



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



In the matter of:)	
)	
)	ISCR Case No. 18-02574
)	
Applicant for Security Clearance)	

Appearances

For Government: Tovah Minster, Esq., Department Counsel
For Applicant: *Pro se*

06/27/2019

Decision

Curry, Marc E., Administrative Judge:

Applicant’s longtime use of marijuana, which continued after he had completed a security clearance application, and had been granted a security clearance, generates security concerns that he failed to mitigate. Clearance is denied.

Statement of the Case

On February 7, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, drug involvement, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant him security clearance eligibility. The DOD CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On March 25, 2019, Applicant answered the SOR allegations, admitting all of the allegations. He requested a decision based on the written record rather than a hearing. On April 10, 2019, Department Counsel prepared a file of relevant material (FORM). Applicant received the FORM on April 16, 2019, and was notified that he could file a reply, together with attachments supplementing the information in the FORM, within 30 days, if desired. He did not do so. The FORM was assigned to me on June 4, 2019.

Findings of Fact

Applicant is a 32-year-old, single man. He earned a bachelor's degree in 2011, and has been employed as a research engineer for a federal contractor since April 2017. (Item 3 at 12-13)

Applicant used marijuana approximately three times a week between 2004 and March 2018. (Item 4 at 10) During that time, he spent approximately \$150 monthly for its purchase. (Item 4 at 10) Part of the period that he used marijuana overlapped with the period of time that he held a security clearance. (Item 2 at 2) During his March 2018 interview with an investigative agent, he pledged to abstain from using marijuana in the future. (Item 4 at 10)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Analysis

Guideline H, Drug Involvement and Substance Abuse

The security concerns about drug involvement and substance abuse are set forth 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.

Applicant abused marijuana between 2004 and 2018, spending approximately \$150 monthly for its purchase. During part of that time, he held a security clearance. AG ¶¶ 25(a), "any substance abuse," 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia," and 25(f), "any illegal drug use while granted access to classified information or holding a sensitive position," apply. Given the length of time Applicant abused marijuana, and the recency of his last use of marijuana, his promise to abstain from future use has minimal probative value. None of the mitigating conditions apply.

Although Applicant has not used marijuana for more than two years, he used it for the previous six years, and despite having been granted a security clearance. Under these circumstances, it is too soon to conclude that he has mitigated the drug involvement security concern.

Guideline E, Personal Conduct

Under this guideline, "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" (AG ¶ 15) Applicant's history of drug use is disqualifying under this guideline for the same reasons that it is disqualifying under Guideline H, as discussed above.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant's conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Considering the length of time Applicant used marijuana, and the minimal period of time that has elapsed since his last use, it is too soon to conclude that he has minimized the drug abuse security concern.

Formal Findings

Formal findings for 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.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

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

Marc E. Curry
Administrative Judge