



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



In the matter of:)
)
) ISCR Case No. 19-02499
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey DeAngelis, Esq., Department Counsel
For Applicant: Sean Bigley, Esq.

March 29, 2021

Decision

TUIDER, Robert, Administrative Judge:

Applicant mitigated security concerns regarding Guideline H (drug involvement and substance misuse). Clearance is granted.

Statement of the Case

On October 30, 2017, Applicant submitted a Questionnaire for National Security Positions (SF-86). On November 15, 2019, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. The SOR detailed reasons why the DOD CAF was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.

On April 2, 2020, Applicant submitted his Answer to the SOR through counsel. On September 30, 2020, Department Counsel was ready to proceed. On October 28, 2020, the Defense Office of Hearings and Appeals (DOHA) assigned the case to me. On October 28, 2020, DOHA issued a notice of hearing scheduling the hearing for December 3, 2020. The hearing was convened as scheduled. Department Counsel

submitted Government Exhibits (GE) 1 and 2, which were admitted without objection. Applicant testified and submitted Applicant's Exhibits (AE) A through I, which were admitted without objection. On December 21, 2020, DOHA received the hearing transcript (Tr.).

Findings of Fact

Applicant, through counsel, admitted the sole allegation alleged under SOR ¶ 1.a, with explanations. (SOR Answer) His admission is incorporated or adopted as a finding of fact. Additional findings of fact follow.

Background Information

Applicant is a 55-year-old senior acquisition specialist two employed by a defense contractor since October 2017. (GE 1; Tr. 11-13) He is a first-time applicant for a secret security clearance. Obtaining a clearance would enhance his employability and upward mobility within his company. (GE 1; Tr. 13-14, 18, 52-53)

Applicant received his high school diploma in 1986. He was awarded a bachelor's degree in international business in 2006, and was awarded a master's degree in system engineering in 2011. (GE 1; Tr. 14-15) Applicant married in January 1997, and has an adult son and an adult daughter; both are currently attending college and live at home. Applicant's wife is a homemaker and assists the elderly on a part-time volunteer basis through their local church. (GE 1; Tr. 16-18, 58-59)

Drug Involvement and Substance Misuse

SOR ¶ 1.a alleged that Applicant used marijuana/THC with varying frequency from 1980 to at least April 2019. (SOR) Applicant was introduced to marijuana as a teenager while growing up in a large metropolitan area on the East Coast. Marijuana was readily available in Applicant's neighborhood and "was part of the community or environment." Applicant's marijuana usage transitioned from teenage peer pressure to a coping mechanism to deal with an anxiety disorder. To cope with his anxiety disorder, Applicant estimated that he used marijuana "about two or three times a week" during a 40-year span. (Tr. 19-23, 45, 61)

Applicant did not seek professional help to deal with his anxiety disorder until his early 30s in the 1995 to 1996 timeframe. His doctor at the time prescribed Klonopin, which was prescribed to him to alleviate the "heavy brain activity [he] experienced, which overwhelmed [his] thought process and created the physiological changes that were very uncomfortable to deal with and manage through this anxiety disorder." (Tr. 23-24, 34, 67-68) Over time, Applicant learned that Klonopin had some undesirable long-term side effects such as dementia or Alzheimer's disease and proved to be more addictive than marijuana. In consultation with his doctor, he reduced his Klonopin dosage. For example, Applicant's prescription indicated a consumption rate of two tablets a day; however, he took Klonopin on average two days a week. His usage depended on work demands such as making a presentation. Applicant stated Klonopin

physiologically reduces brain activity and allows him to breath. By doing so, he is able to formulate better planning. Marijuana had “very similar effects in some form or fashion.” When Applicant used marijuana, he did so by smoking it during the evenings in the privacy of his home. No one in Applicant’s immediate family uses marijuana. After marijuana was legalized in his state of residence, he obtained a marijuana card in about 2011 and purchased marijuana at state-sanctioned dispensaries. Before that, he obtained marijuana from individuals with similar needs. (Tr. 24-26, 34-42, 44, 59-63, 65, 69)

Overcoming Applicant’s anxiety disorder was a process that occurred over time and involved shifting from prescription drugs or marijuana to a faith-based platform. He became involved with his church and its men’s bible study group. Applicant explained, “So, I made a promise to my Lord Jesus Christ, and I communicated to him that I wanted to get away from these artificial medications and work and build an infrastructure that would help me with his grace, mercy and love on my life, to help me establish something better than I had tried to establish.” He found his bible study peers to be excellent role models, role models he never had growing up. (Tr. 27-28) In addition to his men’s bible study group, Applicant is involved in other aspects of his church’s ministry such as hospitality and ushering, and feeding and providing clothing to the homeless. He also assists with a local community project rebuilding schools and provides assistance where needed. (Tr. 27-29)

Applicant made his commitment to stop using marijuana and become sober on April 21, 2019, Easter Sunday. He stated:

I made a deep, deep commitment to my Father in heaven that I was going to pursue this [with] even more diligence; with more firmer [resolve], you know, that I was serious and that I needed His help and I needed Him to guide me, to provide me with the wisdom to interface me with the people that I needed to build this infrastructure that, in my mind, was to alleviate me from having to medicate with these medications. (Tr. 29-30, 45-46, 59)

In addition to a faith-based platform, Applicant pursues a regimen of good nutrition and exercise. He has been seeing a forensic psychologist on a frequent basis since June 2020, and remains open to seeking help, as needed. His psychologist prepared an extensive substance abuse evaluation, discussed below. Applicant also attended Narcotics Anonymous in August or September 2020, it is now almost two years after he stopped using marijuana. He did so to reinforce his infrastructure to stay on a path of sobriety. (Tr. 30-31, 42-52) Applicant credibly testified that he can be trusted to no longer use marijuana. He referred to his proven career track record of dependability and reliability with his colleagues and client customers. He has always given them advice and service to the best of his ability. Applicant is very proud of the service he provides to the country and hopes to continue that service. In short, he wants to leave a legacy that he did what he needed to do for his family, friends, colleagues, and society. (Tr. 31-33)

Applicant completed his security clearance application on October 30, 2017, after he began his employment with his current company. He disclosed his past marijuana use on that application. When he applied for a position with his current employer, the requirement to have a security clearance was not clear. Applicant had no experience with the security clearance process during his previous 25-plus years in the aerospace industry. (Tr. 53-55) During Applicant's November 20, 2018, Office of Personnel Management Personal Subject Interview (OPM PSI), he informed the investigator of his marijuana use up until the time of his OPM PSI. His use of marijuana continued for about six months after that interview. Applicant stated this marijuana use was on an "as needed" basis, that he was not dependent on marijuana, and that its use was a "more natural way to medicate." (Tr. 55-56; GE 2)

When Applicant realized that using marijuana was incompatible with holding a security clearance, he realized "marijuana had to go." (Tr. 40) Applicant's OPM PSI definitely had an impact on him. With coordinated treatment from his health care professionals as well as support received from his faith-based men's bible study group, Applicant was able to bridge the gap that marijuana provided in dealing with his anxiety disorder. (Tr. 56-57)

Applicant does not associate with anyone who uses marijuana. Applicant understands that any use of illegal drugs is not tolerated at his workplace or while holding a security clearance. (Tr. 63-64) This is the first time in Applicant's working career that he encountered a zero tolerance drug-free policy as it applies to the security clearance process. (Tr. 70) Applicant submitted three negative drug tests dated October 7, 2020; September 11, 2020; and August 21, 2019. (Tr. 70-71; AE A, AE B, AE C)

Of particular note is a comprehensive Substance Abuse Evaluation dated November 9, 2020 that Applicant submitted. The report was prepared by a very well credentialed forensic psychologist (Ph.D.), who has significant experience in evaluating security clearance applicants under the auspices of the CIA, NSA, and DOD. Ph.D. diagnosed Applicant with a Social Anxiety Disorder (DSM-5 300.23). Ph.D. did not give Applicant a diagnosis of Cannabis Use Disorder. He explained that Applicant did not meet any of the 11 criteria for a substance use disorder, and added that Applicant "used cannabis as an alternative to the benzodiazepine prescription he received for his anxiety disorder for many years." Ph.D. stated, "To a great degree of psychological certainty, I have concluded that [Applicant] is free from any problems of drug or alcohol use and pose[s] no risk to the national security as a result of his prior usage." (Tr. 71-72; AE D)

In addition to Ph.D.'s Substance Abuse Evaluation, Applicant submitted a letter from his licensed marriage and family therapist (LMFT) dated November 11, 2020. LMFT stated Applicant has been under her care since June 28, 2020, with a diagnosis of Anxiety Disorder (F41.9) in order to increase his coping and to get support for his sobriety from cannabis. She noted that Applicant has shown high motivation, insight, and dependability in a consistent manner. (Tr. 72-73; AE E) Applicant submitted a signed, sworn statement of intent, dated October 23, 2020, to avoid any future drug use or other illegal use of drugs both presently and in the future, with the understanding that

any drug violation will result in the automatic revocation of clearance. (AE F) Applicant submitted a gym membership contract dated February 11, 2020, further documenting his commitment to engage in a healthy lifestyle. (AE H)

Character Evidence

Applicant submitted a character letter dated November 10, 2020, from one of his colleagues from his men's bible study group. Applicant described him as a "mentor in the Christian faith." This individual has known Applicant for at least ten years. He described Applicant as "a diligent worker, constant learner, and man of integrity." He described Applicant's volunteer work at their church, school, and community. (Tr. 73; AE G) Lastly, Applicant submitted his most recent work performance review effective June 30, 2020, with a rating "Exceeds Expectations." The narrative of his evaluation documents the justification for achieving such a rating. (Tr. 74; AE I)

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 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."

