



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 19-03053
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

05/13/2021

Decision

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns raised under Guidelines E (personal conduct), H (drug involvement and substance misuse), and J (criminal conduct). Eligibility for access to classified information is granted.

Statement of the Case

On December 27, 2019, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, H, and J. Applicant responded to the SOR on February 10, 2020, and requested a hearing before an administrative judge. The case was assigned to me on March 18, 2021. The hearing was convened as scheduled on April 21, 2021. Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified, but he did not submit any documentary evidence.

Findings of Fact

Applicant is a 30-year-old employee of a defense contractor. He has worked for his current employer since July 2017. He is applying for a security clearance for the first

time. He earned a bachelor's degree in 2017, and he has taken post-graduate classes for a master's degree. He has never married, and he has no children. (Transcript (Tr.) at 16-17, 20-21, 26; GE 1, 2)

Applicant was raised in a family where illegal drug use was commonplace. His grandfather offered him marijuana when he was about seven years old. Applicant declined all drug use until 2008 when he was about 17 years old and smoked marijuana. His marijuana use slowly increased until about 2012, when he started smoking marijuana almost every day. He used illegal drugs with various family members, including his father, brothers, and sister. Applicant realized that he would pay less for the marijuana if he bought larger quantities. He bought marijuana from his uncle, who grew marijuana. Applicant frequently sold the excess marijuana to friends and neighbors. The profit from selling marijuana helped offset his costs for his own marijuana as well as some other living expenses. (Tr. at 12-21; Applicant's response to SOR; GE 1, 2)

In about 2011, Applicant used Adderall without a prescription to help him focus while he was writing a paper for school. From about 2011 through June 2015, he used the following hallucinogenic controlled substances: LSD (lysergic acid diethylamide), mushrooms, and DMT (*N,N*-Dimethyltryptamine). He used LSD about three times, mushrooms twice, and DMT about eleven times. He bought the LSD, was given the mushrooms, and manufactured the DMT. (Tr. at 15; Applicant's response to SOR; GE 1, 2)

DMT is found in a number of plant materials and can be extracted or synthetically produced in clandestine labs.¹ Applicant and his brother shared an apartment from 2011 to 2012. In 2011, Applicant's brother wanted to manufacture DMT using plant materials and information obtained through the Internet. Applicant was worried his brother would burn the apartment down or poison someone, and he helped his brother with the process. Applicant never manufactured or used DMT after 2011. (Tr. at 15; Applicant's response to SOR; GE 1, 2)

Applicant went to a career fair in about March 2016. Applicant and his friend talked with a recruiting agent from a government agency. His friend told him that if he wanted to work for the government agency, Applicant would have to completely stop taking illegal drugs. Applicant realized that he would graduate in a year, and he needed to make major changes in his life. He gave or threw away all of his drug paraphernalia. He gave all of his marijuana to his father. He told the one person he regularly sold marijuana to that he would have to buy his marijuana elsewhere. He told all of his friends and family members that he stopped smoking marijuana. He still has contact with family members who use drugs, but if he sees any drug use, he leaves. Applicant has not used any illegal drugs since about March 2016, and he does not intend to use any in the future. (Tr. at 14-25, 27; Applicant's response to SOR; GE 1)

¹ See https://www.deadiversion.usdoj.gov/drug_chem_info/dmt.pdf

Applicant gave an extremely detailed accounting of his illegal drug activities in a May 2017 Questionnaire for National Security Positions (SF 86). He also provided extensive information during his background interview, in his response to the SOR, and during his hearing. I found him to be forthcoming and credible. (GE 1, 2)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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. 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant possessed and used marijuana, Adderall, LSD, mushrooms, and DMT. He sold marijuana and he helped manufacture DMT. AG ¶¶ 25(a) and 25(c) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following 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; 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 was raised in a family where illegal drug use was commonplace. He started smoking marijuana in 2008 when he was about 17 years old. His drug involvement increased over the years to include use of other drugs, manufacturing DMT, and selling marijuana. In about March 2016, he realized he needed to make major changes in his life if he wanted a successful future. He completely stopped all involvement with illegal drugs. He credibly testified that he will not use any illegal drugs in the future. He fully disclosed his drug use on his SF 86 and during his background investigation, which bolsters his credibility. Applicant's conduct was serious, but it was more than five years ago. It no longer casts doubt on his reliability, trustworthiness, and good judgment. I find that Applicant has abstained from illegal drug use for an appropriate period, and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

Guideline J, Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about an Applicant's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant's drug involvement was cross-alleged under criminal conduct. The above disqualifying condition is applicable.

Conditions that could mitigate criminal conduct security concerns are provided under AG ¶ 32. The following are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

The discussion above under drug involvement and substance misuse applies equally here. I find evidence of successful rehabilitation; the conduct is unlikely to recur; and it no longer casts doubt on Applicant's reliability, trustworthiness, and good judgment. AG ¶¶ 32(a) and 32(d) are applicable.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information;

(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; and

(g) association with persons involved in criminal activity.

Applicant's drug involvement is cross-alleged under Guideline E. That conduct reflects questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. Applicant still has contact with family members who use drugs. AG ¶¶ 16(c), 16(e), and 16(g) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

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

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant stopped participating in his drug activities more than five years ago. While he still has some contact with his family members who use drugs, if he sees any drug use, he leaves. The discussion above under Guidelines H and J applies equally here. I find that the conduct is unlikely to recur; it does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment; and it no longer serves as a basis for coercion, exploitation, or duress. AG ¶¶ 17(c), 17(e), and 17(g) are applicable.

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 relevant 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 have incorporated my comments under Guidelines E, H, and J in my whole-person analysis. I also considered Applicant's favorable character evidence.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under Guidelines E (personal conduct), H (drug involvement and substance misuse), and J (criminal 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 H:	For Applicant
Subparagraphs 1.a-1.h:	For Applicant
Paragraph 2, Guideline E:	For Applicant
Subparagraphs 2.a-2.b:	For Applicant
Paragraph 3, Guideline J:	For Applicant
Subparagraph 3.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Edward W. Loughran
Administrative Judge