



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
-----) ISCR Case No. 21-00640
)
Applicant for Security Clearance)

Appearances

For Government: Andre M. Gregorian, Esq., Department Counsel
For Applicant: *Pro se*
04/08/2022
Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Department of Defense’s intent to deny his eligibility for access to classified information. Applicant has not mitigated the security concern raised by his use of illegal drugs. Eligibility is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on January 31, 2020. The Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) on June 18, 2021, detailing security concerns under Guideline H, Drug Involvement and Substance Misuse. 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 submitted an Answer to the SOR on June 21, 2021, and June 25, 2021, and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On October 28, 2021, Department Counsel submitted the Government’s file of relevant material (FORM), including documents identified as Item 1 through 3. (Items.) Applicant was sent the FORM on October 29, 2021, and received it on November 8, 2021. He was afforded 30 days after receiving the

FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the answer (Item 1) are the pleadings in this case. Items 2 and 3 are admitted without objection. The case was assigned to me on January 25, 2022.

Findings of Fact

Applicant is 28 years old. He is unmarried and has no children. Applicant has a bachelor's degree. Since December 2018, he has been employed by a defense contractor. (Item 2.)

The SOR alleged that Applicant: (1) used marijuana with varying frequency from April 2011 to at least March 2021, and intends to use marijuana in the future; (2) used LSD in March 2019; (3) used cocaine in February 2018; and (4) misused Adderall in October 2017. (Item 1.) Applicant admitted the SOR allegations. (Item 1.)

Applicant later qualified those admissions. He understands that his use of marijuana is problematic for his security clearance. He purchases marijuana from an outside, illegal source. He intends to continue using marijuana in his own home, because it reduces stress and improves his sleep and appetite. Applicant is concerned about the side effects of prescription drugs that could provide those same benefits. He used cocaine, Adderall, and LSD each only once and has no intention to use those drugs in the future. Applicant used Adderall, which had been prescribed for one of his friends. He used cocaine that was provided by an acquaintance of one of Applicant's friends. The LSD was provided by an unnamed acquaintance. (Items 2 and 3.)

Discussion

Guideline H – Drug Involvement and Substance Abuse

Under Adjudicative Guideline (AG) H, suitability of an applicant may be questioned or put into doubt because drug use can both impair judgment and raise questions about a person's ability or willingness to comply with laws, rules, and regulations. AG ¶¶ 24, 25, and 26 set forth the concern and the disqualifying and mitigating conditions.

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.

In analyzing the facts of this case, I considered the following disqualifying conditions:

AG ¶ 25(a) any substance misuse (see above definition);

AG ¶ 25(c) illegal possession of a controlled substance; and

AG ¶ 25(g) expressed intent to continue drug involvement . . .

Applicant admitted to illegally procuring and using marijuana from April 2011, to March 2021. He also admitted that he will continue to use marijuana. Facts admitted by an applicant in an answer to an SOR or in an interview require no further proof from the Government. ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) (“any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof”); ISCR Case No. 94-0569 at 4 and n.1 (App. Bd. Mar. 30, 1995) (“[a]n applicant’s admissions, whether testimonial or written, can provide a legal basis for an Administrative Judge’s findings”).

Marijuana is a Schedule I controlled substances, and possession of it is regulated by the federal government under the Controlled Substances Act. 21 U.S.C. § 811 *et seq.* The knowing or intentional possession and use of any such substance is unlawful and punishable by imprisonment, a fine or both. 21 U.S.C. § 844. In an October 25, 2014 memorandum, the Director of National Intelligence affirmed that the use of marijuana is a security concern. James R. Clapper, Director of National Intelligence, Memorandum: *Adherence to Federal Laws Prohibiting Marijuana Use* (October 25, 2014). See also <http://www.dea.gov/druginfo/ds.shtml>.

More recently, on December 21, 2021, the Director of National Intelligence signed the memorandum, *Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position*. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production, and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” stated under SEAD 4, to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

LSD and cocaine are Schedule I and Schedule II controlled substances, respectively, under the Controlled Substances Act. 21 U.S.C. § 811 *et seq.* See <http://www.dea.gov/drug-information/drug-scheduling>. Applicant’s use of another person’s prescription drug, here Adderall, is a “misuse of prescription . . . drugs” that raises security concerns under AG H.

Applicant’s past use of marijuana and his intent to use it in the future make disqualifying conditions AG ¶¶ 25(a), (c), and (g) apply. In addition, Applicant’s use of

LSD, cocaine, and his misuse of Adderall raise security concerns under AG H. I find that no mitigating factors apply.

The record raises doubts about Applicant's reliability, trustworthiness, judgment, and ability to protect classified information. In reaching this conclusion, I weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. I also gave due consideration to the whole-person concept. AG ¶¶ 2(d)(1) through (9) and 2(f)(1) through (6). Accordingly, I conclude that Applicant has not met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

As required by section E3.1.25 of Enclosure 3 of the Directive, I make the following formal findings on the SOR allegations:

| | |
|---------------------------|-------------------|
| Paragraph 1, Guideline H: | Against Applicant |
| Subparagraphs 1.a-1.e: | Against Applicant |

Conclusion

In light of the record as a whole, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. Clearance is denied.

Philip J. Katauskas
Administrative Judge