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 clearance 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

Drug Involvement and Substance Misuse

AG ¶ 24 describes the security concern about 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 provides one condition that could raise a security concern and may be disqualifying in this case:

(a) any substance misuse (see above definition).

These proceedings were initiated after Applicant self-reported his history of marijuana use on his October 30, 2017 SF-86, and later during his November 20, 2018 OPM PSI. Although a defense contractor has employed him since October 2017, he has never held a security clearance. AG ¶¶ 25(a) is established. Further review is required.

AG ¶ 26 lists two conditions that could mitigate security concerns:

(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.

Considering the totality of the circumstances in this case, I find application of AG ¶¶ 26(a) and 26(b) (1)(2)(3).

Concerning AG ¶ 26(a), there are no “bright line” rules for determining when conduct is “recent.” The determination must be based “on a careful evaluation of the totality of the record within the parameters set by the Directive.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows, “a significant period of time has passed without any evidence of misconduct,” then an administrative judge must determine whether that period of time demonstrates “changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation.” ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle change and therapy. For the recency analysis the Appeal Board stated:

Compare ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that

mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) (“The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.”) (citation format corrections added).

Applicant’s last drug use was April 2019, about 20 months before his hearing. His initial exposure to marijuana occurred during his teenage years where drugs were readily available in his neighborhood. His use continued as a form of self-medication occurring approximately two to three times a week to cope with an undiagnosed anxiety disorder. In his mid-thirties, he consulted with a medical professional who diagnosed his anxiety disorder and prescribed Klonopin. Applicant took Klonopin, however, over time he became concerned with the adverse long-term effects of taking a synthetic drug. He reverted to the natural drug of marijuana and when his state legalized marijuana, he applied for and received a marijuana card. It was not until he applied for a security clearance at his present job that his marijuana use became an issue.

The record is replete with compelling evidence that Applicant has turned the corner on achieving marijuana abstinence. He recognizes the importance of being a husband, father, and provider to his family. He also fully recognizes that there is no room for any drug use during his current employment. Applicant has aggressively sought out professional and faith-based help to overcome his past use of marijuana and because of his efforts; he achieved 20 months of sobriety as of his hearing date. The absence of evidence of more recent or extensive drug use, and his promise not to use illegal drugs in the future eliminates doubts about his current reliability, trustworthiness, and good judgment with respect to abstaining from illegal drug use. In ISCR Case No. 02-08032 at 8 (App. Bd. May 14, 2004), the Appeal Board reversed an unfavorable security clearance decision because the administrative judge failed to explain why drug use was not mitigated after the passage of more than six years from the previous drug abuse.

AG ¶ 26(b) lists three ways Applicant can demonstrate his intent not to abuse illegal drugs in the future. He has entered a drug-free environment, achieved ongoing personal growth, and changed his own life with respect to drug use. He does not associate with anyone who uses marijuana and made lifestyle changes consistent with sobriety. He has abstained from marijuana use for about 20 months and has had no problem in doing so.

Applicant’s letters from Ph.D., LFMT, and his bible study colleague document his struggle to overcome his anxiety disorder demons. The road to sobriety has not been an easy one for Applicant. Applicant’s work performance evaluation reflects the caliber of the contribution he is making as an employee. His performance further reflects his work behavior is not indicative of someone with a drug problem. As an employee and as a member of his community, he is viewed as reliable, a constant learner, and an individual with integrity. At his hearing, Applicant acknowledged that future drug abuse is incompatible with his future career and family plans, and manifested a steadfast

commitment to continue lifestyle changes consistent with total abstinence of involvement with marijuana and all other illegal drugs.

In evaluating Applicant's credibility, I did so after assessing his demeanor, overall candor on other matters, and reputation among his superiors and peers. Given the circumstances of Applicant's background, his explanation for his actions, and his subsequent actions, I find credible his assertion that he will not use any illegal substance in the future. AG ¶¶ 26(a) and 26(b) apply. Drug involvement and substance misuse security concerns are mitigated.

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.

The ultimate determination whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. AG ¶ 2(c). The discussion under Guideline H is incorporated in this whole-person section. However, further comments are warranted.

Applicant has been and is willing to maintain conduct expected of one entrusted with a security clearance. His employer, friends, and family support him. He has a history of stable employment and a strong work ethic. This support and self-introspection should ensure his continued success. Applicant demonstrated the correct attitude and commitment to remaining drug free. The role that Applicant's faith played during this process is crucial. It has perhaps served as Applicant's greatest motivator in doing what is right for himself and his family. Considering his demeanor and testimony, I believe Applicant has learned from this experience, and is committed to remaining drug-free.

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the adjudicative guidelines.

Formal Findings

The formal findings on the allegations set forth in the SOR are as follows:

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraph 1.a: For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. National security eligibility is granted.

Robert Tuidier
Administrative Judge