



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



In the matter of:)	
)	
)	ISCR Case No. 19-03945
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

05/02/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the drug involvement and personal conduct security concerns generated by his use of marijuana while possessing a security clearance and his subsequent falsifications during the investigative process regarding his history of marijuana use. Clearance is denied.

Statement of the Case

On October 2, 2020, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H, drug involvement, and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant security clearance eligibility. The DOD CAF took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. In an undated answer, Applicant admitted all of the allegations. He requested a decision without a hearing.

On August 12, 2021, Department Counsel prepared a File of Relevant Material (FORM) setting forth the Government's argument in support of the SOR, together with supporting documentation. Applicant received a copy of the FORM on September 3, 2021, and was instructed to file any objections to this information, or to supplement the file within 30 days of receipt. Applicant did not respond. On October 3, 2021, the case was assigned to me.

Findings of Fact

Applicant is a 25-year-old single man. He is a high school graduate, and is being sponsored by a defense contractor for a security clearance. (Item 3) Shortly after finishing high school, he enlisted in the United States Air Force.

Applicant began using marijuana while in high school in 2014. In September 2015, after entering the military, he completed a security clearance application. He admitted to using marijuana twice in 2014, and noted that he did not intend to use it again. (Item 3 at 26-27) In August 2017, Applicant failed a drug test after testing positive for marijuana. (Item 5 at 3) Subsequently, in September 2017, he was charged under the Uniform Code of Military Justice with wrongful use of marijuana. (Item 6) He was awarded non-judicial punishment of reduction in grade from E-3 to E-2, and he was administratively discharged (Item 7 at 3)

In Applicant's response to the SOR, he admitted to using marijuana with varying frequency from February 2014 to August 2017. (Item 2 at 1) During part of this period, he held a security clearance for his duties in the military. (Item 2 at 1)

In July 2017, Applicant was interviewed by an authorized DOD investigator. During the interview, he told the investigator that he had not used marijuana since he was in high school in 2014. (Item 5) In February 2020, Applicant completed interrogatories. He stated that he ceased marijuana use in 2016, and that he has no intention of using it in the future. (Item 2 at 2)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overall 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline H: Drug Involvement

Under this concern, “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.

Applicant used marijuana for approximately three years. During part of this time, he held a security clearance. Applicant’s use of marijuana subsequently led to him failing a

drug test in 2017, and ultimately, to his administrative discharge from the military. Under these circumstances, the following disqualifying conditions apply:

AG ¶ 25(a) any substance abuse,

AG ¶ 25(b) testing positive for an illegal drug, and

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

Applicant now admits his past marijuana use. However, his promise not to use marijuana in the future has minimal probative value given his falsification about earlier marijuana usage, as discussed in the section below. Consequently, I conclude that none of the mitigating conditions apply. Applicant has failed to mitigate the drug involvement security concern.

Guideline E: Personal Conduct

Under this concern, “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.” (AG ¶ 15) Applicant admitted falsifying information regarding his marijuana use during a subject interview in 2017 and in response to interrogatories completed in 2020. These falsifications trigger the application of the following disqualifying conditions under AG ¶ 16:

(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

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant offered no mitigating explanation for his false responses. Consequently, none of the mitigating conditions apply. Applicant failed to mitigate the personal conduct security concerns.

Whole-Person Concept

I considered the whole-person concept factors when I evaluated the disqualifying and mitigating conditions under Guidelines H and E, and they do not warrant a favorable conclusion.

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.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge