



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



In the matter of:)
)
) ISCR Case No. 20-02769
)
Applicant for Security Clearance)

Appearances

For Government: Dan O’Reilly, Esq., Department Counsel
For Applicant: *Pro se*

02/16/2022

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the security concerns under Guidelines H (Drug Involvement and Substance Misuse), G (Alcohol Consumption), and J (Criminal Conduct), and he refuted the security concerns under E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 8, 2019. The DOD Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) on June 25, 2021, detailing security concerns under Guidelines H (Drug Involvement and Substance Misuse), G (Alcohol Consumption), J (Criminal Conduct), and E (Personal Conduct). The DOD CAF acted 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 Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant answered the SOR on July 6, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On October

4, 2021, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6 (Items). Applicant received the FORM on October 18, 2021. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not submit any information within the prescribed time period. The SOR and the answer (Items 1 and 2) are the pleadings in the case. Items 3 through 6 are admitted into evidence without objection. The case was assigned to me on December 14, 2021.

Findings of Fact

In Applicant's SOR response, he admitted SOR allegations. (¶¶ 1.a, 1.b, 1.c, 1.d, and 2.a.) He qualified his admission to ¶ 1.b, that alleged he had used THC while granted access to classified information, with the qualification "if that's what I wrote then I admit." There is no evidence in the record that Applicant wrote (or stated) that he had used marijuana while holding a security clearance or while having access to classified information. He did not specifically admit or deny ¶¶ 3.a, and 4.a. Applicant's admissions are accepted as findings of fact. (Item 1)

Applicant is 59 years old. He married in 1992 and divorced in 2013, and currently lives with a cohabitant. Since September 2018, Applicant has been employed by a defense contractor. Applicant listed on his April 2019 SCA that he previously held a DOD security clearance in approximately 1982. The Joint Personnel Adjudication System (JPAS) showed that Applicant had been granted a secret security clearance in February 2006. There is no other evidence that was submitted to show the specific period of time Applicant possessed his security clearance, whether it was for one month, one year, or if Applicant continuously held the security clearance from February 2006 through January 2013. (Items 3, 4 and 6)

The SOR alleges under Guideline H that Applicant smoked marijuana (THC) with varying frequency from about January 1979 to January 2013. His heaviest use occurred during his high school years and he used marijuana occasionally in his 30s and 40s. Over the course of his life Applicant estimated he has used marijuana on about 100 occasions. He used LSD and psilocybin mushrooms (hallucinogens) from about 1979 to 2005. His heaviest use occurred in high school, but he did use these substances again in his 40s. Applicant used cocaine from 1985 to 1995. He experimented with this drug and never enjoyed the experience. Over the course of ten years he used cocaine about ten times. He has no plans to use any of these illegal substances in the future. (Items 1, 2, 3 and 4)

Applicant self-reported his illegal drug history on the SCA he signed in April 2019. He listed that he had not used any illegal drugs while he held a DOD security clearance. During his background interview in June 2019, which was certified by Applicant in November 2020, he told the investigator that he had not used any illegal substance while holding a security clearance. Applicant also responded to an interrogatory question which specifically asked whether he had used any illegal drugs after he had been granted a security clearance in February 2006. Applicant responded; "No." (Items 1, 2, 3 and 4)

Applicant was granted a security clearance in February 2006, about eight months after he had been hired by a different federal contractor. Department Counsel argued in the brief that

one could assume that Applicant continuously held a security clearance from February 2006 until September 2015, when he left that employment. According to Applicant's admissions, his use of marijuana until January 2013 overlapped with his employment and possession of a security clearance if he held it continuously from February 2006 until he left the employment position in September 2015. JPAS reflected the date the security clearance was issued, but it did not reflect the length of time Applicant possessed the security clearance. (Items 3 and 6)

Under Guideline G it alleged that Applicant was arrested in March 2017 for Driving Under the Influence of Alcohol. (DUI) He was found guilty and was sentenced to restricted driving privileges for six months, to serve eight days in the Sheriff's work program, completion of an alcohol education program, fined about \$1,900, and he was placed on three years of probation. This alcohol-related allegation (§ 2.a) and all of the allegations under Guideline H (§§ 1.a through 1.d) were cross-alleged under Guideline J (§ 3.a). The allegation that Applicant used marijuana while possessing a security clearance (§ 1.b) was cross-alleged under Guideline E (§ 4.a). (Items 1, 2, 3, 4, and 5)

Applicant told the investigator during his June 2019 background interview that this arrest in 2017 was his only alcohol-related arrest. He successfully completed his court-ordered alcohol education program and was not recommended to participate in any other alcohol treatment. He consumed alcohol about three times weekly from the age of 21 until November 2015, when his mother passed away. After November 2015 he consumed a greater volume of alcohol more frequently. He would consume a couple glasses of wine and on occasion, a shot of bourbon. After his March 2017 DUI arrest, he greatly reduced his alcohol consumption. He told the investigator that he did not have a problem with alcohol and the 2017 DUI was an isolated incident. In the 2020 interrogatories, Applicant reported that he completely stopped all use of alcohol in October 2019. He also quit smoking tobacco for health, spiritual, and mental reasons. (Item 4)

Policies

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

The adjudicative 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 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 access to classified information 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 avoided drawing 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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.

Analysis

Guideline H: Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

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

AG ¶ 25(a) any substance misuse; and

AG ¶ 25(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana, with varying frequency, from about January 1979 to January 2013. He also used LSD and psilocybin mushrooms from about 1979 to 2005, and cocaine from about 1985 to 1995. There is insufficient evidence to support that Applicant used marijuana while he was in possession of a security clearance. AG ¶ 25(a) applies.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

AG ¶ 26(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

AG ¶ 26(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.

Applicant used marijuana over a long period of time, but he has not used it in the last nine years. The hallucinogens were used by him well over a decade ago, and cocaine over two decades ago. He disclosed his illegal drug usage on the SCA. Applicant denied that he had used any illegal drug while holding a security clearance, and he had no intention of using any illegal drug in the future. There is insufficient evidence in the record to show that Applicant used marijuana while he was in possession of a security clearance. Applicant was forthright about his past illegal drug use during his security clearance investigation, and is unlikely to resume his use of marijuana, or any other illegal drug. Mitigating conditions AG ¶¶ 26(a) and 26(b) apply.

Guideline G: Alcohol Consumption

AG ¶ 21 describes the security concern about alcohol consumption, “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.”

AG ¶ 22 provides one condition that could raise a security concern and may be disqualifying as follows:

- (a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual’s alcohol use or whether the individual has been diagnosed with alcohol use disorder.

Applicant had a misdemeanor-level alcohol-related offense in 2017. AG ¶ 22(a) is established.

AG ¶ 23 lists one condition that could mitigate security concerns:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or judgment.

AG ¶¶ 23(a) is established. Applicant's single alcohol-related arrest almost five years ago is not recent and does not demonstrate a pattern of questionable judgment. After his successful completion of the court-ordered alcohol education in 2017, there is no indication that Applicant was recommended to obtain additional alcohol treatment. In October 2019, Applicant decided to make a lifestyle change and has completely abstained from using alcohol. I conclude that his isolated alcohol-related misconduct happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on his current judgment. Applicant successfully mitigated the alcohol consumption security concerns.

Guideline J: Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns under AG ¶ 31. The following is potentially applicable in this case:

(a) a pattern of minor offenses, any of which on their own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness.

Applicant admitted his illegal drug use and the 2017 alcohol-related criminal offense. AG ¶ 31(a) applies.

Criminal conduct security concerns may be mitigated under AG ¶ 32. The following are potentially applicable in this case:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

There is no evidence of additional misconduct alleged under Guideline J. The SOR allegations under Guidelines H and G were cross-alleged under this Guideline. Applicant's criminal conduct is related to his illegal drug use and his 2017 alcohol-related offense. For the same reasons previously addressed under those Guidelines, this misconduct is also mitigated under Guideline J. The record evidence shows that the misconduct occurred in the distant past,

Applicant has no intention of using illegal drugs in the future, and he is not currently consuming alcohol. I find that future drug-related or alcohol-related criminal misconduct is unlikely to recur. AG ¶¶ 32(a) and 32(d) apply. Applicant successfully mitigated the criminal conduct security concerns.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 the national security investigative or adjudicative processes.

Applicant's use of marijuana while possessing a security clearance was specifically addressed under Guideline H, and cross-alleged under Guideline E. I previously concluded this allegation was not supported by sufficient evidence. No other personal conduct allegations were raised beyond this cross-allegation. Applicant has successfully refuted personal conduct security concerns.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a public trust position 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(a):

(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 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H, G, J, and E and the AG ¶ 2(d) factors in this whole-person analysis.

Applicant is 59 years old. He married in 1992 and divorced in 2013, and currently lives with a cohabitant. Since September 2018, Applicant has been employed by a defense

contractor. Applicant listed on his April 2019 SCA that he previously held a DOD security clearance in approximately 1982. The Joint Personnel Adjudication System (JPAS) showed that Applicant had been granted a secret security clearance in February 2006. There is no other evidence in the record to show the specific period of time Applicant possessed his security clearance.

Applicant's illegal drug use occurred long ago. He disclosed his illegal drug use on the 2019 SCA, and discussed it fully during his background interview. He has no intention of using illegal drugs in the future. He had an isolated alcohol-related offense in 2017. He fully complied with the conditions set by the court, and after completing his alcohol education program, he was not referred for any other alcohol treatment. In October 2019, Applicant made a lifestyle decision to completely abstain from using alcohol. His actions show responsible behavior and good judgment. I have carefully applied the law, as set forth in Egan, Exec. Or. 10865, the Directive, and the AGs, to the facts and circumstances in the context of the whole person. I conclude that drug use, alcohol consumption, and criminal conduct security concerns are mitigated, and the personal conduct security concerns refuted.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a.-1.d:	For Applicant
Paragraph 2, Guideline G:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline J:	FOR APPLICANT
Subparagraph 3.a:	For Applicant
Paragraph 4, Guideline E:	FOR APPLICANT
Subparagraph 4.a:	For Applicant

Conclusion

In light of all of the circumstances presented, it is clearly consistent with the interests of national security to grant or continue Applicant's eligibility for access to classified information. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge