



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



In the matter of:)	
)	
)	ISCR Case No. 20-03771
)	
Applicant for Security Clearance)	

Appearances

Government: Daniel O'Reilley, Esq., Department Counsel
For Applicant: *Pro se*

05/06/2022

Decision

Curry, Marc E., Administrative Judge:

Applicant mitigated the security concern generated by his history of drug involvement. Clearance is granted.

Statement of the Case

On April 2, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H, drug involvement. The SOR explained why the DCSA CAF was unable to find it clearly consistent with the national interest to grant or continue his security clearance eligibility. The DCSA CAF took the action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG) effective within the DOD on June 8, 2017.

In an undated answer, Applicant admitted the allegations and requested a hearing. On November 4, 2021, the case was assigned to me. On November 30, 2021, DOHA scheduled the hearing for December 10, 2021. The hearing was held as scheduled. I received in evidence three Government exhibits (GE 1 – GE 3) and nine Applicant exhibits (AE A – AE I), and I considered the testimony of Applicant. Also, I took administrative notice, at Department Counsel’s request, of a discovery letter, dated June 24, 2021, identified as Hearing Exhibit I. The transcript (Tr.) was received on December 15, 2021.

Findings of Fact

Applicant is a 27-year-old single man. He graduated from college *summa cum laude* in 2020 with a degree in mechanical engineering. (Tr. 34; AE G) Since then, he has been working for a defense contractor as an engineer. Currently, he works in a program where he rotates among different positions within the company. (Tr. 15)

Applicant has a history of illegal drug use and drug involvement. He used marijuana, cocaine, ketamine, and another hallucinogen, unidentified by name in the record. (GE 2 at 6) He also abused prescription drugs. He began smoking marijuana a few times per week in high school at age 15. (GE 3 at 6) On a few occasions in high school, he purchased marijuana. (GE 2 at 8) He used marijuana from about January 2010 to July 2019. His marijuana use gradually decreased over time. Between 2015 and 2019, he used the drug fewer than ten times. (GE 1 at 35)

Applicant used cocaine, on average once every six months and never more often than once a month. (GE 2 at 6) In total, he used cocaine approximately 25 times over six years, beginning in 2014. He has not used any cocaine since February 2020. (GE 2 at 6)

Applicant began using hallucinogens in 2011 at age 17. (Tr. 22; GE 1 at 37) He began misusing prescription drugs in 2014. (GE 2 at 6) Applicant used an unidentified hallucinogen about eight times between 2011 and 2013. He used ketamine approximately five times in 2015, and he misused depressants approximately six times between 2014 and 2015. He has not used any of these types of drugs since 2015. (GE 2 at 6) Applicant used illegal drugs recreationally at parties and other social gatherings. (Tr. 17)

Applicant stopped taking illegal drugs because he “knew that [he] wanted to obtain an engineering job and the prospects [sic] of [a] career [was his] first priority.” (GE 2 at 7) Applicant characterized his use as casual. It occurred in social situations. (GE 2 at 7)

In March 2021, Applicant enrolled in a random drug testing program. Between March 2021 and August 2021, he took six random tests. The first test was a hair follicle test and the remaining tests were urinalyses. All of the results were negative. (AE A – AE F)

Applicant still associates with people who use drugs. (Tr. 30) If people in his social group are using marijuana, he will go outside “so that he wouldn’t have to breathe it in.” (Tr. 31)

Applicant is highly respected on the job. According to his supervisor, he is “the ‘go-to’ engineer that stands out among a team of excellent employees.” (AE I) In December 2021, Applicant received special recognition for his “tireless work ethic,” and his impressive work, which made operations run more efficiently. (AE H)

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.

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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information. Section 7 of EO 10865 provides that 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

Under 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. Applicant’s history of drug abuse triggers the application of AG ¶ 25(a), “any substance misuse.”

Applicant’s acknowledgment of his drug use and his voluntary enrollment in a drug-testing program triggers the application of 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. . .” However, Applicant still occasionally socializes with his old friends and acquaintances who use drugs. Under these circumstances, AG ¶ 26(b)(1), “disassociation from drug-using associates and contacts,” does not apply. Applicant testified that he will step outside if friends or acquaintances are smoking marijuana. This is not sufficient to constitute “changing or avoiding the environment where drugs are used,” under AG ¶ 26(b)(2). I conclude this mitigating condition is inapplicable.

Applicant’s drug involvement occurred during his high school and college years. His last use was in February 2020. After graduating from college *summa cum laude*, Applicant took a job with his current employer, and he has excelled. In addition, he voluntarily enrolled in a random drug-testing program, the month before the issuance of the SOR, and he passed every test that was administered through August 2021, the last record submission. These accomplishments and positive steps bolster the credibility of Applicant’s assertion that he has no intention of using illegal drugs or misusing legal drugs in the future. On balance, the passage of time since the last drug use, Applicant’s graduation from college with the highest honors, and his outstanding work history outweigh the negative inference generated by his occasional association with friends who use drugs. He is not likely to jeopardize his defense-contractor employment by resuming any illegal drug use. 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,” applies.

Whole-Person Concept

In assessing the whole person, the administrative judge must consider the totality of Applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). Those factors are:

(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.

I weighed the whole-person factors in my analysis of the mitigating and disqualifying conditions. The potential for pressure, coercion, exploitation, or duress based on Applicant's past drug use is minimal. I conclude Applicant has mitigated the drug involvement security concerns.

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.h:	For Applicant

Conclusion

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

Marc E. Curry
Administrative Judge