



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



In the matter of:)
)
) ISCR Case No. 21-01795
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esquire
For Applicant: *Pro se*

08/04/2022

Decision

LYNCH, Noreen A., Administrative Judge:

Statement of the Case

On October 20, 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 May 18, 2022. Applicant received the FORM on June 9, 2022. Applicant did not object to the Government’s evidence. He provided a response to the FORM. The Government’s evidence, included in the FORM and identified as Items 1 through 4, is admitted without objection. The Government also entered Judicial and Administrative Notice 1-5 concerning the prohibition of marijuana under Federal law. The case was

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.

assigned to me on July 29, 2022 Based on my review of the documentary evidence, I find that Applicant has not mitigated security concerns under the drug involvement guideline or the personal conduct security guideline.

Findings of Fact

Applicant is 28 years old. He is single and has no children. He has been employed as an engineering technician since December 2019. He reports no military service. (Item 3) This is his first request for a security clearance. He completed his security clearance application (SCA) on December 20, 2019. (Item 3)

The SOR alleged under Guideline H that Applicant used cocaine at least four times from March 2018 to March 2020; used marijuana with varying frequency from June 2006 to March 2020; purchased marijuana with varying frequency from 2011 to March 2020. (SOR 1.a, 1.b, and 1.c) The SOR also alleged that in July 2019 Applicant tested positive for THC and was terminated from his employment (SOR 1.d); that he misused the prescription medication Norco from about April 2019 to December 2019 (SOR 1.e); and that he used LSD approximately three times from 2013 to 2014. (1.f) (Item1)

The SOR also cross-alleged under Guideline E, the SOR items 1.a through 1.f under Guideline H and that Applicant intentionally falsified material facts on his December 20, 2019 SCA in Section 23, by not disclosing the drug use that occurred in the last seven years; that he was involved in the illegal purchase of any drug or controlled substance; and intentionally engaged in the misuse of prescription drugs within the last seven years. (SOR 2.a through 2.d) However, Applicant disclosed that he was terminated from his employment in 2019 due to a positive drug test on the SCA. In his Answer, Applicant admitted all SOR allegations with no explanation. (Item 2)

Applicant was interviewed in 2020 related to his background investigation. He told the investigator he smoked marijuana and only stopped when it was time to be tested for a new employer. Applicant admitted that he “cleaned” himself for a test and then continued to use marijuana daily. (Item 4) He began using marijuana in high school and his usage has been consistent to the present.

In that 2020 subject interview, Applicant told the investigator that he signed paperwork on the first day of employment, but he is uncertain of the policy regarding illegal drugs because he did not read the paperwork. Also, he is unclear about the use of marijuana when employed, but he knows it is not approved upon hiring. (Item 4)

In 2014, Applicant used LSD about three times with his younger brother and his friends. (Item 4) In addition, Applicant told the subject investigator that in April 2019, he intentionally misused a prescribed medication – the opioid Norco for two weeks, taking three pills at once about three times per week. He stole some of the pills from his mother.

In 2020, on weekends he used cocaine with his brother and friends. Applicant stated that he is usually drunk when he uses cocaine. (Item 4) His mother, brother and close friends use illegal drugs. Applicant does not believe that his drug use has had a negative impact on his life other than when he was terminated from employment. He has not had any counseling or treatment for drug use. (Item 4)

In the attached interrogatories, Applicant states that he has no intention of further use of illegal drugs and that he stopped immediately following his subject interview. Applicant wants to continue with a professional career and hopes that his previous actions do not affect or jeopardize his chance to obtain a security clearance. (Item 4).

In Applicant's response to the FORM, he stated that he was completely honest in his interview and was nervous when he was completing his application. He stated that he believed he could change his answers on the SCA during his interview. He wanted to leave all dishonesty and poor judgment in the past. Applicant claimed he has distanced himself from anyone who uses. His career is important to him and obtaining a security clearance is his highest priority. (Answer to FORM)

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 raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

Applicant's admissions establish the basis for disqualification under Guideline H. He has a history of using several different types of illegal drugs since 2006. The record also establishes that Applicant used illegal drugs after completing his SCA until 2020. He signed a policy for employment concerning drug use but claims he did not read it. He failed a 2019 drug test and was terminated from prior employment. Applicant's problematic judgment is also evident when he disclosed that he cleans his system to avoid testing positive on a drug screen, and then resumes daily use. This shows a recklessness. His avoidance of drug use detection speaks volumes about Applicant's reliability, lack of good judgment, and trustworthiness. 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 illegal drugs or controlled substance was in 2020 after his subject interview and after he completed his SCA. At the time he was seeking to obtain a security clearance. He has not identified any circumstances that would suggest the drug use is unlikely to recur. He stated that he stopped because he wants to obtain a clearance and continue his career. This casts doubt about his judgment and reliability because he used a technique to cleanse himself after the use of marijuana to avoid future detection. 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 in his answer that he intentionally falsified his SCA regarding any drug use. He claimed that he could change his answers on his SCA when he had an interview. He knew he had used the illegal drugs over an extensive period of time. He stated in his response to the FORM that now he knows the importance of answering everything on the SCA truthfully. He did not know that previous drug use would affect his ability to progress in his career. I find that Applicant intentionally falsified material facts on his 2019 SCA regarding his illegal drug use. He stopped just after his subject interview. Even if his claim is found to be credible, the period of abstinence is too short given the extended history of illegal drug use over a period of a decade.

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 intentionally provided false information. He has not identified sufficient 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 SCA. 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.e:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraphs 2.a-2.d:

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