



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



Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: Pro se

07/25/2025

Decision

HOGAN, Erin C., Administrative Judge:

The security concerns under Guideline H, drug involvement and substance misuse were not mitigated. Guideline E, Personal Conduct, was found for Applicant because the concerns were adequately addressed under Guideline H. Applicant's eligibility for a security clearance is denied.

History of the Case

On October 18, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. The DCSA acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on November 13, 2024, and requested a hearing. The case was assigned to me on April 2, 2025. After coordinating with the parties, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on May 5,

2025, and the hearing was held as scheduled on June 3, 2025. The Government offered exhibits (GE) 1 through 2, which were admitted into evidence without objection. The Government's exhibit list and pre-hearing discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified. The record was held open until June 17, 2025, to allow Applicant to submit additional documents. He timely submitted two documents which were admitted as Applicant Exhibits (AE) A and B without objection. AE A is a Statement of Intent digitally signed by Applicant. (1 pg.) AE B consists of six-character reference letters. (7 pgs.) DOHA received the hearing transcript (Tr.) on June 13, 2025. The record closed on June 17, 2025.

Some details were excluded to protect Applicant's right to privacy. Specific information is available in the cited exhibits and transcript.

Findings of Fact

Applicant admitted all of the SOR allegations. His admissions are adopted as a finding of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 25-year-old employee of a Department of Defense contractor. He has worked for them since June 2020. He earned a bachelor's degree in May 2021. He is currently studying for his master's degree in his spare time. During his undergraduate years he interned with DOD contractor A in the summer of 2019. In the summer of 2020 and part time during the school year, he worked for his current employer and was offered a full-time position after his graduation. He has no military service. He is single and has no children. He completed a security clearance application (SCA) on March 4, 2024. This was his first time applying for a security clearance. (Tr.14-17; GE 1)

Under Guideline H, the SOR alleged Applicant used THC (tetrahydrocannabinol - also known as marijuana) with varying frequency from about January 2015 to about March 2021 (SOR ¶ 1.a: GE 1 at 33; GE 2 at 5, 12); that he purchased THC from about January 2015 to about February 2018 (SOR ¶ 1.b: GE 1 at 36; GE 2 at 6); that he sold THC from about September 2017 to February 2018 (SOR ¶ 1.c: GE 1 at 36; GE 2 at 10); that he used cocaine with varying frequency from about January 2018 to about February 2024 (SOR ¶ 1.d: GE 1 at 36; GE 2 at 5, 11); that he purchased cocaine from about January 2018 to about March 2023 (SOR ¶ 1.e: GE 1 at 36; GE 2 at 6, 11); that he used hallucinogens, including mushrooms (psilocybin) and LSD (lysergic acid diethylamide), with varying frequency from about December 2017 to about July 2018 (SOR ¶ 1.f: GE 1 at 35; GE 2 at 5, 13); and that he purchased hallucinogens, including mushrooms and LSD, from about December 2017 to about March 2018 (SOR ¶ 1.g: GE 1 at 35, 37; GE 2 at 6, 13).

Additional Guideline H allegations include that Applicant misused prescription stimulants, including Adderall, Vyvanse, and Ritalin, from about October 2017 to about

February 2024 (SOR ¶ 1.h: GE 1 at 33, 39; GE 2 at 5, 11-12); that he purchased prescription stimulants not prescribed to him, including Adderall, Vyvanse, and Ritalin, from about October 2017 to about September 2022 (SOR ¶ 1.i: GE 1 at 33, 37; GE 2 at 6, 11-12); that he used and purchased Molly (also known as ecstasy, MDMA or 3,4 methylenedioxy methamphetamine) in about August 2023 (SOR ¶ 1.j: GE 1 at 33, 37; GE 2 at 12); that he misused the prescription drug Codeine from about May 2018 to about August 2018 (SOR ¶ 1.k: GE 1 at 34; GE 2 at 5, 12-15); that he misused prescription opioids, including OxyContin and Percocet from about June 2018 to about February 2022 (SOR ¶ 1.l: GE 1 at 35, 39-40; GE 2 at 5, 13-14); and that he purchased prescription opioids not prescribed to him, including OxyContin and Percocet from about August 2018 to about January 2022 (SOR ¶ 1.m: GE 1 at 38; GE 2 at 6, 13-14).

In his SOR response, Applicant also admitted that he bought and misused Xanax from about August 2020 to about May 2021. He claims he used it infrequently. (Response to SOR ¶ 1.k)

Under Guideline E, the SOR cross-alleged all of the allegations under Guideline H, specifically SOR ¶¶ 1.a-1.m. (SOR ¶ 2.a)

Applicant started using marijuana in high school. Between 2015 to 2017, he used marijuana on the weekends. Between 2017 to 2018, he used marijuana daily during his first year in college. He stopped using marijuana on a regular basis after his freshman year in college because his grades suffered. He wanted to focus more on his studies. The last time he used marijuana was around March 2021. He acknowledged that the use of marijuana was illegal under state law at the time he used it and that the use of marijuana was and remains illegal under federal law. Applicant also sold marijuana on several occasions to his friends while in college from about September 2018 to August 2019. (Tr. 19-24, 35; GE 1 at 33-34, 36; GE 2 at 5-6, 10, 12; Response to SOR)

Applicant acknowledged that the other drugs he used while in college were illegal under federal and state law. He testified:

In regards to the other drugs, it was fun. It was - - once I had all my stuff together, and once I was done with my week and we had a Saturday and Sunday in college, and those were some of the ways we frequented - - not frequented, but chose to, I guess enjoy our weekends at times. (Tr. 22)

Aside from marijuana, Applicant used the following illegal drugs while a college student:

Applicant used cocaine from January 2018 to February 2024. During college, he used cocaine a few times a month on the weekends. He either got it from friends or occasionally purchased it. (Tr. 24; GE 1 at 32, 36; GE 2 at 5-6, 11; Response to SOR)

He used hallucinogens, including mushrooms and LSD, from about December 2017 to about July 2018. Applicant testified that he used both drugs a couple times. He would use with his fraternity brothers. He admits to purchasing the drugs on a few occasions. (Tr. 29-30; GE 1 at 34-35, 37-38; GE 2 at 5-6, 13; Response to SOR)

He misused prescription stimulants, including Adderall, Vyvanse and Ritalin, from October 2017 to February 2024. Applicant used the above prescription drugs several times a month while in college. He used them when he needed to focus on his studies or to have fun. He testified the use of these drugs were common among his friends in college. He stated the drug's effects were similar to super-charged caffeine. It was fun to use while drinking alcohol. He was never prescribed any of these drugs. He would often purchase them from friends who had a prescription. (Tr. 26-27; GE 1 at 33, 37, 39; GE 2 at 5-7, 11; Response to SOR)

He misused the prescription drug codeine from about May 2018 to about August 2018. Applicant was prescribed codeine for a legitimate illness, but later mixed it with marijuana on three occasions while at a party. (Tr. 28-29; GE 1 at 34; GE 2 at 5-6, 12-13; Response to SOR)

He misused the prescription drugs Percocet and Oxycodone a few times in 2018, twice in 2019 and a few times in 2021 and 2022. He admits to occasionally purchasing these drugs. He did not have a prescription for either of these drugs. (Tr. 30; GE 1 at 35, 38-40; GE 2 at 5-6, 14; Response to SOR)

In his Response to the SOR, Applicant indicated that he had misused Xanax, without a prescription from January 2021 to May 2021. He used it about three times. (Tr. 30). His misuse of Xanax is not alleged in the SOR. It will not be considered under disqualifying purposes but will be considered under matters of extenuation and mitigation.

After his graduation from college, Applicant was hired full-time by his current employer. He was required to take a drug test, which he passed. (Tr.16-18) He used several illegal drugs while working for his current employer. He used and purchased the drug Molly while at a music festival in August 2023. He misused the prescription drugs, OxyContin and Percocet, until February 2022. He last purchased OxyContin or Percocet in February 2022. He misused and purchased the prescription drugs Adderall, Vyvanse, and Ritalin on several occasions after he graduated college. His last purchase was in approximately September 2022 and his last use was in approximately February 2024. He admits to illegally using and purchasing cocaine between five to seven times after graduating from college. From 2022 to 2023, it was an occasional weekend. The last time he purchased cocaine was approximately March 2023. The last time he used cocaine was in February 2024. He was away for the weekend visiting some of his college friends who lived in another state. He testified that he remembers the weekend because he was given a security clearance application when he returned the following Monday. He

realized that he needed to stop doing illegal drugs immediately. He claims it was a wake up call for him. (Tr. 24-27, 30; GE 1; GE 2)

During cross-examination, Department Counsel asked Applicant about his employer's drug-free workplace policy and his decision to continue to use illegal drugs after becoming an employee. He responded:

I disregarded it, to be blunt. I don't think there's any way around it. No matter, I would say, it's clear I disregarded it. Yeah, I guess - - that's all I have. (Tr. 26)

Applicant testified that his current friends whom he associates with do not use illegal drugs. He has a few friends from college who still use illegal drugs. He told them that he no longer uses illegal drugs because he is applying for a security clearance. He believes that he is able to stop using illegal drugs without treatment. He was honest about his illegal drug use. He needs a security clearance to progress in his career field. He intends to abstain from all illegal drug use in the future. After the hearing, he provided a digitally signed Statement of Intent, dated June 3, 2025, indicating that he intends to abstain from illegal drug use in the future. He acknowledged that any future illegal drug abuse may result in the revocation of his security clearance. (Tr. 32-35, AE A)

Whole-Person Information

Several people wrote letters on Applicant's behalf:

Mr. H is the operations manager in the division where Applicant works. He has worked with Applicant on a daily basis for over a year. Mr. H notes that he has progressed from learning the job to basically managing the entire process. He describes him as "resourceful, reliable, personable, organized, and motivated." He has great potential and interacts well with others. He is committed to the job and often works long hours to accomplish his heavy workload. He highly recommends Applicant. (AE B at 3)

Mr. F is Applicant's direct manager. He has worked with him closely for two years. He describes him as "a highly dependable and well-respected professional." Applicant is someone who he can assign a task or project with full confidence it will be handled thoroughly, thoughtfully and on time. He is "a go-to person for high-priority work." His character is impressive. He is honest, respectful, and a team player. His strong moral compass and proven reliability make him a top performer whom Mr. F. trusts implicitly. (AE B at 5) Mr. F provided a copy of Applicant's performance review for the fourth quarter of 2024. It is highly favorable. (AE B at 6)

Mr. S was Applicant's direct manager from August 2023 to June 2024. He notes Applicant is very positive and has a sense of humor. He embodies teamwork and his work

ethic is very strong. He goes above and beyond his general responsibilities. He recommends him for a security clearance. (AE B at 7)

Three of Applicant's friends and co-workers attest to his trustworthiness and honesty. He is described as kind, loyal and hard working. His diligence, collaborative spirit, and excellent communication skills make him a valuable asset in any workplace. (AE B at 1, 2 and 4)

Policies

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 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, these guidelines are applied 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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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 Abuse

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Two are potentially applicable in this case:

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

AG ¶ 25(a) applies with regard to Applicant’s illegal drug abuse and misuse of prescription drugs that were not prescribed to him as described in SOR ¶¶ 1.a, 1.d, 1.f, 1.h, 1.j, 1.k, and 1.l. AG ¶ 25(c) applies regarding Applicant’s purchase of illegal drugs as alleged in SOR ¶¶ 1.b, 1.e, 1.g, 1.i, 1.j, and 1.m. It also applies to Applicant’s illegal sales of marijuana as alleged in SOR ¶ 1.c.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

- (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.

AG ¶ 26(a) does not apply. Applicant's last use of illegal drugs was cocaine in February 2024. This was close to a year and a half ago. Applicant's extensive history of illegal drug use continues to raise questions about his judgment, trustworthiness and reliability. While most of his drug use occurred when he was in college, he continued to use and purchase illegal drugs after his college graduation and after becoming an employee of a DoD contractor with a drug-free workplace policy which he admitted to being aware of during the hearing. Not enough time has passed since his last illegal drug use to conclude that he will remain drug free in the future.

AG ¶ 26(b) partially applies because Applicant fully acknowledged his illegal drug use and signed a Statement of Intent to abstain from future illegal drug use. This mitigating condition is given less weight because it has only been a year and a half since he last used illegal drugs. While he socializes with friends who do not use illegal drugs, he occasionally sees his friends with whom he used illegal drugs in the past. This as well as Applicant's history of illegal drug use, to include while being employed with a DOD contractor with a drug free workplace policy, raise concerns that not enough time has passed to conclude Applicant will successfully abstain from illegal drug use.

Guideline E, Personal Conduct

All of the concerns under Guideline H were cross-alleged under Guideline E, Personal Conduct. I find the Guideline E allegations for Applicant because the same concerns were adequately considered under Guideline H.

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 the 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 the favorable recommendations of Applicant's current and past direct managers as well as several friends. I considered that Applicant was very forthcoming about his past illegal drug use. However, I also considered that Applicant's use and purchase of illegal drugs was not experimental but quite extensive and involved several controlled substances. I considered that he was aware that his drug use was illegal under state and federal law. I considered that he continued his illegal drug use after being hired full-time by a DoD contractor. I considered his illegal drug use while employed with a DoD contractor occurred on several occasions over a period of two and a half years and that he stopped using illegal drugs when he was given a security clearance application to complete. I considered that Applicant's last use of illegal drugs occurred only a year and a half ago. Considering his history of illegal drug use, not enough time has passed to conclude Applicant will continue to remain drug free.

Overall, the record evidence leaves me with doubts about Applicant's eligibility and suitability for a security clearance. Applicant's illegal drug abuse raises questions about his trustworthiness and reliability as well as his ability or willingness to comply with laws, rules and regulations. While forthcoming about his illegal drug use, Applicant did not appear to understand the security significance of his past illegal drug abuse. For all these reasons, I conclude Applicant did not mitigate the drug involvement and substance misuse security concerns. I find Guideline E for Applicant because the allegations were adequately addressed under Guideline H.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to be eligible for a security clearance. The determination of an individual's eligibility and suitability for a security clearance is not a once in a lifetime occurrence, but is based on applying the

factors, both disqualifying and mitigating, to the evidence presented. Under his current circumstances, a clearance is not warranted. In the future, he may well demonstrate persuasive evidence of his security worthiness.

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
Subparagraphs 1.a-1.m:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge