



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



In the matter of:)
)
) ISCR Case No. 24-01258
)
Applicant for Security Clearance)

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: Caleb N. Byrd, Esq.

09/18/2025

Decision

BORGSTROM, Eric H., Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On August 27, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). 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.

In Applicant's September 25, 2024 response to the SOR (Answer), he admitted all six allegations without further explanation. He did not attach any documentary evidence. He requested a determination by a Defense Office of Hearings and Appeals (DOHA) administrative judge based upon the written record, in lieu of a hearing. By email dated November 8, 2024 (Hearing Exhibit (HE) 4), Applicant's counsel requested a hearing.

On December 9, 2024, the Government was ready to proceed to a hearing. I was assigned this case on April 10, 2025. On April 25, 2025, a notice was issued scheduling the hearing for May 19, 2025, by video teleconference. The hearing proceeded as scheduled. The Government proffered two evidentiary exhibits, which I admitted as Government Exhibits (GE) 1 and 2, without objection. Applicant and two witnesses testified. Applicant submitted two exhibits, which I admitted as Applicant Exhibits (AE) A and B, without objection. I held the record open until June 9, 2025, to give Applicant the opportunity to provide any other additional evidence. I received the transcript (Tr.) on June 2, 2025. Applicant timely submitted one post-hearing exhibit, which I admitted as AE C, without objection. The record closed on June 9, 2025.

Findings of Fact

Applicant is 25 years old. He graduated from high school in May 2018. He attended college from August 2018 to May 2023, and he earned a bachelor's degree. He has never married, and he has no children. (GE 1; Tr. 48-50)

While in college, Applicant had two summer engineering internships – from May to August 2021 and from May to August 2022 – with a DOD contractor. Prior to each internship, he was required to take and pass a drug urinalysis. In October 2022, he received an offer of full-time employment to begin following graduation. He accepted this offer and took a pre-employment drug urinalysis in early 2023. Since July 2023, he has been employed full time as a cybersecurity engineer with a DOD contractor. (GE 1; Tr. 48-51, 93-94)

The SOR alleges drug involvement and substance misuse security concerns arising from Applicant's purchase, use, and sale of marijuana; his purchase and use of hallucinogenic drugs; his use of cocaine; and his illegal use of ketamine and Adderall, without a prescription.

Marijuana (SOR ¶¶ 1.a. and 1.b.)

From about October 2015 until about November 2022, Applicant purchased and used marijuana. He estimated that he used marijuana about once or twice a week, although there would be times when he would abstain from marijuana use. He stopped using marijuana in advance of his three pre-employment drug urinalyses, and he did not use during his internships. In March 2017, he purchased marijuana and baked brownies containing marijuana. He kept one brownie and sold about 11 brownies at \$15 apiece. He stopped selling marijuana brownies out of concern for the potential criminal consequences. (Answer; GE 1-2; Tr. 52-53, 80)

Hallucinogenic Drugs (SOR ¶ 1.c.)

Between about September 2017 and about September 2022, Applicant purchased and used hallucinogenic drugs on approximately six occasions. In September 2017, while in high school, he purchased n-dimethyltryptamine (DMT) from and manufactured by

another high school student. While in college, he purchased and used lysergic acid diethylamide (LSD) three times and psilocybin mushrooms twice. After his two internships and while awaiting his offer of employment, he last used mushrooms in September 2022. (Answer; GE 1-2; Tr. 55, 69-70, 84-85)

Adderall (SOR ¶ 1.d.)

In April 2021, to aid his preparation for a college exam, Applicant used Adderall, a prescription medication, without a prescription. (Answer; GE 1-2; Tr. 56)

Cocaine (SOR ¶ 1.e.)

In June 2023, Applicant and his roommate traveled to Mexico by car to attend a wedding. They picked up his roommate's acquaintance on the way. Once in Mexico, they relied upon the acquaintance for transportation. They stayed out late at a bar and relied on an unknown individual to transport them to another social gathering. En route to this after-party, the driver took Applicant and his roommate to a vacant house and offered them cocaine. Applicant testified that he felt uncomfortable and unsafe to decline the offered cocaine, though he did have concerns that the cocaine may be adulterated with other substances, such as fentanyl. Applicant and his roommate used the offered cocaine and then traveled on to the after-party. (Answer; GE 1-2; Tr. 58-61, 71-73, 88)

Ketamine (SOR ¶ 1.f.)

In July 2023, approximately two weeks before his start date with the DOD contractor, Applicant met a woman on a dating application and later used ketamine, a prescription drug, offered by her. They continued dating for a few weeks after that, but Applicant only used ketamine once. (Answer; GE 1-2; Tr. 52, 63-64, 89)

Applicant admitted that he stopped using marijuana a few months prior to his three pre-employment drug tests in order to pass any urinalyses. He also admitted that he continued using illegal drugs and misusing prescription drugs after his early 2023 pre-employment drug urinalysis. He testified that he had not used any illegal drugs or misused any prescription drugs since his July 17, 2023 start date with the DOD contractor. He acknowledged that he was concerned about a random drug test when he first started with the DOD contractor given his recent illegal drug use. (Tr. 51-52, 77-81)

On October 4, 2023, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP). Under Section 23 – Illegal Use of Drugs or Drug Activity, he reported that he had used marijuana between October 2015 and November 2022. He admitted that the frequency of his marijuana use was greater during high school and in college and that he discontinued his drug use before his summer internships as he anticipated pre-employment drug tests. He estimated that he used marijuana about once or twice a week while in college. He noted that he did intend to use marijuana in the future if legal under Federal law. In his e-QIP, he also admitted using hallucinogenic drugs, ketamine, Adderall, and cocaine. (GE 1)

On January 17, 2024, Applicant was interviewed by an authorized investigator on behalf of the Office of Personnel Management (OPM). He confirmed his disclosures on his October 2023 e-QIP about his illegal drug use and prescription drug misuse. As to marijuana, he admitted having illegally purchased marijuana. He also admitted having used DMT which he had purchased from an acquaintance. He admitted that he had used ketamine with an individual whom he had met through an online dating application. This individual provided him the ketamine in the form of a nasal spray. He admitted that he used cocaine with a roommate while in Mexico on vacation. He admitted that he had baked 12 brownies with THC or marijuana as an ingredient, and he sold 11 brownies to his friends. He admitted that he obtained Adderall from a friend. (GE 2)

On May 22, 2025, Applicant participated in a hair follicle drug panel test and tested negative for amphetamines, methamphetamines, cocaine, opiates, phencyclidine, and marijuana. (AE C)

Applicant testified that he has never failed a drug test; however, he has not been required to take a random drug urinalysis since his July 2023 start date. He acknowledged his questionable judgment by using cocaine and ketamine shortly before his employment began in July 2023. He no longer associates with the woman with whom he used ketamine. He continues to socialize with the roommate with whom he used cocaine; however, he has not observed that roommate use illegal drugs since June 2023. He does not currently socialize with anyone who uses illegal drugs. Applicant's parents are unaware of his cocaine or ketamine use, and his character references are unaware of the full extent of his illegal drug use and prescription drug misuse. (Tr. 64, 82, 88-91)

Whole Person

Applicant's current and former supervisors employed by the DOD contractor testified in support of his clearance eligibility. They praised his subject-matter expertise, leadership, initiative, work ethic, honesty, and reliability. They were generally aware that Applicant's illegal drug use was a security concern; however, they had not reviewed the SOR and were unfamiliar with the illegal and prescription drugs at issue. Both witnesses attested to a drugfree workplace policy and employees being subject to random drug testing, although neither were aware of any drug testing beyond pre-employment urinalyses (Tr. 16-27, 31-41)

Applicant submitted seven character-reference letters in support of his clearance eligibility. His current manager and former supervisor praised his "uncompromising integrity, initiative, dependability, loyalty," professionalism, work performance, and work ethic. A co-worker attested to Applicant's technical expertise and his remorse for his past illegal drug use. (AE A)

Two longtime friends praised Applicant's work ethic, intelligence, trustworthiness, and compassion. An acquaintance, the mother of Applicant's girlfriend, described him as "very polite, professional, and trustworthy." His girlfriend noted Applicant's positive influence in her own career journey. One letter referenced Applicant's illegal drug use but

did not indicate any awareness as to the full extent of Applicant's drug involvement. (AE A)

Applicant's 2024 performance review praised his proactive approach in identifying and addressing problems and described him as a natural leader. His 2023 performance review noted his teamwork and critical thinking. (AE B)

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 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 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish 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." The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

A person who seeks access to sensitive 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 sensitive information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard sensitive information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of sensitive 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 for drug involvement is set out in 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 notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable:

- (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.

Marijuana is a Schedule I controlled substance under Federal law pursuant to Title 21, Section 812 of the United States Code. Schedule I drugs are those which have a high potential for abuse; have no currently accepted medical use in treatment in the United States; and lack accepted safety for use of the drug under medical supervision. Section 844 under Title 21 of the United States Code makes it unlawful for any person to knowingly or intentionally possess a controlled substance not obtained pursuant to a valid prescription.

On October 25, 2014, the then Director of National Intelligence (DNI) issued guidance that changes to laws by some states and the District of Columbia to legalize or decriminalize the recreational use of marijuana do not alter existing Federal law or the National Security Adjudicative Guidelines, and that an individual’s disregard of Federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security eligibility determinations.

On December 21, 2021, the then DNI issued clarifying guidance concerning marijuana, noting that prior recreational use of marijuana by an individual may be relevant

to security adjudications, but is not determinative in the whole-person evaluation. Relevant factors in mitigation include the frequency of use and whether the individual can demonstrate that future use is unlikely to recur.

Applicant admitted his purchase, use, and sale of marijuana, his purchase and use of hallucinogenic drugs, his use of cocaine, and his misuse of Adderall and ketamine. AG ¶ 25(a) and 25(c) apply. All of these controlled substances were illegal in Applicant's state of residence.

Conditions that could mitigate the drug involvement security concerns are provided under AG ¶ 26. The following are potentially 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.

Applicant was fully aware that his purchase, use, and sale of these controlled substances was illegal. Even while he was in high school, he was aware that his sale of marijuana brownies placed him at risk of significant criminal penalties. Over seven years, he used marijuana hundreds of times, with some periods of abstinences. His illegal drug use extended beyond marijuana to using hallucinogenic drugs on approximately six occasions. While he discontinued his illegal drug use during his internships, he resumed his use of marijuana and hallucinogenic drugs after his internships concluded. He resumed his illegal drug use after his early 2023 pre-employment drug test. He placed himself in a vulnerable position leading to his June 2023 cocaine use, and then he was persuaded by a romantic partner to illegally use ketamine just two weeks before his employment started with a DOD contractor. I have considered his statement of intent to abstain from all drug involvement in the future. I have also considered Applicant's presence in a college environment during most of his drug use, but he cannot attribute his drug involvement to immaturity while also claiming maturity and good judgment during his internships and full-time employment. Furthermore, the breadth and depth of Applicant's drug involvement, intertwined with his internships and pre-employment

urinalyses, cast doubt on his reliability and judgment and require a longer pattern of abstinence. He did not mitigate the drug involvement and substance misuse security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for access to classified information 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and the factors in AG ¶ 2(d) in this whole-person analysis.

Applicant has thrived in his new career with a DOD contractor. I found his testimony credible and sincere; however, he has not overcome the serious concerns about his maturity and judgment. None of his references were aware of the full extent of his drug involvement and substance misuse. He cannot excuse his drug involvement on the basis of immaturity and the college environment and then claim maturity, reliability, and good judgment weeks later as an employee of a DOD contractor. With a greater passage of time and continued abstinence, he may be able to mitigate those concerns, but, at present, Applicant has not mitigated the drug involvement and substance misuse security concerns.

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

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric H. Borgstrom
Administrative Judge