



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



In the matter of:)
)
-----) ISCR Case No. 21-02190
)
)
Applicant for Security Clearance)

Appearances

For Government:
Andrew Henderson, Esquire, Department Counsel

For Applicant:
Leon J. Schachter, Esquire
Bigley Ranish LLP

August 9, 2022

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on February 12, 2021. (Government Exhibit 1.) On February 4, 2022, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guidelines H (Drug Involvement and Substance Misuse), G (Alcohol Consumption), and E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*

(January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on February 22, 2022, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on April 25, 2022. The case was assigned to me on April 26, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 28, 2022. I convened the hearing as scheduled on June 17, 2022. The Government offered Government Exhibits 1 and 2, which were admitted without objection. Applicant testified on his own behalf, and submitted Applicant Exhibits A through H. Applicant's exhibits were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on July 5, 2022.

Findings of Fact

Applicant is 29-years-old. He has been employed with a defense contractor since September 2021. He is single. Applicant received a Doctorate in August 2021. He is seeking to obtain a security clearance in connection with his work with the Defense Department. This is his first application for a security clearance.

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used illegal drugs. Applicant admitted all four allegations under this paragraph with explanations.

1.a and 1.d. Applicant used marijuana approximately seven to nine times between 2015 and October 2020. His usage included smoking marijuana and consuming edibles. He purchased marijuana on a single occasion in 2018. His October 2020 marijuana use occurred when he visited friends in a state where the purchase and use of marijuana is legal. He further testified that he stopped marijuana use because he really did not like it and he wanted to move on with his career. (Tr. 21-27, 42-44, 46; Government Exhibit 1 at Section 23; Government Exhibit 2.)

1.b and 1.c. Applicant purchased and used psilocybin mushrooms on a single occasion in about July 2020 with friends. He realizes that the purchase and use of mushrooms was illegal. He has no intention of using or purchasing any mushrooms in the future, admitting that this was an impulsive mistake. He is no longer in touch with the person from whom he obtained the mushrooms. (Tr. 44-45, 54; Government Exhibit 1 at Section 23; Government Exhibit 2.)

Applicant submitted a Statement of Intent. In that Statement he indicated that he is not currently using any controlled substances, that he has no future intent to use any illegal controlled substances or misuse prescription medication, and he stipulated to

random drug testing and the immediate and unqualified revocation of his security clearance in the event of a positive drug test. (Applicant Exhibit G.)

Paragraph 2 (Guideline G – Alcohol Consumption)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he consumes intoxicants to excess. Applicant denied the single allegation under this paragraph.

2.a. Applicant admitted that he has consumed alcohol, occasionally to intoxication, starting in about March 2018 through December 2021. He testified that he has reduced his drinking “significantly” because he is too busy with his job and healthy personal lifestyle to engage in excessive alcohol consumption. He has had no alcohol-related arrests or incidents at any time in his past. There is no evidence that he has been diagnosed with an alcohol problem. A current coworker submitted a statement indicating that he has not seen the Applicant drink to the point of intoxication during the time he has known him. (Tr. 27-39, 45-46; Government Exhibit 2; Applicant Exhibit D.)

Paragraph 3 (Guideline E – Personal Conduct)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows poor judgment, untrustworthiness or unreliability. Applicant denied subparagraph 3.a. He admitted the other two allegations.

3.a. This subparagraph alleged that Applicant socializes with individuals who use illegal substances. Applicant testified that he has informed the people he used illegal substances with earlier that they could not do that in front of him. He believes that these people will support him in this endeavor. Applicant Exhibit F is a statement from a friend concerning Applicant’s decision not to be around people who use illegal substances. (Tr. 46-49.)

3.b. The Government alleges in this subparagraph that Applicant’s drug use history, as set forth under Paragraph 1, above, is also cognizable under Guideline E.

3.c. The Government alleges in this subparagraph that Applicant’s alcohol use history, as set forth under Paragraph 2, above, is also cognizable under Guideline E.

Mitigation

Applicant received an evaluation from a Licensed Marriage and Family Therapist (LMFT) who is also an Addiction Treatment Counselor. Her report is dated June 6, 2022, and is Applicant Exhibit H. Based on her evaluation of Applicant using various diagnostic criteria she reported, “[Applicant] does not fit any of the criteria; thus no evidence of misuse of drugs or alcohol. He has not experienced any adverse effects or consequences consistent with the misuse of substances.”

The therapist further stated, “Lastly, my impression of [Applicant] is that he is an honest, reliable, hard-working individual. He also made it clear to me that a career is of the utmost importance to him and he would not do anything to jeopardize such a life-changing opportunity.”

As stated, Applicant Exhibit D is a letter from a coworker. The witness writes that Applicant is an effective member of the team stating, “He [Applicant] is honest about his work and someone I can trust to put forth his best work.”

The record shows that Applicant had a successful academic career. In addition to school, he also engaged in extra-curricular activities that helped his community. (Applicant Exhibits A through C.)

Applicant testified that he has been very successful in his first year with his employer. He was nominated for and received an award for his hard work. (Tr. 19-21.)

Policies

When evaluating an applicant’s national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 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 applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, and has the ultimate burden of persuasion as to obtaining 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 national security eligibility. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth in 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition); and

- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant used marijuana on an infrequent basis from 2015 to 2020. He used psilocybin mushrooms one time in 2020. He purchased each drug on a single occasion. Both of the stated disqualifying conditions apply.

The following mitigating conditions under AG ¶ 26 have also been considered:

(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.

I have also considered the Memorandum from the Director of National Intelligence dated December 21, 2021, entitled, "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." (Applicant Exhibit E.)

Applicant used marijuana on an infrequent basis between 2015 and 2020. He used mushrooms on a single occasion in 2020. He purchased each drug on a single occasion. Applicant stated in his Answer that he intended to abstain from future drug use. He confirmed this statement during his testimony. He submitted a signed statement of intent. (Applicant Exhibit G.) He shows a credible intent to avoid such conduct in the future. He is recently employed after a successful college career. Applicant's evidence, including his testimony, showed a person who is determined to act with maturity in the future. That is confirmed by his statements to the LMFT who prepared Applicant Exhibit H after examining Applicant this year. Viewing his minor marijuana and mushroom use in the context of the whole person Applicant has mitigated the security significance of his past drug use. Paragraph 1 is found for Applicant.

Paragraph 2 (Guideline G – Alcohol Consumption)

The security concerns relating to the guideline for alcohol consumption are set out in AG ¶ 21, which states:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

AG ¶ 22 describes four conditions that could raise security concerns and may be disqualifying in this case:

(a) alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of the frequency of the individual's alcohol use or whether the individual has been diagnosed with alcohol use disorder;

(b) alcohol-related incidents at work, such as reporting for work or duty in an intoxicated or impaired condition, drinking on the job, or jeopardizing the welfare and safety of others, regardless of whether the individual is diagnosed with alcohol use disorder;

(c) habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed with alcohol use disorder; and

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of alcohol use disorder.

The evidence in the record is insufficient to support any of the disqualifying conditions. Applicant has no alcohol-related incidents, either at work or away from work. There is no history of binge drinking to the point of impaired judgment. Applicant Exhibit H is a report from an LMFT who examined him this year and found no evidence to support a finding that he had an alcohol issue. Paragraph 2 is found for Applicant.

Paragraph 3 (Guideline E – Personal Conduct)

The security concern relating to the guideline 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. Two are potentially applicable in this case:

(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 individual may not properly safeguard classified or sensitive information; and

(e) personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

As stated, Applicant used marijuana on an infrequent basis from 2015 to 2020. He used mushrooms on a single occasion. He has had contact with the people he used drugs with, except for the person from whom he bought mushrooms. The cited disqualifying conditions apply.

The following mitigating conditions under AG ¶ 17 are possibly applicable to Applicant's conduct:

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(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; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

As stated under Paragraph 1, above, Applicant's drug use was very infrequent, in the past, and he evinces a credible intent not to use any illegal drugs in the future. He has made sure that the people he used drugs with know that he is no longer comfortable with that lifestyle, and that he will not be around drug users. Paragraph 2 was found for Applicant due to a lack of evidence. He has mitigated the security concerns raised in Paragraph 3.

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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated his minor drug use. His forthright disclosures minimized or eliminated the potential for pressure, coercion, or duress. Continuation or recurrence of similar conduct is unlikely. Overall, the record evidence does not create substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraphs 1.a through 1.d: For Applicant

Paragraph 2, Guideline G:

FOR APPLICANT

Subparagraph 2.a:

For Applicant

Paragraph 3, Guideline E:

FOR APPLICANT

Subparagraphs 3.a through 3.c:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge