



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



In the matter of:

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ISCR Case No. 24-01417

Applicant for Security Clearance)

Appearances

For Government: John Renahan, Esq., Department Counsel

For Applicant: *Pro se*

06/30/2025

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On October 2, 2023, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On September 9, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse; and Guideline J, Criminal Conduct. The action was taken 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*, effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR on October 15, 2024, and requested a hearing before an administrative judge. The case was assigned to me on April 10, 2025. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on April 15, 2025, and the hearing was convened as scheduled on June 11, 2025. The Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. The Applicant offered two exhibits, referred to as Applicant's Exhibits A and B, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on June 23, 2025.

Findings of Fact

Applicant is 24 years old and single with no children. He has a Bachelor's degree in Mechanical Engineering. He is employed by a defense contractor as a Mechanical Engineer. He is seeking to obtain a security clearance in connection with his employment.

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

Applicant started using marijuana in high school in about August 2017. A friend introduced him to it. He enjoyed the effects and he continued to smoke marijuana on a daily basis, from once, to two to three times daily, mainly at night. This use continued through high school, and then throughout college on an intermittent basis. He believes that in high school he may have used it about 300 times total. In college, which Applicant characterized as a "party school," he stated that he may have used it about 200 times total. Applicant also stated that he learned that marijuana was illegal under Federal law in 2019. He explained that although marijuana was legal in the state, it was not legal on his college campus because it was a public university that received federal funding. He stated that he avoided trouble and did not use marijuana on the university campus. (Tr. pp. 29-31, and Government Exhibits 1, 2, and 3.)

Applicant also purchased marijuana from about August 2017 to August 2023. During high school, before he turned 21 years old, he would purchase marijuana from friends who had it. In college, and after turning 21 years old, he would purchase it from the dispensaries. At times, the dispensaries would have marijuana that Applicant felt was too strong, and he did not like it. Applicant normally purchased about 1/8 ounce of marijuana, \$40 worth, which would last him about one to two months. (Tr. pp. 32-35, and Government Exhibits 1, 2, and 3.)

Applicant used other illegal drugs including cocaine, one to two times a month, from July 2022 to June 2023; mushrooms, one to two times a month from about September 2022 to about September 2023; the prescription medication Adderall, on two occasions, (that was not prescribed to him), from August 2022 to November 2022; and ecstasy, one time in June 2023. (Tr. pp. 55-58, and Government Exhibits 1, 2, and 3.)

After spring break, during his senior year of college, Applicant received a job offer from his current employer. He explained that towards the end of his senior year of college, he stopped using marijuana altogether because he knew that he would be required to undergo a pre-employment drug test. He needed to pass the test as part of the onboarding process to start employment. Applicant stopped using marijuana until after his drug test, and then he started using it again. It was during the onboarding process with his employer that he was made aware of their drug free policy. (Tr. p. 41.) Applicant stated that after the drug test, he rarely used marijuana, but his use picked up again when he went to Amsterdam. Applicant stated that he knew at this point that he should not use illegal drugs, and he did not want to use it daily, but he did not want to miss out on graduation celebrations. (Tr. pp. 29-43, and Government Exhibits 1, 2, and 3.)

After graduating from college, in June 2023, Applicant and five of his friends traveled throughout Europe, for a month, visiting many places including Amsterdam. During this vacation they went to many bars and nightclubs where Applicant used a variety of illegal drugs, including marijuana on a daily basis, and cocaine, mushrooms, and ecstasy. (Tr. pp. 43-47, and Government Exhibits 1, 2, and 3.)

Applicant started working for his current employer at the end of August 2023. Three weeks later, in September 2023, he used mushrooms. He stated that he knew that he would have to stop using drugs before he started work. (Tr. p. 43.) Applicant explained that when he moved to the new city to start the job, he was not familiar with the area, and there were a lot of drugs around. He stated that after using mushrooms, he had a wake-up call and realized that he had to stop his illegal drug use. He also knew that he was in violation of his work-place policy, but he did not report this use to his Facility Security Officer. He states that since then he has not used any illegal drugs and that he has been drug free for 1 year and 9 months. (Tr. pp. 51-57, and Government Exhibits 1, 2, and 3.)

Applicant stated that he no longer wants to use illegal drugs and intends to abstain from any future use. Most of his friends are drug users. He has told them that he cannot use drugs anymore because of his job. He is making a conscious effort to avoid drugs. He now avoids certain locations where he knows people will be using drugs, like Techno Shows. He also makes it clear to new friends that he does not do drugs. He stated that since he stopped using marijuana, he has been physically more healthy. He has lost 25 pounds from working out and watching his diet, and he is also saving money. He has now moved into a house. (Tr. pp. 51-68.)

Guideline J – Criminal Conduct

The Government alleges that Applicant has engaged in criminal activity that creates doubt about a person's judgment, reliability, and trustworthiness and calls into question a person's ability or willingness to comply with laws, rules, and regulations.

Applicant's use and purchases of marijuana, use of cocaine, use of mushrooms, and use of Adderall without a prescription, were against both state and Federal law while he was in high school. After the age of 21, the state in which he resided made it legal to use marijuana for recreational purposes. However, his use of cocaine, mushrooms, and Adderall remained illegal. It is unclear whether his use of ecstasy which occurred in Europe was legally permitted, but common sense would dictate that it was illegal. (Tr. pp. 54-57, and Government Exhibits 1, 2, and 3.) In any event, Applicant engaged in a pattern of criminal conduct involving the use and purchase of illegal drugs that shows poor judgment, unreliability, and untrustworthiness.

Letters of recommendation from Applicant's Manager, and the Chief Engineer, who both work closely with the Applicant, indicate that Applicant joined the team in July 2023. Collectively, they indicate that Applicant has shown a strong work ethic, commitment, and integrity. He possesses a robust mechanical engineering ability and a keen attention to detail. He has a strong moral compass and displays a deep sense of responsibility. He is an excellent team player with a positive attitude. His willingness to help others make him a pleasure to work with. He has proven himself to be exceptionally trustworthy, handling proprietary data with the utmost care and confidentiality. His commitment to protecting sensitive information, and exceptional technical skills make him an outstanding candidate for a security clearance. (Applicant's Exhibits A and B.) It is noted that neither of these letters address Applicant's illegal drug use history. In response to questioning by Department Counsel, neither reference had any specific details about the extent of Applicant's illegal drug use. (Tr. pp. 57-59.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing 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 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 applies for access to classified information seeks to enter 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 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 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 relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 at AG ¶ 25 contains two conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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.

None of the mitigating factors demonstrate full mitigation. Although Applicant went to college and obtained a degree, he was a regular/daily drug user, who associated with drug users and lived that lifestyle. His history of illegal drug use and purchases from August 2017 to September 2023, involving marijuana, cocaine, mushrooms, Adderall, and ecstasy, with intermittent and daily use, over six-years, reflects poor judgment, unreliability, and untrustworthiness. Applicant knew in 2019 that Federal law prohibits illegal drug use. To get hired by a defense contractor, Applicant

deliberately stopped using marijuana to pass his employer's drug test, and then started using it again. He knew that he would have to stop using illegal drugs before starting work. Applicant also used mushrooms shortly after he was hired by the defense contractor, knowing that any illegal drug use is prohibited by the DoD. Furthermore, he did not report this illegal drug use to his Facility Security Officer. Applicant stated that he had an awakening after using mushrooms in September 2023, and he decided to stop using illegal drugs for good. He states that he has been drug free for 1 year and 9 months. However, under these circumstances, given the extent of his illegal drug use; including the frequency and variety of drugs used; and the recency of the use which last occurred while he was working for a defense contractor; more time is needed to determine whether he will be able to maintain a drug-free lifestyle to convince the Government that he will not return to his old ways. At this time, he has not shown a sufficient pattern and practice of good judgment, reliability, and trustworthiness necessary to be eligible for access to classified information.

Guideline J; Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

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.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

(a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and

(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; and

Applicant committed numerous violations of the law by using and purchasing the above-described illegal drugs beginning in high school with marijuana, and continuing to his last use of any illegal drug, mushrooms, which occurred in September 2023. The aforementioned disqualifying conditions have been established.

Four Criminal Conduct mitigating conditions under AG ¶ 32 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;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; 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.

Applicant is making an effort to improve his lifestyle by quitting his illegal drug use. He states that he has now been drug free for 1 year and 9 months. However, his fairly recent and extensive history of illegal drug use and purchases establishes criminal conduct that creates doubt concerning his judgment, reliability, trustworthiness, and ability or willingness to abide by law, rules, and regulations. None of the mitigating conditions establish full mitigation.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline H, and Guideline J, in my whole-person analysis. To hold a security clearance is a privilege and not a right. While holding a security clearance one is expected to show honesty, responsibility, and good judgment at all times. Applicant has only recently stopped using illegal drugs and needs more time to show a sustained positive pattern of conduct and the level of maturity needed for access to classified information.

At this time, he is not an individual with whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. Right now, he is not qualified for access to classified information, nor is it certain that sensitive information will be properly protected. More time is needed to determine that his past pattern of poor judgment is finally over for good. He may in the future be found to be eligible for access to classified information, but it will take continued work on his part to show that he can be drug-free and without criminal conduct for a significant period of time to establish security clearance eligibility.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate 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 ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H: **AGAINST APPLICANT**

Subparagraphs 1.a., through 1.f: Against Applicant

Paragraph 2, Guideline J: **AGAINST APPLICANT**

Subparagraph 2.a. 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 for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge