



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



In the matter of:)
)
) ISCR Case No. 21-00756
)
Applicant for Security Clearance)

Appearances

For Government: Ross Hyams, Esquire
For Applicant: *Pro se*

02/17/2022

Decision

LYNCH, Noreen A., Administrative Judge:

Statement of the Case

On October 8, 2021, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct).¹ Applicant answered the SOR and elected to have his case decided on the written record in lieu of a hearing.

Department Counsel submitted the Government’s file of relevant material (FORM) on November 30, 2021. Applicant received the FORM on December 9, 2021. Applicant did not object to the Government’s evidence, and he provided no response to the FORM. The Government’s evidence, included in the FORM and identified as Items 1 through 5, is admitted without objection. The case was assigned to me on February 8, 2022. Based on my review of the documentary evidence, I find that Applicant has not

¹ The action was taken under Executive Order 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) effective within the DOD on or after September 1, 2006. Since that time, the AG were amended as *Guideline H: Drug Involvement and Substance Abuse*, and it is now in effect for any adjudications on or after June 8, 2017.

mitigated security concerns under the drug involvement guideline or the personal conduct security guideline.

Findings of Fact

Applicant is 27 years old. He obtained his undergraduate degree in December 2017. Applicant studied abroad in 2026. He is single and has no children. He has been employed as a senior analyst from April 2020 to the present. He reports no military service. (Item 4) He obtained a security clearance in January 2018.

The SOR alleged under Guideline H that Applicant used and purchased marijuana with varying frequency from November 2013 to December 2017 (1.a and 1.b); used marijuana with varying frequency from February 2018 to April 2020, while possessing a public trust clearance (1.c); and continued to associate with persons who use illegal drugs. (1.d) In his Answer (Item 3) Applicant admitted all SOR allegations with no explanations. The SOR alleges under Guideline E that Applicant falsified his June 12, 2020 e-QIP by failing to report his most recent drug usage in response to Section 23. (Item 3) He admitted the SOR allegation (2.a) and provided no further comment or information in his answer.

Applicant completed his e-QIP on June 12, 2020. (Item 4) He disclosed that he smoked marijuana regularly in college from 2013 until 2017. He stated that he had no intention to use the drug in the future because it was “not worth the stress of drug testing when applying for jobs” He answered “No” to using an illegal drug while holding a security clearance. (Item 4)

In Applicant’s August 16, 2020, subject interview, he told the investigator he smoked marijuana almost daily, used it and smoked it in a pipe. He used with his roommates, and he purchased from a dealer. Applicant acknowledged that he stopped briefly in 2017 because of his job search. He started using again in February or March 2018 because he had a job with a federal contractor. (Item 4) He went on to say that he has a future intent to use marijuana, whenever it would not affect him adversely. He purchased marijuana once every three to four months. He also said that he used until April 2020. Applicant stated to the investigator that he did not know it was illegal federally to use marijuana with a clearance. He has had no counseling.

In addition, Applicant told the subject investigator that he associates with people who use drugs. He would continue to use if he had a clearance. He has never reported the usage of marijuana to his employer. (Item 4)

Under Guideline E, the SOR alleged that Applicant falsified material facts on his 2020 e-QIP by failing to disclose that he illegally used drugs and had been involved in the purchase of drugs in the last seven years (2.a,) and that he falsified material facts on the e-QIP by failing to disclose her involvement in the illegal purchase of drugs in the last seven years (2.a). The SOR cross alleges the Guideline H concerns set forth in allegation 1.c.

Concerning Guideline E, Applicant admitted falsifying the information in Section 23 with regard to his recent drug use on his e-QIP and to the subject investigator in his 2020 interview.

Policies

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. 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(c), 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 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.

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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern for this guideline is set forth in AG ¶ 24, where it is noted that the illegal use of a controlled substance, and the use of other substances that can 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. This is 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. Such use also raised questions about a person's ability or willingness to comply with laws, rules, and regulations.

Applicant's admissions establish that he purchased and used marijuana as alleged in the SOR. The record also establishes that Applicant used illegal drugs after being granted a security clearance in 2018 and he used after completing his security clearance application. Applicant's use of marijuana after he knew that his position with a federal contractor required him to refrain from drugs shows a recklessness. This is sufficient to raise AG ¶ 25(a): any substance misuse, AG ¶ 25(c) illegal possession of a controlled substance, including ... purchase or sale; AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position; and AG 25(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse. The Government's substantial evidence, as provided by Applicant's admissions, thus raises security concerns under Guideline H. Therefore, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate related security concerns.

Under Guideline H, conditions that could mitigate security concerns arising from drug involvement and substance misuse are enumerated. The following mitigating conditions under AG ¶ 26 potentially apply to Applicant's case:

- (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 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.

Applicant's last use of marijuana, an illegal substance, took place in 2020. At the time he was holding a security clearance. He has not identified any circumstances that would suggest the drug use is unlikely to recur. This casts doubt about his judgment and reliability because he used marijuana while holding a security clearance and provided misleading false statements about her marijuana use. I find that none of the mitigating conditions apply.

Guideline E, Personal Conduct

The security concern 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.

Applicant admitted that he intentionally falsified his e-QIP regarding his most recent drug use. He admitted in his subject interview that he did that to enhance his chance in getting a clearance. Between 2014 and 2019, Applicant made nine conflicting statements to the Government about his illegal drug use and purchase of marijuana. I find that Applicant intentionally falsified material facts on his 2020 e-QIP regarding his drug use and purchase of illegal drugs while holding a security clearance.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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, and

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard classified or sensitive information.

Applicant provided false information. He has not identified any efforts that he made to correct the falsifications. The offenses are not minor, and he has not expressed any remorse. His lack of candor and inconsistent statements do not persuade me that his illegal drug use will not recur. It casts doubt on his reliability, trustworthiness, and good judgment. He has not presented sufficient evidence to mitigate the personal conduct

concerns. Any doubts must be resolved in favor of the Government. I find none of the mitigating conditions apply in this case.

Whole-Person Concept

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(d). The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record.

I have doubts as to Applicant's trustworthiness, judgment, and reliability. Any doubts must be resolved in favor of the Government. Under these circumstances, I find Applicant has not mitigated the security concerns raised under drug involvement and substance misuse, nor under personal conduct due to intentional falsification of his e-QIP. Clearance is denied.

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:	AGAINST APPLICANT
Subparagraphs 1.a-1..d:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.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 a security clearance. Eligibility for access to classified information is denied.

Noreen A. Lynch
Administrative Judge