



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



In the matter of:)
)
) ISCR Case No. 19-02277
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

04/27/2020

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline H, drug involvement and substance misuse. Applicant’s eligibility for a security clearance is granted.

Statement of the Case

On November 8, 2019, the Defense of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse. 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.

Applicant answered the SOR on November 26, 2019, and requested a hearing before an administrative judge. The case was assigned to me on January 27, 2020. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 30, 2020, and the hearing was convened as scheduled on March 5 2020. The Government offered exhibits (GE) 1-2, which were admitted into evidence without objection. The Government's exhibit list was marked as hearing exhibit (HE) I. Applicant testified and offered exhibits (AE) A-C, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on March 13, 2020.

Findings of Fact

In Applicant's answer to the SOR, he admitted all the allegations, with explanations. I have incorporated those admissions into my findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following additional findings of fact.

Applicant is 29 years old. He is married with two children. He has a bachelor's degree. He is an engineer. He has worked for a defense contractor since October 2018. He has never held a security clearance. He completed his security clearance application (SCA) in September 2018. (Tr. 6, 17; GE 1)

The SOR alleged Applicant: used and purchased marijuana, with varying frequency, from October 2007 to April 2018; used hallucinogenic (not alleged, but implied) mushrooms on two occasions in or around April 2012 and November 2017; and stated to a defense investigator during his background interview that if he were offered marijuana in the future, he might use it. (See SOR ¶¶ 1.a - 1.c.)

Applicant disclosed the full scope of his illicit drug use when he completed his September 2018 SCA. His marijuana use started while in high school in about 2008. He used marijuana approximately twice then. His marijuana use continued into his college years where he used it approximately two to three times a week. The marijuana was either provided by a roommate or Applicant purchased it himself. He stopped using marijuana in 2014 because he applied for a position which required pre-employment drug testing. He was hired for the position. He was aware that his new employer maintained a zero-tolerance drug policy. He abstained from marijuana use for about four months, then began using it recreationally again about once to twice a year. His last use of marijuana was in April 2018, before he began his current position. He experimented by using hallucinogenic mushrooms on two occasions in 2012 and 2017. He has not used them since that time. He met his wife while they both attended college. She used marijuana at that time, but she no longer uses it. (Tr. 18-23; GE 1-2; AE A)

Applicant credibly testified that he stopped using all illegal controlled substances because of his current employment position and the realization that his past use was foolish and irresponsible. He no longer associates with his friends who continue using marijuana. He passed his employer's drug-screening test. He has no future intent to use illegal drugs and documented such intent in a written statement. He also clarified his

previous statement to a defense investigator where he indicated he might use illegal drugs in the future. He just meant that if marijuana was legalized under federal law and if its use was not prohibited under security clearance regulations, he might then use it in the future. He further acknowledged that those conditions do not currently exist and he has no intention to use marijuana in the future. He has not participated in any drug counseling or treatment programs. (Tr. 23-24, 26, 29; GE 2; AE A-B)

Applicant presented a letter from his work supervisor. His supervisor recognized Applicant as a trustworthy employee and highly dependable. He recommends granting Applicant's security clearance. (AE C)

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 H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. One condition is potentially applicable in this case, to wit:

- (a) any substance misuse;

- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Appellant used and purchased marijuana and used hallucinogenic mushrooms at various times between 2008 and 2018. I find AG ¶¶ 25(a) and (c) apply. After Applicant's explanation of his statement during his background investigation and his subsequent written statement of intent not to use illegal drugs in the future, I find that AG ¶ 25 (g) does not apply.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this 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 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's marijuana use of mushrooms was infrequent. His marijuana use was more frequent, but it ceased (as did all of his illicit drug use) in April 2018. He has expressed his intent not to use it in the future and submitted that intent in writing. He no longer associates with the friends with whom he was using marijuana. He acknowledged that his youthful use of marijuana and mushrooms was foolish and irresponsible. He has established an excellent reputation at work where he is valued and trusted employee. AG ¶ 26(a) applies. His nearly two years of abstinence, his written commitment to abstinence, and his distancing from his drug-associated friends are sufficient to demonstrate Applicant's intent not to use in the future. AG ¶ 26(b) applies.

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 facts and circumstances surrounding this case. I considered Applicant's supervisor's statement. I also considered Applicant's statement of intent not to use drugs in the future. Applicant provided sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated 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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge