



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 20-00463
)
)
Applicant for Security Clearance)

Appearances

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

February 17, 2021

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On September 4, 2019, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 2.) On May 19, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Abuse. 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on a date uncertain. He requested that his case be decided by an administrative judge on the written record without a hearing. (Item 1.) On November 23, 2020, Department Counsel submitted the Government’s written case. A complete copy of the File of Relevant Material (FORM), containing three exhibits, was sent to the Applicant and received on December 1, 2020. The FORM notified Applicant that he had an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM. Applicant

responded to the FORM on December 28, 2020, and submitted a three page document, referred to as Applicant's Exhibit A, which was admitted into evidence without objection. DOHA assigned the case to me on January 28, 2021. Items 1 through 3 are admitted into evidence and hereinafter referred to as Government Exhibits 1 through 3.

Findings of Fact

Applicant is 26 years old. He has a bachelor's degree. He is employed by a defense contractor as a Project Engineering Specialist. He is seeking to obtain a security clearance in connection with his employment. Applicant has no military service.

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

Applicant admits each of the four allegations under this guideline. He attended college from August 2012 to May 2018. While in college, Applicant's curiosity and desire to fit in socially with his classmates caused him to use illegal drugs. He explained that his decision to use illegal drugs was not a spur of the moment decision, but rather an informed decision with months of research behind it. He used and purchased marijuana with varying frequencies from approximately January 2017 to approximately July 2019. He used cocaine on one occasion in about October 2017. He also used ecstasy from about March 2014 to August 2016. Applicant was hired by his current employer in July 2019. He is currently awaiting his employment start date contingent on the outcome of his security clearance application. (Government Exhibit 2.)

Applicant used marijuana one to two times a week on average from January 2014 through July 2018, by smoking it or edibles while with friends in college at his or at their apartments. He then used it three more times, the last use occurred in March 2019. In total, he believes he has used marijuana 300 to 350 times. From January 2017 to July 2019, he would purchase marijuana at times every month or two from dispensaries because it was legal in the state. Applicant stated that he used marijuana to decompress from a high academic workload or a long day at work. He explained that it was a replacement to consuming alcohol, as he is allergic to alcohol, and he does not like the way it makes him feel. (Government Exhibit 2.)

During his interview with the authorized DoD investigator on November 12, 2019, Applicant stated that he last used marijuana in March 2019. Applicant used marijuana recreationally with friends. He also remembers purchasing marijuana for his brother on one occasion in June or July 2019, when his brother did not have his debit card. Applicant also admitted that he has used Adderall without a prescription on one

occasion in 2015 or 2016. On that occasion, a college friend offered it to him. (Government Exhibit 3.)

Applicant used ecstasy from March 2014 to about August 2016. A college friend introduced him to it. His friend would acquire it, and Applicant normally used it when they attended music festivals. Applicant was told by his friends that when attending a music festival he should use ecstasy to get the most out of the experience. Applicant last used ecstasy in August 2016. (Government Exhibits 1 and 2.)

In October 2017, Applicant used cocaine on one occasion with college friends. Applicant was drinking at a party, when cocaine was offered to him. He stated that he used it due to peer pressure from friends at the party where everyone else was using it. (Government Exhibits 1 and 2.)

Applicant states that he no longer associates with any of his college friends or anyone who uses illegal drugs. He does not intend to use any illegal drug in the future. He stated that the marijuana was always a temporary activity that he only planned to do while in college. (Government Exhibit 2.) Since graduating from college in May 2018, however, Applicant continued his marijuana on at least three more occasions. He stated that he used it while visiting with friends he had not seen in a long time. He regrets this use. (Applicant's Exhibit A.)

Applicant argues that he could have said nothing about his drug use on his security clearance application, and the DoD would only be aware of one transaction for purchasing marijuana after it was legalized for recreational use. Rather than deliberately lie on his application, he chose to disclose his extensive drug use history. (Applicant's Exhibit A.)

Policies

When evaluating an applicant's suitability for a security clearance, 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 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 AG ¶ 2 describing 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 protect or 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 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 relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, 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.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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.

Other than his admissions to the allegations in the SOR, the record is void of evidence in mitigation. There is nothing in the record in the way of documentary evidence to substantiate his eligibility for access to classified information. There are no letters of recommendation to substantiate his character. There is no statement of intent acknowledging that any further use of any illegal drug would result in automatic revocation of his security clearance. It appears that Applicant stopped using marijuana just before he was hired by his current employer in order to try to obtain a security clearance. The evidence in this record is inadequate to grant access to classified information to this applicant. Applicant is young, and has made some poor decisions in the past concerning the use of illegal drugs. It is not clear from his evidence that he understands the great responsibilities involved in holding a security clearance. It is also not clear whether he understands that the use and purchase of marijuana is against

Federal law. Although he states that his last use of marijuana occurred about 19 months ago, he also stated that he planned to discontinue his use of marijuana when he graduated from college in 2018, and did not do so. Applicant continued to use it after college. Applicant is a college-educated man, whose actions have shown immaturity and poor judgment that is inexcusable. More evidence is needed to show that he has committed himself to a drug free lifestyle and can properly protect classified information. At this time, he does not show the required level of good judgment, reliability and trustworthiness necessary to be eligible for access to classified information.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations and policies that apply to them. Applicant has chosen to live his life to his convenience, and has disregarded the law. Under the particular facts of this case, Applicant does not show the requisite character or judgment of someone who has the maturity, integrity, good judgment, and reliability necessary to access classified information. Applicant does not meet the qualifications for access to classified information.

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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. While holding a security clearance one is expected to show responsibility and good judgment. Applicant has not demonstrated the level of maturity needed for access to classified information. This is not an individual with whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. He is

not qualified for access to classified information. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with 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 Drug Involvement and Substance Misuse security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a. through 1.d.	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge