



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



In the matter of:)	
)	
)	ISCR Case No. 19-00236
)	
Applicant for Security Clearance)	

Appearances

For Government: Raashid S. Williams, Esq., Department Counsel
For Applicant: *Pro se*

07/10/2019

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse. Eligibility for access to classified information is denied.

Statement of the Case

On February 15, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse. The action was taken 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 adjudicative guidelines (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on March 18, 2019, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on May 8, 2019.

He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 5. Applicant did not submit a timely response. There were no objections filed by Applicant, and all Items are admitted into evidence. The case was assigned to me on June 24, 2019.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 26 years old. He graduated from high school in 2011, and college in 2017, with a bachelor's degree. He began working for a federal contractor in April 2017. He has cohabitated since April 2017. (Item 3)

Applicant completed a security clearance application (SCA) in September 2017. In it he disclosed illegal drug use. Applicant was interviewed by a government investigator in May 2018 and provided additional information about his illegal drug use. (Items 3, 4, 5)

Applicant used marijuana from June 2011 to February 2017. He primarily used it in his home, but also socially with college friends. It made him feel like he was having an "out-of-body" experience. He used it about 1,000 times. (Items 3, 4, 5)

Applicant disclosed that he used Ecstasy from June 2012 to November 2015, on about 19 occasions. He was introduced to it by a friend and felt peer pressure to try it. He agreed to do so. He did not consider it a bad experience and continued to use it quarterly at music festivals. Except for his first use, where his friend gave him the drug for free, he reimbursed the people who sold him the drug.¹ (Items 3, 4, 5)

Applicant used Psilocybin Mushrooms on about four occasions from November 2011 to March 2015. Each use was at his apartment with a friend. It made him feel introspective. He considered his use random and experimental. He never purchased it. His friend would bring it to him. (Items 3, 4, 5)

Applicant used LSD once in March 2013, with a friend. His friend supplied the drug. Applicant had minor hallucinations, and said his use was experimental. (Items 3, 4, 5)

Applicant also disclosed that from December 2012 to December 2016, he purchased marijuana, usually from a friend, on a monthly basis. He noted that this was the only way for him to obtain the drug. (Items 3, 4, 5)

Applicant stated in his SCA, during his background interview, and in his answer to the SOR that he does not intend to use illegal drugs in the future. He stated he no longer

¹ Applicant stated he would reimburse the person who provided Ecstasy to him. This is tantamount to purchasing it. I have not considered this conduct for disqualifying purposes, but may consider it when making a credibility determination, in applying mitigating conditions, and in a whole-person analysis.

has contact with college peers with whom he used illegal drugs. He saw no value in continuing to use illegal drugs and does not want to risk losing his job or being arrested. He stated he has never been dependent on any illegal drugs. He has never tested positive for illegal drugs. He did not indicate how many drug tests he may have taken and if they were randomly given. Applicant also stated that he has never felt addicted to any illegal drug and has never received any form of counseling or treatment for using illegal drugs. (Items 3, 4, 5)

In his SCA, Applicant stated:

Marijuana was used voluntarily and with variable frequency over the time period listed above. At some periods, marijuana was frequently used, at other periods, only occasional use. Additionally there were many periods of abstinence (ranging from 2 weeks to 6 months) during the time frame listed above. These periods of abstinence were all voluntary and for the purpose of not developing a habit of use (retaining control). At no point during the time period listed, was any treatment advised or signs of addiction present. Use was for enjoyment with peers (similar to the widely accepted use of alcohol) and periods of abstinence were attained with ease. (Item 4)

He further stated in the SCA the following:

It should be noted that all of the above use was voluntary, purely for personal enjoyment, and never once were any addictive or withdrawal signs present. Use was never under persuasion or coercion. Motivation for use was to increase quality of life by attaining differing perspectives. It has been stated, for each substance, the intent to permanently discontinue use. Additionally, use was during very experimental period in life (college) and no such use has occurred since leaving that environment. Also that no problems (financial, legal, mental, health, etc.) has ever occurred during any use nor did use interfere with any aspects of life (school, job, social, etc.). (Item 4)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (AG). 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(c), 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.” 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. Directive ¶ E3.1.15 states 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.

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 Misuse

The security concern relating to the guideline for drug involvement and substance misuse 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.

AG ¶ 25 provides conditions that could raise security concerns. 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.

Applicant illegally used the following substances: marijuana about 1,000 times from June 2011 to about February 2017; Ecstasy from June 2011 to about November 2015 about 19 times; hallucinogenic mushrooms about four times from November 2011 to March 2015; and LSD one time in March 2013. He purchased marijuana with varying frequency from about December 2011 to about December 2016. The evidence establishes the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 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;
- (b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the 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 being 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; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant was a regular drug abuser from 2011 to 2017. He honestly disclosed his illegal drug use in his SCA and background interview. He stated he would not use illegal drugs in the future because he sees no value in continuing to use them and does not want to risk losing his job or being arrested. He said he last used illegal drugs in February 2017. Applicant's illegal drug use was ongoing from 2011 to 2017 and not infrequent. He was aware that the repeated use of marijuana, Ecstasy, hallucinogenic mushrooms, and LSD over the course of at least six years was voluntarily illegal, and had the potential to jeopardize his future. It appears that his knowledge of those consequences was not a

deterrent. He willingly made a choice to repeatedly break the law by buying and using illegal drugs. His use of illegal drugs was beyond youthful indiscretion and experimentation. Based on Applicant's past history of marijuana and other illegal drug use, and without corroborating evidence from a duly qualified medical professional and a favorable diagnosis, as further discussed below, I find that future use is likely to recur. His conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply.

Applicant acknowledged his illegal drug use. He stated that he no longer uses illegal drugs; has disassociated himself from drug using associates and contacts; has changed his environment; and provided a statement of intent to abstain all drug involvement. Although he asserts the above, he failed to provide corroborating evidence of actions he has taken to overcome his drug involvement. He stated he has not used illegal drugs since 2017. He stated he has not failed a drug test, but did not provide evidence that he participated in random drug testing, or if he did, he did not provide the results. He stated he has moved and does not associate with his friends from college who use drugs. He failed to provide evidence about whether he has returned to where he formerly lived or plans to visit in the future; whether any of his college friends have visited him; whether any of his new friends use illegal drugs; whether he used illegal drugs in the past with the person with whom he cohabites; whether the person he cohabitates with uses illegal drugs; whether he was required to take a drug test prior to employment and the results; and whether his employer has a drug testing program and how many tests he may have participated in and the results. There is insufficient evidence for the full application of AG ¶ 26(b).

Applicant stated in his SCA and answer to the SOR that "at no point during the time period listed, was any treatment advised or signs of addiction present." He further stated: "Also that no problems (financial, legal, mental, health, etc.) has ever occurred during any use nor did use interfere with any aspects of life (school, job, social, etc.)." Applicant failed to provide corroborating evidence as to who specifically evaluated and concluded that he did not need treatment and had no signs of addiction, or that his consistent and extensive drug use did not interfere with any aspects of his life. He did not provide evidence that he was ever evaluated by a duly qualified medical professional. He did not provide evidence that he has participated in a drug treatment program. AG ¶ 26(d) does not apply.

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 have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant is 26 years old. He has an extensive history of using illegal drugs from 2011 to 2017. He admitted to using marijuana approximately 1,000 times and Ecstasy 19 times. He illegally purchased marijuana and Ecstasy. Applicant stated that he has abstained from illegal drug use since February 2017 and does not intend to use them in the future. Other than his personal assertions, he did not provide corroborating evidence to support his claim that he does not have a drug problem. Applicant has not met his burden of persuasion. His six-year use and misuse of illegal substances reflects a long pattern of failing to comply with rules and regulations. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H, drug involvement and substance misuse.

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.e:	Against Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge