



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



In the matter of:)
)
) ISCR Case No. 19-00971
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne M. Driskill, Esquire
For Applicant: *Pro se*

07/19/2019

Decision

LYNCH, Noreen A., Administrative Judge:

Statement of the Case

On April 12, 2019, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement). The action was taken under Executive Order 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 or after September 1, 2006. Since that time, the AG were amended as Guideline H: Drug Involvement and Substance Abuse, and it is now in effect for any adjudication on or after June 8, 2017. Applicant timely answered the SOR 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) on May 20, 2019. Applicant received the FORM on May 28, 2019. Applicant did not object to the Government's evidence, and he provided no response to the FORM. The Government's evidence, included in the FORM and identified as Items 1 through 3, is admitted without objection. The case was assigned to me on July 12, 2019. Based on my review of the documentary evidence, I find that Applicant has not mitigated security concerns under drug involvement and substance abuse.

Findings of Fact

Applicant is 27 years old. He graduated from high school in 2010 and obtained his undergraduate degree in 2016. He is single and has no children. He has been employed as a developmental operations engineer with his current employer since 2016. Applicant was granted a security clearance by DOD in 2016. (Item 2) Applicant completed his security clearance application (SCA) in April 2017. He reports no military service.

The SOR alleges that Applicant used mushrooms in about February 2017, while granted access to classified information. (SOR 1.a) It also alleges that Applicant used marijuana, with varying frequency, from about September 2012 to about April 2014. (SOR 1.b) (Item 1) Applicant admitted both allegations under guideline H, drug involvement.

Applicant disclosed the information about his marijuana use on his 2017 SCA. He smoked in college in a social setting with friends. He believed it was about four to six times, separated by months apart. (Item 2) In that SCA, he noted that he no longer had any interest in marijuana, it was experimental, and he is focused on his career.

In Applicant's answer, he stated that he used the mushrooms because the supplier of the substance gave it to him. Applicant stated that it was in a "safe setting." He stated that he ingested between two and three grams of the substance. He believes that this did not affect his ability to guard classified information. He further explained that he was depressed at the time due to his grandfather's death a month earlier. He stated that he was having difficulty grieving. He noted that he made a poor choice that he otherwise would not have made. He explained it was a one-time event and he understood the repercussions after the incident. (Item 1, attachment)

Applicant noted that he occasionally sees the supplier of the mushrooms because he is part of his group of friends. However, he would refuse any future invitations to use any illegal substance. He has never tested positive for any illegal substance and he avoids environments where an illegal drug might be used to the best of his ability.

During Applicant's 2018 OPM interview, he disclosed the information about the use of marijuana. He noted that "pot" was regularly available during parties. He reiterated that he had no future intent to use marijuana. (Item 3)

As to the use of mushrooms, Applicant again noted that he was with a friend who offered it to him. He claims he used it because he was in a low place and it was a poor choice. (Item 3) Applicant stated that it had no effect on his work or relationships and that he did report the use.

Applicant stated that he intends to continue to abstain from all substance misuse. He has no police record concerning the use of illegal drugs.

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. 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 access to classified information will be resolved in favor of 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, 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern for this guideline is set forth in AG ¶ 24, where it is noted that the illegal use of a controlled substance, and the use of other substances that can 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. This is 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. Such use also raised questions about a person's ability or willingness to comply with laws, rules, and regulations.

Here, Applicant admitted he used marijuana on a few occasions between 2012 and 2014. He acknowledged that he used mushrooms in 2017 when he held a security clearance. This is sufficient to raise AG ¶ 25(a): any substance misuse, and ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position. The Government's substantial evidence, as provided by Applicant's admissions, thus raises security concerns under Guideline H. Therefore, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate related security concerns.

Under Guideline H, conditions that could mitigate security concerns arising from drug involvement and substance misuse are enumerated. The following mitigating conditions under AG ¶ 26 potentially apply to Applicant's case:

(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 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's last use of marijuana, an illegal substance, took place nearly five years ago. He reported using marijuana a few times during the period from 2012 through 2014. In the life of this Applicant, in terms of age, maturation, and work history, sufficient time has passed to deem his marijuana usage as not being recent. Between 2012 and 2014, he used marijuana a few times, reflecting that his usage was infrequent. Although in 2017, he chose to use mushrooms in spite of holding a security clearance. His justification for the use was the passing of his grandfather and his deep depression and emotional state. However, he knew he was using an illegal substance. Applicant betrayed the Government's trust in him when he ingested mushrooms in 2017. The fact that he was depressed is not justification for the use. Granted, he disclosed the incident, and also noted that it was only a one time incident, but he still sees the friend who gave the illegal substance to him. Applicant claimed that he has no intention of returning to drugs, or jeopardizing his career. I find AG ¶ 26(a) and 26(b)(1)-(3) do not apply.

Here, Applicant exhibited instances of unreliable conduct reflecting questionable judgment. These include the few instances he used marijuana between 2012 and 2014, and which included his singular use of mushrooms in 2017, after being granted a security clearance. Spread out over a dozen years, his use of marijuana was mainly in his college years. His drug use in academia could have been readily dismissed due to youthful indiscretion. This is particularly true given its infrequency. His use of mushrooms in 2017, on the other hand, shows that he violated and ignored rules and laws concerning illegal drugs. He was an adult entrusted with the security clearance. His justification for using the illegal substance in 2017 does not mitigate the security concerns. I have doubts about his reliability and good judgment. I find none of the mitigating conditions apply in this case.

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(d). The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. In addition to Applicant's past drug involvement and personal conduct. He did not respond to the FORM to supplement the record. Thus, I have no other evidence to consider.

Applicant is a 27-year-old engineer who was granted a security clearance in 2016. He is single and has no children.

Applicant tried marijuana in college, a varied number of times. His last use was in 2014 and he intends never to use an illegal drugs again. He maintains that his focus is on his career.

However, in 2017, Applicant ingested mushrooms given to him by a friend. He still occasionally sees that friend. The justification for using in 2017 was depression. However, he held a security clearance. He is aware of the laws about the illegal use of drugs. I have doubts as to Applicant's trustworthiness, judgment, and reliability. Any doubts must be resolved in favor of the Government. Under these circumstances, I find Applicant has not mitigated drug involvement and substance misuse. Clearance is denied.

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.b:	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 interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge