



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



Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

06/09/2025

Decision

HARVEY, Mark, Administrative Judge:

On December 5, 2023, Applicant submitted an Electronic Questionnaire for Investigations Processing (SF-86) (SCA). On August 23, 2024, after reviewing the application and information gathered during a background investigation, the Department of Defense Counterintelligence and Security Agency, sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant him eligibility for access to classified information.

This national security eligibility action was taken 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 the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), which became effective within the DoD on June 8, 2017.

The SOR detailed the factual reasons for the action under Guideline H (drug involvement and substance misuse). On September 24, 2024, Applicant answered the SOR and requested a hearing. On November 13, 2024, Department Counsel was ready to proceed. The case was assigned to another administrative judge on April 2, 2025, and

on April 15, 2025, the case was transferred to me for administrative reasons. On April 18, 2025, the Defense Office of Hearings and Appeals (DOHA) issued a notice scheduling the hearing for May 20, 2025. The hearing was held as scheduled using the Microsoft Teams video teleconference. On June 2, 2025, I received a copy of the transcript of the hearing. I proposed to the parties that this case was appropriate for a summary disposition in Applicant's favor. Department Counsel indicated she did not object to a summary disposition in Applicant's favor.

In summary, this case centers on Applicant's involvement with illegal drugs with varying frequency as follows: (1) marijuana use from about January 2010 to August 2023; (2) marijuana purchases from about 2018 to 2023; (3) cocaine use about four times from about June 2017 to February 2022; (4) Adderall use without a prescription from about January 2020 to January 2021; and (5) mushrooms and lysergic acid diethylamide (LSD) use from about May 2014 to May 2019. Applicant disclosed his involvement with illegal drugs consistent with the allegations in the SOR on his December 12, 2023 SCA, his January 29, 2024 Office of Personnel Management (OPM) personal subject interview (PSI), his SOR response, and at his hearing. The disqualifying conditions in AG ¶¶ 25(a) ("any substance misuse"); and 25(c) ("illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia") are established.

In January 2024, Applicant began working for the government contractor as a quality assurance engineer. (Tr. 7) He did not use illegal drugs while holding a security clearance or occupying a law enforcement position. He resided in a state in which state law did not prohibit his marijuana involvement. He ended his involvement with illegal drugs several months before he completed his SCA, had his OPM PSI, or began his employment with a government contractor. In his SCA, during his OPM PSI, in his SOR response, and at his hearing, he promised not to use illegal drugs in the future. He 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. Applicant established the mitigating conditions in AG ¶ 26(a) and 26(b):

- (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.

Applicant provided character statements from friends, coworkers and supervisors. The character statements lauded his diligence, responsibility, honesty, trustworthiness, intelligence, and professionalism.

Based on the record evidence as a whole, I conclude that Department Counsel presented sufficient evidence to establish the facts alleged in the SOR under Guideline H. I also conclude that Applicant presented sufficient evidence to explain, extenuate, or mitigate the facts admitted by Applicant or proven by Department Counsel.

The concerns over Applicant's history of drug involvement and substance misuse do not create doubt about his current reliability, trustworthiness, good judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I considered the decisions of the Appeal Board discussing "the changing landscape of marijuana law" with respect to security clearance decisions. See ISCR Case No. 23-02402 at 4-6 (App. Bd. Feb. 19, 2025); ISCR Case No. 24-01005 at 4-5 (App. Bd. Apr. 11, 2025); ISCR Case No. 24-00914 at 4-6 (App. Bd. Apr. 9, 2025). I also gave due consideration to the whole-person concept. Accordingly, I conclude that he 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. This case is decided for Applicant.

Mark Harvey
Administrative Judge