



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



In the matter of:)	
)	
)	ISCR Case No. 19-02576
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara Karoian, Department Counsel
For Applicant: Pro se

February 3, 2021

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On May 3, 2018, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On December 19, 2019, 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 February 6, 2020, and requested a hearing before an administrative judge. The case was assigned to me on April 28, 2020. The Defense Office of Hearings and Appeals issued a notice of hearing on September 29, 2020, and the hearing was convened as scheduled on November 9, 2020. The Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant offered no exhibits. Applicant testified

on his own behalf. DOHA received the transcript of the hearing (Tr.) on November 18, 2020.

Findings of Fact

Applicant is 28 years old. He has two Bachelor's degrees. He is employed by a defense contractor as a Manufacturing Engineer. 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 the 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 the single allegation under this guideline. He has used marijuana off and on for seven years from approximately April 2011 to approximately November 2018. Applicant began using marijuana sporadically in college, at first about once every four or five months or so. (Tr. p. 27) From 2015 until mid-2016, he used marijuana weekly. By 2016, toward the end of college, he was using it on a monthly basis. He did not use it again until March 2017 when he used it on a weekly basis until November 2018 when he stopped. (Government Exhibit 1.)

In March 2017, Applicant was hired by his current employer as a Facilities Engineer. At that time, Applicant was given a company handbook that set forth the rules and regulations prohibiting illegal drug use. Applicant also understood that all employees were subject to random drug testing. Despite receiving this information, Applicant continued to use marijuana from March 2017 until November 2018. He testified that he used marijuana to relax and for recreation because he enjoyed it. (Tr. p. 22.) He also described an ankle surgery he had in August 2017 where he obtained a medical marijuana card in order to purchase it. He contends that he purchased marijuana legally from marijuana dispensaries. He normally used marijuana at his residence with apartment mates while playing video games. (Tr. p. 23.) Applicant testified that he continues to associate with his friends who use marijuana. (Tr. p. 24.) He currently lives with his best friend who uses marijuana in their apartment several times a week. When other friends come over to Applicant's home, they use marijuana with Applicant's roommate in Applicant's presence. (Tr. p. 26.) Applicant has never asked his friends or his roommate to avoid using marijuana in his presence. Applicant last used marijuana in November 2018. (Tr. p. 24.)

In December 2017, due to company lay-offs, Applicant was transferred to his current position. In April 2018, he learned that the new position would require a security clearance. In May 2018, Applicant completed a security clearance application. (Government Exhibit 1.) In response to Section 23 of the application, Applicant was asked if in the last seven years he had used any illegal drugs or controlled substance?

In response to Section 23, Applicant responded, "Yes." (Government Exhibit 1.) On page 35 of the same questionnaire, Applicant explained that he intends to use marijuana in the future because it is now legal in the state where he resides. (Government Exhibit 1.)

In November 2018, Applicant met with an OPM investigator and was asked about his future intent to use marijuana. Applicant initially told the investigator that he intended to continue using and purchasing marijuana in the future. (Government Exhibit 2.) Applicant stated that he changed his intent during the interview when the investigator told him that although marijuana use is legal in his state, it remains illegal under Federal law. Applicant testified that he now has no intent to use or purchase marijuana in the future due to the fact that his job requires a federal security clearance. (Tr. p. 22.)

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.

None of the mitigating factors are applicable. Applicant has used marijuana, from April 2011 to about November 2018. He used it before being hired by a defense contractor, after being hired by a defense contractor, and even after applying for a security clearance, disregarding DoD policy, company policy and Federal law. Although he claims that he did not know its use was illegal under Federal law, he knew or should have known that by applying for a Federal security clearance, he is subject to Federal law. Although he states that he discontinued his use of marijuana in November 2018, Applicant continues to associate with people who use marijuana, specifically his current roommate, allowing marijuana to be used in his presence, and in his home. Applicant is a college-educated man whose actions show immaturity and poor judgment that is inexcusable. He does not show the requisite 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. At this time, 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 many 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:	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