



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



In the matter of:)
)
) ISCR Case No. 21-00030
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

11/12/2021

Decision

MURPHY, Braden M., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H, drug involvement and substance misuse, regarding his one-time use of “Molly” (Ecstasy) while holding a security clearance, and his earlier one-time use of Adderall without a prescription. Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on August 19, 2020. On April 14, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (AG), effective June 8, 2017.

When Applicant answered the SOR on April 27, 2021, he admitted both allegations in the SOR without further comment, and requested a decision based on the administrative (written) record, without a hearing before an administrative judge from the Defense Office of Hearings and Appeals (DOHA).

On May 30, 2021, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 5. Items 1 and 3 are the pleadings in the case (the SOR and the Answer), and Item 2 is the SOR transmittal letter. Items 4 and 5 were offered as substantive evidence.

The FORM was mailed to Applicant on June 1, 2021. He was afforded an opportunity to file objections and to submit material in refutation, extenuation, or mitigation, and was given 30 days from receipt of the FORM to do so. Applicant received the FORM on June 7, 2021. Applicant did not respond to the FORM, nor did he note any objections to the Government's proposed evidence. FORM Items 4 and 5 are admitted into evidence without objection. The case was assigned to me on September 7, 2021.

Findings of Fact

Applicant admitted SOR ¶¶ 1.a and 1.b without further comment. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 32 years old. He has never married and he has no children. (Item 4 at 26) He graduated from high school in 2008, and earned his bachelor's degree in 2011. He continued his academic studies for several years after that (2011-2015), but did not earn an advanced degree. (Item 4 at 14-15; Item 5 at 11)

While continuing his education, Applicant worked various jobs, including as a research assistant (2012-2013), a self-employed engineer (2013-2014), and a graduate teaching assistant (2014-2015) among other jobs. (Item 4 at 17-21) In May 2015, after finishing his classes, he moved to a new state for a job in mechanical engineering. He has worked for that employer ever since. (Item 4 at 16)

The allegations in the SOR concern Applicant's one-time use of Adderall, without a prescription, in March 2013 (SOR ¶ 1.a) and his one-time use of "Molly," while holding a security clearance, in August 2020. (SOR ¶ 1.b).⁸ "Molly" is another word for Ecstasy, or MDMA. (See <https://www.drugabuse.gov/publications/drugfacts/mdma-ecstasy-molly>)

Applicant had a background interview in April 2018, in which he discussed his one-time use of Adderall, in March 2013. The SCA that preceded that interview is not in the record, on which he appears to have disclosed his Adderall use. He explained that he was given the Adderall by a friend before they went out to a bar. The Adderall was not prescribed to the friend, and it was not prescribed to Applicant. (Item 5 at 5)

Applicant also disclosed this one-time use of Adderall on his next SCA, in August 2020. He said he would not use it again because “it is illegal.” (Item 4 at 38-39) He also said that his prior clearance application had been granted, in June 2018. (Item 4 at 43)

On or about September 23, 2020, Applicant had his background interview for his most recent SCA. (Item 5 at 10) He confirmed his 2013 Adderall use, as previously disclosed. Applicant was then asked if he had ever illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance. He responded in the affirmative. He disclosed that, in late August 2020, after submitting his SCA earlier that month, he had been at a party and someone had offered him some white powder, a drug called “Molly.” He tasted the powder by wetting his finger, dipping it into the powder, and then licking his finger. He did this three times. (Item 5 at 15)

Applicant said he tried the drug because he was curious. He knew that he had a security clearance at the time, and he knew the drug was illegal. He acknowledged in the interview that he made an unwise decision. He said he was offered another chance to use the powder at the party but declined. (Item 5 at 15) Applicant indicated during the interview that he will not use any drugs in the future because it is illegal and not worth risking his job. He said he regretted his decision to use the powder and would not do it again. (Item 5 at 15)

Applicant authenticated both of his interview summaries in January 2021, without substantive alterations. (Item 5) He also disclosed both the Adderall and Molly usage again, in the portion of the interrogatory regarding recent drug involvement. (Item 5 at 20)

Applicant admitted both SOR allegations without further comment. He did not respond to the Government’s FORM or otherwise offer any mitigating evidence beyond what he had previously stated.

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988).

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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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 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.

Analysis

Guideline H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

- (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.

Applicant's use of Adderall without a prescription establishes AG ¶ 25(a) since misuse of prescription drugs is considered an illegal use of a controlled substance, as addressed in AG ¶ 24. Applicant's use of "Molly", while holding a security clearance, establishes both AG ¶ 25(a) and AG ¶ 25(f). AG ¶ 25(c) is established because he possessed both substances when using them.

I have considered the mitigating conditions under AG ¶ 26. 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 is grounds for revocation of national security eligibility.

No mitigating conditions fully apply. Applicant's illegal substance use was not frequent, as it occurred on two occasions several years apart. However, the second instance was recent, as it occurred in August 2020, just over a year ago. Inexplicably, it also occurred not only while Applicant possessed a security clearance, but only days after he submitted his SCA (on which he disclosed his 2013 Adderall use, and noted that he knew it was illegal), and while he was undergoing an additional review of his clearance eligibility. Further, Applicant offered no mitigating evidence in either his SOR response or in answer to the Government's FORM. While Applicant's illegal drug use is isolated and not frequent, the recency of his most recent use, and its circumstances, preclude full application of either AG ¶ 26(a) or AG ¶ 26(b).

