



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



In the matter of:)
)
) ISCR Case No. 23-02239
)
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: Daniel P. Meyer, Esq.

07/31/2025

Decision

HOGAN, Erin C., Administrative Judge:

Applicant mitigated the security concerns under Guideline F, Financial Considerations. The security concerns raised under Guideline H, Drug Involvement and Substance Misuse; Guideline J, Criminal Conduct; and Guideline E, Personal Conduct were not mitigated. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 1, 2022. (Government Exhibit (GE) 1) The Defense Counterintelligence & Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) on February 16, 2024, detailing security concerns under Guidelines H, E, J and F. DCSA acted under Executive Order (Exec. Or.) 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

Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

On February 24, 2024, Applicant answered the SOR and elected a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA). The DOHA Hearing Office received the case on June 3, 2024, and it was assigned to me on December 9, 2024. On March 27, 2025, a Notice of Hearing was issued scheduling the hearing for April 30, 2025. The hearing was held on that date. Department Counsel offered five exhibits which were marked and admitted as GE 1 - 5 without objection. Applicant through his counsel offered 5 exhibits, which were marked and admitted as Applicant Exhibits (AE) A - E without objection. Applicant testified and called no witnesses during the hearing. The transcript (Tr.) was received on May 12, 2025.

Several names and other facts have been modified to protect Applicant's privacy interests. More detailed facts can be found in the record.

Findings of Fact

In Applicant's SOR response, he admits all of the allegations in the SOR. Applicant's admissions are accepted as findings of fact.

Applicant is 28 years old. He has applied for a position with a DOD contractor and will be hired if he is granted a security clearance. He enlisted in the United States Air Force in June 2019 when he was 22. Prior to enlisting in the Air Force, he attended a year at a community college and then transferred to a university. He attended the university from 2015 to 2018. His sister attended the university at the same time. He dropped out of college in 2018 because his mother could not afford to pay tuition for two children. He enlisted in the Air Force a year later, primarily for the educational benefits. He was involuntarily separated from the Air Force with a discharge characterized as general under honorable conditions. He is currently studying for a bachelor of science degree and expects to graduate in December 2025. He is single and has a four-year-old son. He shares joint custody of his son with his child's mother, a former girlfriend. (Tr.16 – 20, 33-36; GE 1)

The SOR alleges under Guideline H that Applicant used marijuana with varying frequency from about August 2015 to about January 2023 (SOR ¶ 1.a: GE 2 at 7, 9-10; GE 2 at 5,9); that he failed a urinalysis test in September 2021, testing positive for Tetrahydrocannabinol (THC), the psychoactive ingredient in marijuana (SOR ¶ 1.b: GE 2 at 5,9; GE 5); that he used Lysergic Acid Diethylamide (LSD) with varying frequency in about June 2020 (SOR ¶ 1.c: GE 2 at 5, 9-10; GE 5); that he wrongfully purchased, possessed, and distributed some amount of LSD in April 2021.(SOR ¶ 1.d: GE 2 at 5, 9-10; GE 5); that he used Methyleneatedoxymethamphetamine (MDMA, or Ecstasy) once in

approximately 2022 (SOR ¶ 1.e: GE 2 at 6-7, 10-11; GE 5); and he used various illegal drugs, to include marijuana and LSD with varying frequency from June 2019 to about April 2022, while granted access to classified information. (SOR ¶ 1.f: GE 2 at 5, 9-10)

Under Guideline J, Criminal Conduct, Applicant received nonjudicial punishment under Article 15, Uniform Code of Military Justice (UCMJ), on January 10, 2022, for the offenses of wrongfully using LSD from about June 1, 2020 to about June 30, 2020; wrongfully using marijuana on about September 21, 2021; wrongfully possessing some amount of LSD on about April 11, 2021; and wrongfully distributing some amount of LSD on about April 11, 2021. His conduct was in violation of Article 112a of the UCMJ.

Under Guideline E, Personal Conduct, the allegations relate to Applicant's alleged deliberate falsification in response to several questions on his November 1, 2022 e-QIP application (security clearance application). Specifically:

SOR ¶ 3.a alleges Applicant falsified material facts on the November 1, 2022 security clearance application, in response to "Section 23 – Illegal Use of Drugs or Drug Activity – Illegal Use of Drug or Controlled Substances? In the last seven (7) years have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance?" He answered, "No" and deliberately failed to list his illegal use of marijuana, LSD, and MDMA as alleged in SOR ¶¶ 1.a, 1.c and 1.e. (GE 1 at 27; GE 2 at 10)

SOR ¶ 3.b alleges Applicant falsified material facts on the November 1, 2022 security clearance application in response to "Section 23 – Illegal Use of Drugs or Drug Activity: Illegal Drug Activity: In the last seven years, have you been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance?" when he answered "No." He deliberately failed to disclose the information alleged in SOR ¶ 1.d related to his wrongful purchase, possession, and distribution of LSD in April 2021. (GE 1 at 27; GE 2 at 5, 9-10; GE 5)

SOR ¶ 3.c alleges Applicant falsified material facts on the November 1, 2022 security clearance application in response to "Section 23 – Section 23 – Illegal Use of Drugs or Drug Activity: While Possessing a Security Clearance: Have you EVER illegally used or otherwise been illegally involved with a drug or controlled substance while possessing a security clearance other than previously listed? He answered "No." He deliberately failed to disclose the information alleged in SOR ¶¶ 1.f which states that he used various illegal drugs, to include marijuana and LSD with varying frequency from about June 2019 to April 2022 while possessing a security clearance. (GE 1 at 27; GE 2 at 10)

SOR ¶ 3.d alleges Applicant falsified material facts on the November 1, 2022, security clearance application in response to “Section 15 – Military History, Discipline. In the last 7 years, have you been subject to court martial, or other disciplinary procedure under the UCMJ, such as Article 15, Captain’s Mast, Article 135 Court of Inquiry, etc.” He answered “No.” He deliberately failed to disclose his January 2022 Article 15 nonjudicial punishment which is alleged in SOR ¶ 2.a. (GE 1 at 17; GE 2 at 10)

Under Guideline F, Financial Considerations, the sole allegation is a delinquent debt related to an apartment lease that was placed for collection in the approximate amount of \$26,120. (SOR ¶ 4.a: GE 2 at 11; GE 3 at 2; GE 4 at 2)

GUIDELINE H – Drug Involvement

Applicant testified that he began using marijuana around 2015 when he was 18 years old and attending community college. He did not use marijuana as much when he transferred to a university in 2015. He was trying to join the football team. During his interview with the investigator who was conducting his background investigation, he indicated that he smoked marijuana on a regular basis while he was in college. (Tr. 34-35; GE 2 at 10)

While he was on active duty in the Air Force, he began to use marijuana around the time his son was born in January 2021. He lived with his girlfriend, the mother of his son. She was a civilian and not associated with the military. She used marijuana and gave him marijuana to rest. He told his background investigator that he used marijuana at least ten times from January 2021 to September 2021. He testified that he used marijuana about two times a month while in the Air Force. (Tr. 34-35; 39; GE 2 at 9-10)

In addition to marijuana use, Applicant used LSD from about July 2020 to 2021 on at least two occasions while on active duty in the Air Force. He also used MDMA in approximately 2022 on one occasion while in the Air Force. (GE 2 at 7) He purchased the drugs from someone whom he knew sold drugs. He also sold LSD to two airmen in his squadron. One of the airmen, Airman C was called into the Air Force Office of Special Investigations (AFOSI) because his roommate had assaulted his girlfriend. During the interview, AFOSI asked Airman C if they could review the text messages on his phone. Airman C consented. AFOSI reviewed Airman C’s phone and discovered text messages between Airman C and Applicant about purchasing LSD. (GE 2 at 7, 9; GE 5)

AFOSI opened an investigation regarding Applicant’s LSD involvement. Applicant gave them consent to review the text messages on his cell phone. On September 22, 2021, Applicant waived his rights under Article 31, UCMJ, and agreed to be interviewed by the AFOSI. During the interview, Applicant admitted to purchasing four tabs of LSD. He kept two tabs and sold the other two tabs to two Airmen. He first used LSD with an

Airman D at his house in July 2020. He also used LSD with his girlfriend. In mid-September 2021, Applicant bought Ecstasy from an Air Force member and ingested it. Applicant also admitted that he used marijuana with his girlfriend when he was on active duty. (GE 5 at 31-32, 89-90, 137-138)

Applicant gave AFOSI consent to search his car and residence. A marijuana vape pen was discovered in his car. A search of his residence disclosed several marijuana pipes and marijuana residue. Applicant claimed it belonged to his girlfriend. A command-directed urinalysis on September 22, 2021, resulted in Applicant's urine testing positive for THC. (GE 5 at 137-138)

As a result of the investigation, Applicant received Article 15 nonjudicial punishment from his commander on January 24, 2022. He was charged and found guilty of violating Article 112a of the UCMJ for:

wrongfully using LSD between on or about June 1, 2020, and on or about June 30, 2020;

wrongfully using marijuana on or about September 21, 2021;

wrongfully possessing LSD on or about April 11, 2021; and

wrongfully distributing LSD on or about April 11, 2021.

He was found guilty and was reduced to the grade of airman, forfeiture of \$200 pay per month for two months, and reprimanded. (GE 5 at 4-6) He was subsequently involuntarily discharged from active duty on April 12, 2022, with a discharge characterized as general under honorable conditions. (Tr. 41, 50; GE 5 at 10)

After his discharge from the Air Force, Applicant continued to use marijuana about one to two times a week with his girlfriend. On February 21, 2023, he was interviewed for his background investigation. He admitted to the investigator that if he was given a urine test on the day of the interview, he would probably not pass it. He last used marijuana on January 15, 2023. (GE 2 at 10) During the hearing, Applicant testified that he continued to use marijuana after his discharge from the Air Force because he felt like everything was all over. (Tr. 41)

Applicant provided a certificate that he completed a one-hour drug and alcohol awareness class on April 22, 2025. (AE E at 1) On April 14, 2025, he provided a signed Statement of Intent declaring his intent to not illegally use any drugs in the future, to include marijuana. He acknowledges that future use of illegal drugs may be grounds for

the revocation of his security clearance. (AE E at 2) On April 10, 2025, he took a drug screen for illegal drugs and alcohol. The result of the screen was negative. (AE E at 3-6)

Guideline J – Criminal Conduct

The allegation under criminal conduct is Applicant's punishment under Article 15, UCMJ on January 10, 2022, for the offenses of wrongfully using LSD from about June 1, 2020, to on or about June 30, 2020; wrongfully using marijuana on or about September 21, 2021; wrongfully possessing LSD on about April 1, 2021, and wrongfully distributing LSD on or about April 11, 2021. The offenses were in violation of Article 112a, UCMJ, and were discussed in detail under the Guideline H section.

Guideline E – Personal Conduct

Applicant deliberately failed to list his illegal drug use on his November 1, 2022, security clearance application (GE 2). He was required to list his illegal drug use within seven years of the date he completed his security clearance application. He answered, "No" and did not list his illegal marijuana use from August 2015 to October 2022; his illegal LSD use in June 2020; and his illegal MDMA (ecstasy) use in 2022. He deliberately failed to list he purchased illegal drugs on the same security clearance application. He did not list that he purchased LSD in April 2021. He also did not list that he used illegal drugs while possessing a security clearance. Finally, he failed to list his Article 15 nonjudicial punishment for the drug offenses alleged under the Guideline H concern. (GE 1)

During his background investigation interview on February 21, 2023, the investigator asked Applicant about why he failed to disclose his Article 15, his use of marijuana, MDMA and his use and distribution of LSD. Applicant admitted he made a bad decision to answer "No" to these questions when he should have said "yes." He believed that no one would find out about his past history of illegal drug use because he was applying for a job with a civilian contractor. He was feeling desperate and needed a job. He expressed remorse for being deceptive and indicated he would tell the truth moving forward. (GE 2 at 10) He provided similar testimony during the hearing. (Tr. 46)

Guideline F - Financial Considerations

The sole allegation under Guideline F is a \$26,120 delinquent account owed to a apartment company that was placed for collection. After recently enlisting in the Air Force, Applicant's father asked him to sign as a co-signer on his apartment lease. Applicant agreed to sign as a co-signer. His father stopped paying the rent and left the rental property early. He refuses to accept his responsibility to pay the amount owed which leaves the responsibility for the debt to the Applicant since he co-signed the lease. At the moment, Applicant cannot afford to pay this debt. If he gets his security clearance or finds

better employment opportunities he hopes to begin resolving this debt. (Tr. 48; GE 2 at 11; GE 3 at 2; GE 4 at 2)

Whole-Person Evidence

Several of Applicant's friends and colleagues wrote letters on his behalf. Mr. M.C. was Applicant's roommate at his last duty station. He also worked in the same area as Applicant but in a different unit. Mr. M.C. has known Applicant since 2020. He had the opportunity to work with Applicant when the units temporarily merged. He describes him as "someone you could count on when it came to doing the job right." He is aware of Applicant's illegal drug use and involvement. Applicant told him what happened and that he regrets his past actions. He believes he has learned from his experience and has taken the right steps to improving his life. He fully trusts him with the security of the United States and recommends him for a security clearance. (AE D at 1-2)

Mr. D.L. served with Applicant in the Air Force. He has known him since 2021. They worked together and became friends outside work. Applicant worked extremely hard and was a leader in their section. His peers looked up to him. He could always depend on him as a friend. He and his wife socialized with Applicant and his wife. They occasionally watched Applicant's son. He learned of Applicant's troubles through his supervisor. He is aware that Applicant truly regrets his conduct and wishes he could take it back. He understands that he put his family in a difficult situation. He is working hard to improve his and his family's situation. He has gone back to school and has worked to provide for his son financially. He is aware that he attended therapy after he separated from active duty. He is taking his recovery seriously and he fully trusts Applicant. He recommends he be granted a security clearance. (AE D at 3-5)

Mr. A.O. has known Applicant since 2010. They attended the same high school and remain close friends. Applicant is always willing to help a friend in need. He has full confidence in his reliability, dependability, and judgment. Applicant told him about what happened when he was in the Air Force. He believes it was an unfortunate mistake and that Applicant has learned from it. He has noticed Applicant has turned to his religious beliefs more and is partaking in healthy hobbies. He notes fatherhood has changed him for the better. He is a trustworthy person. (AE D at 6-8)

Mr. Q.S. has known Applicant since 2018. He says similar favorable things about Applicant. He believes he is trustworthy and recommends he be granted a security clearance. (AE D at 9-10)

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).

The adjudicative 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(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 access to classified information 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining 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 as to potential, rather than actual, risk of compromise of classified information.

DOD and Federal Government Policy on Marijuana Use

On October 25, 2014, the Director for National Intelligence issued a memorandum titled, “Adherence to Federal Laws Prohibiting Marijuana Use” addressing concerns raised by the decriminalization of marijuana use in several states and the District of Columbia. The memorandum states that changes to state and local laws do not alter the

existing National Security Adjudicative Guidelines. “An individual’s disregard for federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations.”

On May 26, 2015, the Director of the United States Office of Personnel Management (OPM) issued a memorandum titled, “Federal Laws and Policies Prohibiting Marijuana Use.” The Director of OPM acknowledged that several jurisdictions have decriminalized the use of marijuana, allowing the use of marijuana for medicinal purposes and/or for limited recreational use but states that Federal law on marijuana remains unchanged. Marijuana is categorized as a controlled substance under Schedule I of the Controlled Substances Act. Thus, knowing or intentional marijuana possession is federally illegal, even if the individual has no intent to manufacture, distribute, or dispense marijuana.

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 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.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

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

- (a) any substance misuse;

- (b) testing positive for an illegal drug;
- (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.

Applicant admits and the record evidence shows that Applicant used marijuana at various times from about August 2015 to about January 2023. In September 2021, he tested positive for THC, the active ingredient in marijuana. He used LSD in about June 2020 and purchased and distributed LSD in about April 2021. He used MDMA sometime between September 2021 and 2022. Finally, his use of marijuana and LSD from about June 2019 to April 2022, occurred while he was granted access to classified information. He was on active duty in the Air Force during this time period. AG ¶ 25(a), AG ¶ 25(b), AG ¶ 25(c), and AG ¶ 25(f) apply to Applicant's case.

The Government's substantial evidence and Applicant's admissions raise security concerns under Guideline H. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. Sept. 22, 2005))

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 potentially apply:

- (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 on 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 conditions apply to Applicant's case. AG ¶ 26(a) does not apply because Applicant's use of illegal drugs was fairly recent. He was discharged from the Air Force in April 2022 because of illegal drug use. He continued to illegally use marijuana despite the consequences of his past illegal drug use. He submitted his current security clearance application on November 1, 2022. He was interviewed in conjunction with his background investigation on February 21, 2023. He told the investigator that his last use of marijuana was on January 15, 2023, and admitted that it was unlikely that he would pass a urinalysis test if he had to submit a urine sample on the date of the interview. Not enough time has passed to conclude that Applicant will abstain from illegal drug use.

AG ¶ 26(b) does not apply. Applicant initially tried to hide his illegal drug use when he completed his November 1, 2022 security clearance application. When the investigator asked about why he received a general discharge from the Air Force during his February 2023 background investigation interview, he disclosed his illegal drug use. While he expressed and provided a written statement of intent to abstain from illegal drug use, it is too soon to conclude that he will abstain from illegal drug involvement in the future.

Overall, I found Applicant did not mitigate the security concerns raised under Guideline H, Drug Involvement and Substance Misuse.

Guideline J – Criminal Conduct

AG ¶ 30 describes the security concern about 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."

AG ¶ 31 lists two conditions that could raise a security concern and may be disqualifying in this case:

- (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.

While on active duty in the Air Force, Applicant was punished under Article 15, UCMJ, for several violations of Article 112a UCMJ including wrongfully using LSD from about June 1, 2020, to about June 30, 2020; wrongfully possessing and distributing LSD

on April 11, 2021; and wrongfully using marijuana on September 21, 2021. Applicant's use, possession and distribution of illegal drugs raised questions about his judgment, reliability, and trustworthiness. While Applicant was not formally charged and convicted in a trial by court-martial, his conduct was criminal under military and federal law. AG ¶¶ 31(a) and 31(b) are established.

AG ¶ 32 describes four conditions that could mitigate security concerns including:

(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.

Applicant continued to use illegal drugs after he accepted nonjudicial punishment and his discharge from the Air Force with a general under honorable conditions discharge. During his background investigation interview, he admitted to using marijuana one month before the interview and after he submitted his security clearance application in November 2022. Considering his history of illegal drug use, not enough time has passed to conclude his illegal drug use is unlikely to recur. AG ¶ 32(a) and AG ¶ 32(d) do not apply. The criminal conduct concerns are not mitigated.

Guideline E – Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct 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. Of special interest is any failure to cooperate or provide truthful and candid answers during the national security or adjudicative processes. . .

The following disqualifying condition under AG ¶ 16 potentially apply to Applicant's case:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities; and

AG ¶ 16(a) applies with regard to SOR ¶¶ 3.a – 3.d. Applicant admits that he deliberately failed to list his illegal marijuana, LSD and MDMA use on his security clearance application dated November 1, 2022. (SOR ¶¶ 1.a, 1.c, 1.e) He admits that he deliberately failed to list his wrongful distribution of LSD in April 2021. (SOR ¶ 1.d) He admits that he deliberately failed to list that he illegally used marijuana and LSD while holding a security clearance. (SOR ¶ 1.f) Finally, he admits that he deliberately failed to list his January 2022 Article 15 nonjudicial punishment related to his illegal drug use and involvement. (SOR ¶ 2.a) Applicant told the investigator conducting his background investigation, that he deliberately omitted his illegal drug involvement on his security clearance application because he was desperate for a job and thought that no one at his future civilian contract employer would discover his illegal drug use.

Under Guideline E, the following mitigating condition potentially applies in Applicant's case:

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

AG ¶ 17(c) does not apply. Applicant's deliberate falsifications of his illegal drug involvement on his November 2022 security clearance raised questions about his reliability and trustworthiness. His conduct was serious. When he completed his November 2022 security clearance application, he felt that if he disclosed his past illegal drug use his potential to be hired would be threatened and he believed his potential civilian employer would never discover his past illegal drug use if he did not list it. While Applicant disclosed his past illegal drug use during his February 2023 background investigation interview, he only admitted his past illegal drug involvement after being asked by the investigator who interviewed him.

The Government expects individuals who are granted access to classified information to be truthful and straight-forward at all times. Intentional falsifications cut to the heart of the security clearance process. It is serious because a person should not receive access to classified information based on false information. A person who lies during the security-clearance process is not trustworthy. They cannot be relied upon to

report a security infraction or violation. Overall, Personal Conduct security concerns are not mitigated.

Guideline F – Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

AG ¶ 19 notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are relevant to Applicant's case include:

- (a) inability to satisfy debts; and
- (c) a history of not meeting financial obligations.

The SOR alleges Applicant owes approximately \$26,120 for a debt owed to an apartment company related to an apartment lease which Applicant agreed to act as a co-signer for his father. As a co-signer, he was responsible for the debt if the principal signer defaulted on the payments. AG ¶¶ 19(a) and 19(c) apply.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline F. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶E3.1.15)

AG ¶ 20 includes examples of conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions potentially apply to Applicant's case:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶ 20(a) applies because Applicant agreed to act as a co-signer several years ago during his early years in the Air Force. His father defaulted on the lease agreement leaving Applicant responsible for the debt. Applicant asked his father to repay the debt, but he refused to pay it. Applicant learned a difficult lesson about acting a co-signer on loans or lease agreements. It is unlikely he will act as a co-signer in the future.

AG ¶ 20(b) applies because Applicant had no control over his father's default of the lease agreement. He did not benefit from the lease agreement. He did not live in the apartment after he co-signed the lease. He is financially responsible towards his personal finances. He is unable to make payments at this time towards this debt but intends to make payments in the future.

Under the special circumstances regarding this debt, I find Applicant mitigated the security concern under financial considerations.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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 under the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H, J, E and F as well as the AG ¶ 2(d) factors in this whole-person analysis.

I considered that Applicant is the father of a four-year-old son. I considered that he is taking college courses and hopes to graduate this coming December. I considered the favorable references from his friends and colleagues. I also considered Applicant's history of illegal drug use and drug involvement. I considered that he used illegal drugs while on active duty in the Air Force. I considered that he illegally sold LSD to two other airmen. I considered that he received Article 15 nonjudicial punishment related to his illegal drug involvement while in the Air Force. I considered that he was subsequently discharged from the Air Force with a general discharge. I considered that he continued to illegally use marijuana after his discharge from the Air Force until January 2023. I considered his deliberate falsifications about his illegal drug involvement on his November 2022 security clearance application. While he stopped using marijuana in January 2023 and does not intend to use illegal drugs in the future, it is too soon to conclude Applicant will follow through on his intentions because he previously violated the Government's trust by deliberately lying about his illegal drug use on his November 2022 security clearance application and continued to illegally use marijuana after completing his November 2022 security clearance application. After weighing the disqualifying and mitigating conditions under Guidelines H, J, and E and evaluating all the evidence in the context of the whole person, I conclude Applicant did not mitigate the security concerns raised under these Guidelines. I conclude he mitigated the security concern raised under Guideline F based on the circumstances of his case.

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.f: Against Applicant

| | |
|---------------------------|-------------------|
| Paragraph 2, Guideline J: | AGAINST APPLICANT |
| Subparagraph 2.a: | Against Applicant |
| Paragraph 3, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 3.a – 3.d: | Against Applicant |
| Paragraph 4, Guideline F: | FOR APPLICANT |
| Subparagraph 4.a: | For Applicant |

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant's eligibility for access to classified information. Eligibility for access to classified information is denied.

Erin C. Hogan
Administrative Judge