



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



In the matter of:)	
)	
)	ISCR Case No. 19-00745
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

11/20/2019

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On April 2, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. The DOD acted 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) implemented by the DOD on June 8, 2017.

On May 25, 2019, Applicant answered the SOR and requested a hearing. The case was assigned to me on June 26, 2019. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 10, 2019, and the hearing

was held on September 25, 2019. The Government offered exhibits (GE) 1-6, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified, but he did not offer any exhibits at hearing. DOHA received the hearing transcript (Tr.) on October 7, 2019.

Findings of Fact

In Applicant's answer, he admitted all the allegations. I adopt his admissions as findings 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 years old. He is single and has no children. Applicant started working for his current federal-contractor-employer during the summer of 2016 before his final year of college as an intern. After his graduation in December 2016, he resumed his employment with this federal contractor. He holds a bachelor's degree and is currently pursuing his master's degree. (Tr. at 5-6, 19; GE 1-3)

The SOR alleged Applicant used and purchased marijuana, with varying frequency (from approximately December 2011 to at least November 2016); that he used codeine, for non-medicinal purposes without a prescription in about August 2015; that he used cocaine, on multiple occasions (from approximately October 2013 to at least January 2015); that he used "spice" (synthetic marijuana containing THC) on multiple occasions (from approximately November 2011 to at least April 2012); that he used hallucinogenic mushrooms on at least one occasion in about March 2012. The SOR also alleged that Applicant falsified his answers when completing his security clearance applications (SCA) in March 2017 and June 2016 when he failed to disclose his drug use, other than marijuana, within the last seven years on his March 2017 SCA, and when he failed to disclose his overall drug use, including marijuana, on his June 2016 SCA. The SOR further alleged that in 2016 and 2017, Applicant deliberately provided false information to his employer regarding his overall drug use history.

Applicant acknowledged that he used all the illegal substances alleged in the SOR. He claims that his last use of any illegal drug was his use of marijuana in November 2016, which was after he completed his first SCA in June 2016. His last illegal use of prescription drugs was in March 2016. He testified that he does not intend to use any illegal drugs in the future. (Tr. 22-24; GE 3)

Applicant began using marijuana while in high school. He used marijuana by smoking it and eating "edibles." He used marijuana as much as "a couple of times a month." He enjoyed the effects marijuana had on him. In college, Applicant increased his marijuana use to four to five times weekly. He claims that from August to December 2014, his marijuana use decreased to once weekly because his grades had dropped. He generally used marijuana at the fraternity house where he resided. In January 2015, his marijuana use again increased to four to five times weekly and on multiple times during the day. He claims that he abstained from using marijuana from March to June 2016 because he was selected for an internship by his current employer. His internship

(and follow-on employment) was in a state which legalized marijuana use, unlike the state where he attended high school and college. In June 2016, while he was performing his internship, he purchased an eighth of an ounce of marijuana from a marijuana dispensary in the state where his internship was located. He took the marijuana back to his state of residence where he used it from June to August 2016. He continued to use marijuana until November 2016, stopping because he anticipated a drug test from his prospective employer. Applicant estimated that from 2011 to 2016, he purchased approximately 64 grams of marijuana for which he spent approximately \$1,080. (Tr. at 22-24; GE 3, 6)

Applicant used the synthetic drug spice while in high school from 2011 to 2012. In about August 2015, Applicant and some friends used prescription cough syrup containing codeine by smoking it using a water bong. He did not have a prescription for the cough syrup. He used it because of peer pressure and out of curiosity. In about March 2012, he used hallucinogenic mushrooms on one occasion while in high school. He used them because of peer pressure and out of curiosity. He experienced euphoric feelings by using them. He claims he used cocaine on two occasions while in college, in October 2013 and January 2015. On both occasions, he inhaled a three-inch line of cocaine through his nose. He purchased the cocaine on one instance and it was given to him on the other occasion. He was invigorated after using the cocaine. (GE 3, 6)

Applicant completed a SCA in June 2016, as a requirement for his internship. In response to a question asking about his illegal drug use in the past seven years, he answered in the negative. This answer was false and Applicant knew it was false at the time. He intentionally provided false information about his past illegal drug use for two reasons. He believed it was a private matter and because he was afraid his disclosure of his drug use would jeopardize his chance at the internship. (Tr. 25-26; GE 2-3)

In January 2017, Applicant was hired for a full-time position from the government contractor which offered him his internship. He was going to be working on a different program which required him to complete another SCA. Applicant was informed about this requirement to complete another SCA and was panicked because of his earlier falsification about his drug activity. He completed the second SCA in March 2017. When answering the question about past illegal drug use, Applicant responded affirmatively by reporting some marijuana use, but failing to list any of his other drug use. He underreported his marijuana use and falsified the date of his most recent use. Applicant admitted these falsifications. (Tr. at 25-28; GE 1, 3, 6)

During the process of Applicant completing his March 2017 SCA, his employer discovered the discrepancy concerning his drug use information listed on the two SCAs. Applicant initially lied to his employer's security personnel about the reason for the discrepancy. Upon further investigation by his employer, Applicant admitted to his intentional lying about his past drug use and his intentional falsifications of his SCAs. (GE 5-6)

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 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.

Under Directive section E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive section 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 E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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 national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is potentially applicable:

(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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

Applicant admitted extensive and varied drug use as recently as November 2016, which was after he completed his first SCA and worked for his employer as an intern. He intentionally concealed this information from his employer creating a vulnerability to exploitation. The evidence supports his deliberate falsifications on two SCAs and his lying to his employer about his drug history. All the above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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 it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

While Applicant claims his last drug use was in November 2016, his marijuana use was fairly extensive over a period of years. He continued his use after he completed his first SCA when he was employed as an intern for a defense contractor. He lied about his drug use on two SCAs and when asked about his disclosure discrepancies by his employer's security personnel. Providing false information on a SCA is not a minor offense because providing honest and truthful information is important to the overall security review process. Applicant's actions cast doubt on his reliability, trustworthiness, and good judgment. None of the above mitigating conditions fully 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 guideline 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 Applicant's statement of intention of no future marijuana use. However, I also considered that he used marijuana and other drugs on numerous occasions and lied about his use on multiple occasions.

Overall, the record evidence leaves me with questions and doubts about 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 E, personal conduct.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a - 1.h:	Against Applicant

Conclusion

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

Robert E. Coacher
Administrative Judge