girlfriend was in the Navy at the time of all of this. I can see how it could be misinterpreted into me trying to buy drugs from a service member (emphasis added). (Ex. 3.)

There was no record support cited for SOR ¶ 2.d. First, the SOR drafting is misleading. The “*tried to get*” somehow becomes “*the purchase*” in the same sentence. In short, there is no antecedent to support making “tried to get” into “the purchase.” Second, Exhibit 6 (August 4, 2023 PSI) addresses this subject as follows:

[Applicant] was informed [by the OPM investigator] that the investigation disclosed he [Applicant] told NCIS agents in 3/2017 he tried to get acid once but the purchase fell through. He denied telling NCIS agents he attempted to buy acid. [Applicant] was informed the investigation disclosed he exchanged text messages with another military member attempting to obtain controlled substances, more specifically, LSD. [Applicant] was asked why he said [Ms. A] purchased the LSD and brought it to the barracks if he was texting people trying to make a purchase, *to which he responded, he did not text anyone and attempt to purchase LSD.* (Emphasis added.)

Exhibit 6 references an April 13, 2017 Naval Criminal Investigative Service (NCIS) Report of Investigation which is Exhibit 7. Its relevant portions follow:

[Applicant] . . . was identified as having exchanged text messages with SN XYZ regarding obtaining controlled substances for each other . . .

On 29MAR17, [Applicant] was interviewed and stated SN XYZ *tried to get him “acid” once, but it fell through.* (Emphasis added.)

Applicant’s denial is clear that he does not remember ever trying to *buy* drugs from a service member or attempt to *purchase* drugs or LSD on active duty. SOR ¶ 2.d is poorly drafted, and “tried to get” is not equivalent to a “purchase.” SOR ¶ 2.d is not supported by the record.

SOR ¶ 2.f alleged that Applicant falsified his April 5, 2024 Responses to Interrogatories when he stated that he never used MDMA; whereas, in truth, he used MDMA as set forth in SOR ¶ 1. d above. That paragraph of the SOR alleged that he used MDMA on two occasions in 2016 and failed to disclose it in his responses. (Ex. 1.) He said “I admit” but added:

I was not as forthcoming about all of these mistakes as I should have been. It was hard for me as well because I feel like I had forgotten a lot of what had happened then. It has been a long-time sense [sic] then and honestly, I have forgotten a lot of what happened. This was not something I look back on with pride so it’s not something I thought of often up until this point of trying to get a security clearance. (Ex. 3.)

Although prefaced by “I admit,” Applicant’s full answer is that he cannot recall an answer to the substance of the allegation. Therefore, it will be treated as a denial.

In June 2014, Applicant joined the Navy. He continued his drug use in the service. In 2016, he used MDMA while in a position requiring a security clearance. (Exs. 1, 3.) As a result of his drug use, he received Non-Judicial Punishment (NJP) of a reduction in grade to E-2, forfeiture of half a month pay for two months, and an other than honorable discharge from the Navy in June 2017. (Exs. 1, 6.)

Applicant's August 4, 2023 PSI detailed the status of some of his drug use. He confirmed that his last use of LSD was August 2016. His last use of marijuana was in July and August 2012. (Ex. 6.) According to his Answer, he last used MDMA in 2016. (Exs. 1, 3.). His use of LSD and MDMA was while he was on active duty in the Navy holding a Secret clearance. (Ex. 5.) In his May 2023 SCA, he selected "No" as the answer to the question "do you intend to engage in this [illegal drug] activity in the future?" (Ex. 5.) He reaffirmed that in his August 4, 2023 PSI.

The following is from Section 23 of Applicant's May 9, 2023 SCA:

I was separated from th military for admitting to having issues with minor drug use. I was hanging around the wrong people at the time and this is something I regret very much looking back on it. I ruined my naval career over something that I that I should never even been involved with. The only good about this mistake is that it forced me to learn from it and better myself. Since that time, I am no longer hanging arouind those types of people and I haven't touched a single drug with no interest in doing so. I am married and have two kids now and drugs have no place in my life. I have held multiple jobs in recent years where I have had to take drug tests in order to be hired. I have passed all three: one at PQR, the second at STV, and the third here with [his current employer]. I am doing very well working on the EFG program. I am a big asset to my team and have been selected to head up the BLOCK V retrofit . . . I want to reiterate that drugs have not been in my life for many years now. I do believe that people can change and better themselves. It was a huge learning lesson for me. (Ex. 5.)

The Interview Verification interrogatories were combined with the Drug Use interrogatories. Applicant verified his August 4, 2023 PSI and his December 23, 2013 PSI on April 5, 2024. He did not answer any of the Drug Use interrogatories but signed their verification on April 5, 2024. In his August 4, 2023 PSI, he was summarized as saying:

[Applicant] denied illegally using any other drugs or controlled substances in the last 7 years. His listed marijuana use was over seven (7) years ago, but he left it on the form since it was on his prior background investigation. (Ex. 6.)

Law and 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).

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. These guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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, then the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . ." The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Guideline H – Drug Involvement and Substance Abuse

Under AG H, illegal drug use may raise questions about a person's ability or willingness to comply with laws, rules, and regulations. AG ¶ 24 sets forth the concern, 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.

In analyzing the facts of this case, I considered the following potentially disqualifying conditions:

AG ¶ 25(a) any substance misuse (see above definition);

AG ¶ 25(c) illegal possession of a controlled substance . . . ; and

AG ¶ 25(f) any illegal drug use while . . . holding a sensitive position.

The following mitigating conditions potentially apply in this case:

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 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.

Applicant's first Illegal drug use goes back to April 2012, about a year after he graduated from high school. Not long after that, in August 2012, he was convicted of possession of marijuana. He joined the Navy in 2014. While in the Navy, he used MDMA twice in 2016, while holding a security clearance. In sum, the SOR covers his drug use from when he was 19 to 24 years old, unmarried, and with no children.

Since Applicant left the Navy in June 2017, he worked in several retail jobs. From April 2021, he worked as a contractor for his current defense contractor, which he then joined as an employee in February 2023. He married in December 2018, has three children, and owns his own home. He has not used any illegal drugs since 2016.

Marijuana is a Schedule I controlled substances, and possession of it is regulated by the federal government under the Controlled Substances Act. 21 U.S.C. § 811 et seq. The knowing or intentional possession and use of any such substance is unlawful and punishable by imprisonment, a fine or both. 21 U.S.C. § 844. In an October 25, 2014 memorandum, the Director of National Intelligence affirmed that the use of marijuana is a security concern. James R. Clapper, Director of National Intelligence, Memorandum: *Adherence to Federal Laws Prohibiting Marijuana Use* (October 25, 2014). See also <http://www.dea.gov/druginfo/ds.shtml>

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 medicinal or 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. MDMA, also known as ecstasy or Molly, and LSD are Schedule I controlled substances under the Controlled Substances Act. They are also illegal for possession and use under federal law.

Applicant used marijuana, LSD, and MDMA from 2012 to 2016, including while holding a sensitive position. Therefore, disqualifying conditions AG ¶¶ 25(a), (c), and (f) apply. The next inquiry is whether any mitigating conditions apply.

I considered mitigating condition AG ¶ 26(a). Applicant’s use of drugs ranged from when he was 19 to 24 years old. He is now 32. His last use of illegal drugs was in 2016. Almost nine years have passed. In those years, he has left the service, married, had three children, bought a home, and now works for a defense contractor. He reports that he is an asset there, and “drugs have no place in [his] life.” In his most recent SCA, he reported that he has no intention to use drugs in the future. He confirmed that in his August 2023 PSI. In sum, the circumstances of his life have changed dramatically for the better from those days almost 10 years ago when he was a drug user. I find it unlikely that his drug use will recur, and his past use does not cast doubt on his current reliability, trustworthiness, or good judgment. I find that his past drug use alleged in SOR ¶ 1 is mitigated by AG ¶ 26(a).

I considered mitigating condition AG ¶ 26(b). That condition has two components. First, the individual must acknowledge his drug involvement and substance misuse. Second, the individual must establish a “pattern of abstinence.” The condition then lists several nonexclusive examples of how such a pattern could be shown.

Applicant acknowledged his drug use in his May 2023 SCA and again in his August 2023 PSI. He has acknowledged his drug involvement and substance misuse. Therefore, he has satisfied the first component of AG ¶ 26(b).

The second component requires a showing of a pattern of abstinence. When Applicant was using drugs, he “was hanging around the wrong people.” Applicant now reported that he “no longer [hangs] around those types of people.” His environment has certainly changed. He has grown from a young, unmarried sailor to a husband, father, homeowner, and a full-time employee of a defense contractor. He has no interest in doing drugs and has no intention of using illegal drugs in the future. This he attested to in his May 2023 SCA. He has satisfied AG ¶ 26(b)(1) through (3) and has established a pattern of abstinence. I find that his past drug use alleged in SOR ¶ 1 is mitigated by AG ¶ 26(b). (Note: SOR ¶ 1,e was also found to be without factual support. (See pages 3-3, *supra*.)

Guideline E - Personal Conduct

In assessing an allegation of falsification, I consider not only the allegation and applicant's answer but also all relevant circumstances. See AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). Under Guideline E for personal conduct, the concern is that "[c]onduct 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 or sensitive information." A statement or an omission is false or dishonest when it is made deliberately (knowingly and willfully). Finally, but importantly, I use the common definition of "falsify" and "falsified, which is: "[T]o change something, such as a document, in order to deceive people." E.g., "the certificate had clearly been falsified."

<https://dictionary.cambridge.cambridge.org/english/falsify?q=falsified+>

The SOR alleged that Applicant falsified material facts by omitting certain information from his December 6, 2013 SCA, his December 23, 2013 PSI, and in his August 4, 2023 PSI. This alleged conduct falls within AG ¶ 16(a), which states in pertinent part:

[An] omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . used to conduct investigations.

AG ¶ 17(c) states in pertinent part a condition that may mitigate that disqualifying condition:

[T]he offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

SOR ¶¶ 2.a and 2.b alleged that Applicant falsified his December 6, 2013 SCA and his December 23, 2013 PSI. In that SCA, he was asked whether he had any additional instances of illegal drug use to enter [in the SCA]? He answered "No." The omission is that he did not list his prior use of LSD when he filled out that SCA. In his PSI, he is alleged to have also omitted his prior use of LSD. Applicant admitted those allegations. He explained that he was afraid at the time that if he noted his drug use he would not be able to join the Navy. He was a recent high school graduate. Those omissions were 10 years ago. Since then, he has married, had children, and become a homeowner. I find that so much time has passed and that those omissions do not cast doubt on his current reliability, trustworthiness, or good judgment. SOR ¶¶ 2.a and 2.b have been mitigated by AG ¶ 17(c).

SOR ¶¶ 2.c alleged that Applicant falsified his August 4, 2023 PSI by failing to disclose the information alleged in SOR ¶ 1.e. SOR ¶¶ 1.e has been shown to be without any factual basis, See pages 2 and 3, *supra*. I find in favor of Applicant on SOR ¶ 2.c.

SOR ¶ 2.d alleged that Applicant falsified his August 4, 2023 PSI by failing to state that he never unsuccessfully attempted to purchase LSD while on active duty; whereas in truth, he *tried to get* LSD from a Navy service member but *the purchase fell through*. (Emphasis added.) This allegation has been shown to be without any factual basis, See pages 3 and 4, *supra*. I find in favor of Applicant on SOR ¶ 2.d.

SOR ¶ 2.e alleged that Applicant falsified his August 4, 2023 PSI when he stated that he had not used any illegal drugs other than marijuana and LSD; whereas, in truth, he used MDMA as set forth in SOR ¶ 1. d above. That paragraph of the SOR alleged that he used MDMA on two occasions in 2016 and failed to disclose it during the PSI. The following is the relevant excerpt from his PSI:

[Applicant] denied illegally using any other drugs or controlled substances in the last 7 years. His listed marijuana use was over seven (7) years ago, but he left it on the form since it was on his prior background investigation.

This context shows clearly that Applicant admitted this allegation, because at the time of his PSI, he honestly believed all of his prior drug use had occurred over seven years ago. Thinking that 2016 is seven years before August 4, 2023, is reasonable, and more importantly, it does not show the kind of intent “to deceive people” that is the common definition of “falsify.” Based on the record as a whole, I find in favor of Applicant on SOR ¶ 2.e.

SOR ¶ 2.f alleged that Applicant falsified his April 5, 2024 Responses to Interrogatories when he “stated [he] had never used MDMA”; whereas, in truth, he used MDMA as set forth in SOR ¶ 1. d above. That paragraph of the SOR alleged that he used MDMA on two occasions in 2016 and failed to disclose it in his responses. This allegation is vague in that it does not specify which interrogatory or interrogatories he responded to and “stated [he] had never used MDMA.” There is no passage in Exhibit 6 when he “stated [he] had never used MDMA.” In fact, he did not respond to any of the Drug Use interrogatories, likely in part for the reasons explained in the SOR ¶ 2.e analysis. Moreover, there is no showing of any intent “to deceive people” that is the common definition of “falsify.” Based on the record as a whole, I find in favor of Applicant on SOR ¶ 2.f.

Whole-Person Concept

The record does not raise doubts about Applicant’s reliability, trustworthiness, judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered whether the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept. AG ¶¶ 2(d)(1)-(9) and 2(f)(1)-(6). Accordingly, I conclude that

Applicant has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraphs 1.a - 1.f: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraphs 2.a – 2.f: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant access to classified information. Applicant's eligibility is granted.

Philip J. Katauskas
Administrative Judge