



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



In the matter of:)
)
) ISCR Case No. 20-02298
)
)
Applicant for Security Clearance)

Appearances

For Government: Adrienne Driskill, Esq., Department Counsel
For Applicant: Alan V. Edmunds, Esq., Applicant’s Counsel

August 23, 2021

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On March 13, 2019, Applicant submitted a security clearance application, SF-86. (SCA) On January 20, 2020, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines H and E. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on February 1, 2021, and requested a hearing before an administrative judge. Appended to the Answer were Prehearing Exhibits (PHXs) A~G, which were admitted into evidence. The case was assigned to me on May 20, 2021. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on May 20, 2021. I convened the hearing as scheduled on

July 14, 2021. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and presented Applicant Exhibits (AppXs) A and B, which were admitted without objection. DOHA received the transcript of the hearing (TR) on July 22, 2021. The record was closed on July 22, 2021.

Findings of Fact

Applicant admitted to all the allegations in SOR, except for SOR allegation ¶ 1.j. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 39-year-old employee of a defense contractor. (GX 1 at page 7.) He has been employed with the defense contractor since January of 2006. (GX 1 at page 17.) He has held a security clearance since October of 2008. (GX 1 at page 53.) He is not married, and has no children. (TR at page 14 lines 7~10.) Applicant has a Master's degree. (TR at page 14 lines 16~21.)

Guideline H - Drug Involvement and Substance Misuse

1.a., 1.b., 1.g.~1.j., and 2.c. Applicant used Marijuana "weekly" from 1995~2012, and three times from 2012~2017. He also purchased Marijuana with varying frequency from 1995~2012. (TR at page 15 line 11 to page 17 line 25, and Answer at page 2.) Furthermore, Applicant used and purchased Marijuana after completing his SCA in 2007, and used Marijuana after completing his SCA in 2017, while employed in a sensitive position, and after being granted a security clearance in 2008. (GX 3.)

1.c., 1.d., 1.g.~1.j., and 2.c. Applicant used Psilocybin Mushrooms from 2002~2011. He also purchased Psilocybin Mushrooms four times. (TR at page 18 line 1 to page 19 line 20, and Answer at page 3.) Furthermore, Applicant used and purchased Psilocybin Mushrooms after completing his SCA in 2007, while employed in a sensitive position, and after being granted a security clearance in 2008. (GX 3.)

1.e., 1.f., 1.g.~1.j., and 2.c. Applicant used Cocaine from 2001~2011. He also purchased Cocaine. (TR at page 18 line 1 to page 19 line 20, and Answer at page 3.) Furthermore, Applicant used and purchased Cocaine after completing his SCA in 2007, while employed in a sensitive position, and after being granted a security clearance in 2008. (GX 3.)

Guideline E - Personal Conduct

2.a. Applicant admits that he falsified his March 2007 SCA, in answer to "Section 24: Your Use of Illegal Drugs and Drug Activity," when he failed to disclose his Psilocybin Mushroom usage, his Cocaine usage, and his post-2004 Marijuana usage. (TR at page 28 lines 3~25, and GX 3 at pages 36~37.) I find this to be a willful falsification.

2.b. Applicant admits that he falsified his March 2017 SCA, in answer to “Section 23: Illegal Use of Drugs or Drug Activity,” when he failed to disclose his Psilocybin Mushroom usage, his Cocaine usage, and his Marijuana usage. (TR at page 34 lines 5~12, and GX 3 at pages 43~44.) I find this to be a willful falsification.

2.c. See before mentioned discussion, above, under Paragraph 1.

Policies

When evaluating an applicant’s suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person applying for national security eligibility 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “[a]ny determination under this order adverse to an applicant shall be a determination in

terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 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 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 seven conditions that could raise a security concern and may be disqualifying. Three conditions are established:

- (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
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Appellant used and purchased Marijuana, Psilocybin Mushrooms and Cocaine between 1995 and 2017. He held a security clearance for his job during the last ten years of that time. Therefore, AG ¶ 25 (a), (c), and (f) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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.

None of these were established by the evidence in this case. Drug Involvement and Substance Misuse is found against Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

- (a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and
- (b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(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.

Applicant falsified his 2007 and 2017 SCAs. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully.

None of these was established. Personal Conduct is found against Applicant.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable 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 Guidelines H and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment. Applicant is well respected at his workplace and in his community. (PHEs B and C.)

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 Personal Conduct 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
Subparagraphs 1.a.~1.j:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a.~2.c:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge