



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



In the matter of:)
)
) ISCR Case No. 20-02225
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Department Counsel
For Applicant: Pro se

June 14, 2022

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On July 11, 2019, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On December 31, 2020, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse; and Guideline E, Personal Conduct. The action was taken under Executive Order 10865 (EO), *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 Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on September 16, 2021, and requested a hearing before an administrative judge. The case was assigned to me on December 6, 2021. The Defense Office of Hearings and Appeals issued a notice of hearing on February 24, 2022, and the hearing was convened as scheduled on April 20, 2022. On April 15, 2022, the Government Amended the Statement of Reasons to add four additional

subparagraphs under Guideline H, paragraph 1, specifically allegations d, e, f and g. Applicant Answered the Amended Statement of Reasons on April 18, 2022, and admitted each of the four additional allegations. At the hearing, the Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant offered eleven exhibits, referred to as Applicant's Exhibits A through K, which was admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on April 28, 2022.

Findings of Fact

Applicant is 39 years old. He is married with three children. He has a Bachelor's degree in Electrical Engineering. He holds the position of Test Engineer. He is seeking to obtain a security clearance in connection with his employment.

Guideline H - Drug Involvement and Substance Misuse Guideline E – Personal Conduct

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose; and that he has engaged in conduct involving questionable judgment, which can raise questions about an individual's reliability and trustworthiness.

From 1998 through 2001, while in high school, Applicant used marijuana. He began using it experimentally, but it soon became a recreational habit. After high school, in 2002, Applicant enlisted in the U.S. Air Force. Applicant served on active duty from November 2002 to November 2008. In 2002, he applied for and was granted a security clearance. He used marijuana and other illegal drugs on numerous occasions while in the Air Force. In 2002, Applicant did not disclose his illegal drug use on his security clearance application. Applicant testified that a friend who served in the military told him not to. (Tr. p. 12.) From November 2008 to November 2014, Applicant served in the Air National Guard. (Tr. p. 31.)

While on active duty with the Air Force, and after being granted a Top Secret security clearance, Applicant used a variety of illegal drugs including marijuana, cocaine, and prescription medication such as Vicodin, Percocet, and Rohypnol (not prescribed to him), Ecstasy, and Methamphetamine. Applicant used cocaine from 1999 through 2019 with varying frequency, and at times while granted access to classified information. He used prescription medication, not prescribed to him, from 2001 to 2011, at times while granted access to classified information. He used Ecstasy and Methamphetamines in 2009, while granted access to classified information.

In 2009, while serving in the Air National Guard, Applicant was pulled over and cited for possession of marijuana. Applicant did not tell the military about this citation and apparently, they were not notified about it. Applicant continued to use marijuana. A few months later, in 2010, Applicant was cited again for possession of marijuana. This time, the military was officially notified about this citation. Applicant lied to his

supervisor or first sergeant, who was filling in for the commander at the time, and told him that the marijuana found in his car during his June 2009 citation belonged to his cousin, and that he did not smoke marijuana. This was a lie. The marijuana was the Applicant's, and he had used it at the time. Applicant's punishment for this offense was only given a verbal and written reprimand. Applicant was later asked by the commander about the incident, and Applicant admitted to possession of the marijuana, but did not tell him that he was smoking the marijuana or that it was his marijuana. Applicant told the commander only enough to get out of the situation. (Tr. pp. 29-30.) At the end of his commitment term, Applicant wanted to re-enlist, but was told that he was unable to do so given his history of drug use. Apparently the police reports of the two citations for possession of marijuana disclosed that Applicant had been using marijuana and that it was his marijuana. This information was not timely reported to the military legal department and so Applicant slipped through the cracks and was able to finish his military commitment without interruption. Concerning the possession charges in 2009 and 2010, the court offered the Applicant a diversion program that required him to complete mandatory drug treatment programs, and the charges were dismissed. Applicant has completed substance abuse education and counseling ordered by the court as a result of his possession charges. (Applicant's Exhibit I.)

In 2014, with the commander's discretion, Applicant was given an honorable discharge with a stipulation that prevents him from ever re-enlisting in military service again. (Tr. pp. 39-40.)

After leaving military service, Applicant continued to use marijuana. He last used marijuana in 2019 with a friend, and another time that year he used it with his brother.

Applicant began his current employment in October 2018. On July 11, 2019, Applicant completed a security clearance application. In response to Section 23, concerning Illegal Drug Activity, the question asked, "In the last seven years, have you illegally used any drugs or controlled substance? Have you EVER illegally used or otherwise been illegally involved with a drug or controlled substance while possessing a security clearance other than previously listed?" Applicant answered, "NO," to both questions. (Government Exhibit 1.) Applicant's answer was false to both questions. Applicant deliberately failed to disclose his history of illegal drug use discussed above.

Applicant states that he has not used any illegal drugs since 2020. (Tr. p. 53.) He states that he is a changed man who has greatly matured. He is taking positive steps to eliminate the chances that would place him in a situation where he would be compelled to use illegal drugs. He no longer associates with drug users or puts himself in those environments.

In February 2013, Applicant got married. His wife does not use illegal drugs. He now has children who are depending on him to provide, and be reliable and sober-minded, and to be available physically, mentally, and spiritually every day. (Tr. p. 63.)

Applicant testified that from 2010 to 2015, although he was using illegal drugs, he finished college and obtained his bachelor's degree. Throughout the years of his illegal

drug use, alcohol abuse went hand and hand. At times, he still consumes alcohol to excess. In 2007, he was arrested for Driving Under the Influence. Applicant states that he no longer drinks and drives but uses UBER or LYFT services. (Tr. p. 65.) He has also attended mandatory MADD meetings and substance abuse courses. (Tr. pp. 66.)

Applicant's military performance reports during the period from November 19, 2002, to July 15, 2004; July 16, 2004, to July 15, 2005; and July 16, 2005 to July 15, 2006, reflects superior performance in all areas. From July 16, 2006 to July 15, 2007, the performance reports show a remarkable decline in work performance. (Applicant's Exhibit F.)

Applicant's performance evaluation for the period from January 2, 2020, to June 30, 2020, reflects an overall rating of "excellent performer." (Applicant's Exhibit B.)

Letters of recommendation from former colleagues, friends, and family of the Applicant described Applicant as a dedicated employee, a trusted leader, respected by all, highly motivated, honest and responsible. At work, he has helped develop training material and provide mentorship for new members of the team. When the technical manager was away, Applicant was called upon to be the leader. Applicant is professional, and is committed to self-improvement. (Applicant's Exhibit A.)

Applicant has received a number of awards and commendations for his service in the military. (Applicant's Exhibit B.)

Applicant underwent a voluntary drug test on September 8, 2021. The results are negative for any illegal drugs. (Applicant's Exhibit J.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. 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. 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, the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance 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 the 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.

Section 7 of EO 10865 provides that adverse 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 and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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. *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.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are applicable:

- (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 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 or misuse is grounds for revocation of national security eligibility.

None of the mitigating factors are applicable. Applicant used marijuana and other illegal drugs over at least a seventeen-year period, from 2002 to about 2019, at times, while possessing a security clearance. Applicant states that he is no longer using marijuana. His actions are not mitigated.

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Three are potentially applicable in this case:

- (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;
- (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; and
- (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a while-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:
 - (2) any disruptive, violent or other inappropriate behavior; and
 - (3) a pattern of dishonesty or rule violations.

The guideline at AG ¶ 17 contains conditions that could mitigate security concerns. One of the conditions is potentially applicable:

- (d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant has completed several court-ordered substance abuse programs as part of his diversion program in order to have his two drug possession charges dismissed. However, even after completing these programs, he continued to abuse illegal drugs. Applicant has engaged in poor personal conduct that reflects unreliability and untrustworthiness. From 1998 to 2020, he used a variety of illegal drugs

(discussed in detail above) on various occasions over a period of at least twenty-two years. In 2009 and again in 2010, he was cited for possession of marijuana, and lied about it to military superiors. He lied on two separate security clearance applications in an effort to conceal his illegal drug history. Finally, he has used illegal drugs while possessing a security clearance. Illegal drug use is against Federal law. It is not tolerated by DoD policies. Applicant understands that illegal drug use is clearly prohibited while holding a security clearance. His conduct shows poor judgment, unreliability and untrustworthiness.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations and policies that apply to them. Applicant has chosen to live his life to his convenience, and has disregarded the law. Knowing that the use of any illegal drug is against DoD policy. He also lied to military officials during his time in service regarding his drug involvement, and he has falsified two security clearance applications. Applicant has engaged in conduct involving questionable judgment. Under the particular facts of this case, Applicant does not show the requisite character or judgment of someone who has the maturity, integrity, and reliability necessary to access classified information. At this time, Applicant does not meet the eligibility qualifications for a security clearance.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for a security clearance 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(d):

- (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 clearance 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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant has not demonstrated the level of maturity needed for access to classified information.

Applicant understands the requirements associated with holding a security clearance and knows that illegal drug use is not tolerated. Applicant is not an individual in whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse, and Personal Conduct security concerns.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a through 1.g	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 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 national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge