



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



In the matter of:)
)
) ISCR Case No. 20-03261
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

08/29/2022

Decision

Hyams, Ross D., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H (drug involvement and substance misuse), Guideline G (alcohol consumption), and Guideline E (personal conduct). Applicant’s eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on November 14, 2019. On May 11, 2021, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse), Guideline G (alcohol consumption), and Guideline E (personal conduct). The DOD issued the SOR under Executive Order (Exec. Or.) 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 Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines (AG)*, effective June 8, 2017. Applicant submitted an answer to the SOR on June 20, 2021. In her answer, she requested a decision based on the administrative (written) record, without a

hearing before an administrative judge from the Department of Defense Office of Hearings and Appeals (DOHA).

On February 24, 2022, Department Counsel submitted the Government's File of Relevant Material (FORM), including documents identified as Items 1 through 5. Items 1 and 2 are the SOR and answer, which are the pleadings in the case.

The FORM was mailed to Applicant on February 25, 2022. She was afforded an opportunity to note objections and to submit material in refutation, extenuation, or mitigation. Applicant received the FORM on March 8, 2022, and submitted a short narrative response on March 11, 2022. She did not offer any objection to the Government's evidence. The case was assigned to me on May 13, 2022. Items 3-5 are admitted without objection.

Findings of Fact

In her answer, Applicant admitted all of the SOR allegations, except the allegations concerning her future intent to use drugs (¶¶ 1.f and 1.g). No further information was provided with her answer. Her admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 38 years old. She earned an associate's degree in 2004. She is employed as an engineering technician for a defense contractor. She has worked for this employer since 2004 and has held a secret clearance since March 2010. She was married in 2005 and divorced in 2013. She has two children; one is an adult, and the other a minor. (Item 3)

In February 2020, a Government investigator conducted a background interview with Applicant. In response to an interrogatory, she verified the accuracy of the report of this interview. On the signature block of her interrogatory response, the year printed is 2020, which is an administrative error, because her interrogatory response would predate the interview. The correct year of this response is 2021. (Item 4)

In her background interview, Applicant disclosed to the investigator that she had used marijuana from 2001 to November 2016. Between 2010–2016, she had been using marijuana while granted access to classified information. She reported that until 2013, she had used marijuana recreationally on most weekends. After her divorce, she was using it every day after work and on weekends. This continued until 2016. (Item 3, 4)

In her background interview, Applicant also disclosed that she had used ecstasy, mushrooms (psilocybin), and cocaine in the last seven years. She reported that she used mushrooms once in about 2016, because she had never tried it. She stated that she had used ecstasy on about twelve occasions, from about 2016 to 2019, while attending festivals or concerts. Her most recent use was in December 2019, which was

the month after she submitted her most recent SCA. She stated that she used ecstasy after a period of abstinence from substance abuse, because she wanted to see what it would feel like after being sober for a long time. She admitted in her answer that she used ecstasy while granted access to classified information. (Item 4)

Applicant admitted to the investigator that she had first tried cocaine in November 2013, while at a party. She continued to use it about six more times over the next month. After then, she used cocaine most weekends until her driving while intoxicated (DWI) arrest in November 2016. She last used cocaine in December 2019. She admitted in her answer that she used cocaine while granted access to classified information. (Item 4)

In her background interview, Applicant was asked about her intent to use drugs in the future. She claimed that she does not intend to use marijuana because it is expensive and smelly. She admitted that she would do ecstasy again if it was given to her, because it is enjoyable for concerts or festivals. She stated that she will probably use ecstasy about once a year from now on. She also admitted that if cocaine is available, she will use it a couple of times a month. She has friends that provide it to her. She claimed that she could abstain from drugs if it threatened her job, and has been able to abstain in the past because she avoided her friends. She denied future intent to use drugs in her answer. (Item 4)

Applicant failed to report any drug use or drug use while possessing a security clearance on her SCA. When asked about her omissions by an investigator, she claimed that she was only thinking of her three years of sobriety, and that she must have mismarked the form. She also stated that she did not know why she answered the question in that way. (Item 3, 4)

In November 2016, Applicant was arrested for DWI. When she was pulled over by police at about 4 AM, her blood alcohol content (BAC) was almost double the legal limit of intoxication. She was arrested, and pled guilty to fourth degree driving while impaired. In March 2017, she was sentenced to two years of probation, a 45 day suspended jail sentence, a fine, and attendance at state mandated DWI offender classes. (Item 3, 4, 5)

After her DWI conviction, Applicant attended an outpatient substance abuse program. She reported on her SCA that she attended from March 2017 to October 2017. She verified this information in her background interview. SOR ¶ 2.c listed the year she attended this program as 2016, which appears to be an administrative error. In this program, she attended individual therapy and group therapy once a week. In her answer, she admitted being diagnosed with alcohol use disorder, cannabis use disorder, and cocaine use disorder. (Item 3, 4)

Applicant reported that her drinking became a problem after her divorce in 2013. Until her DWI arrest, she was binge drinking on weekends. After attending the substance abuse program in 2017, she was sober for two and a half years. In August

2020, she had a drink at a wedding, and decided to start drinking again on weekends. She claimed that she is not binge drinking anymore, and limits herself to three shots per weekend night or special occasion. She asserted that she has not abused alcohol since completing the substance abuse program in 2017. She stated that she intends to keep drinking because all her friends do it, and she does not want to be excluded from her friends. She claimed that she will be able to drink in moderation. (Item 4)

In her FORM response, Applicant stated that she was sorry and ashamed, and has been grateful for the privilege to hold a clearance for 12 years. She stated that she regrets her offending behavior and understands the damage that drugs can do. She asserted that she has worked for her employer for over 17 years, and has been mentoring and leading her co-workers for ten years. She stated that she has a history of anxiety and depression, and had planned to seek help to continue to address her mental health issues, and has been spiritually practicing and seeking guidance. (Response)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (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 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, 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(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. Likewise, I have not drawn 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, 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 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 of potential, rather than actual, risk of compromise of classified information.

Analysis

Guideline H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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 considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

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

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

- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and

(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

The Controlled Substances Act (“CSA”) makes it illegal under Federal law to manufacture, possess, or distribute certain drugs (Controlled Substances Act, 21 U.S.C. § 801, et seq. See § 844). All controlled substances are classified into five schedules, based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. §§811, 812. Marijuana, ecstasy, and mushrooms (Psilocybin) are classified as Schedule I controlled substances, §812(c), based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment. §812(b)(1). Cocaine is classified as a Schedule II controlled substance based on its high potential for abuse, with use potentially leading to severe psychological or physical dependence. §812(b)(2).

Applicant admitted in her answer that she used marijuana, ecstasy, and cocaine while granted access to classified information. She also admitted using marijuana for about nine years prior as well. She was diagnosed with cannabis and cocaine use disorders. Applicant told the background investigator that she intended to continue to use ecstasy and cocaine. AG ¶¶ 25(a), 25(d), 25(f), and 25(g) apply.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially 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;

(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 is grounds for revocation of national security eligibility; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant used cocaine and ecstasy as recently as 2019. This drug involvement is recent, and is part of a larger pattern of illegal drug use going back 21 years. She did not state in her answer or response that her drug use has completely stopped, and she detailed the likelihood of future use in her background interview. There is insufficient evidence in the record showing that her drug use occurred under circumstances that are unlikely to recur. Applicant’s use of illegal drugs continues to cast doubt on her current

reliability, trustworthiness, and good judgment with respect to her eligibility for a security clearance. AG ¶ 26(a) does not apply.

Applicant failed to provide sufficient evidence to find that she has overcome her use of illegal drugs, or established a pattern of abstinence from her most recent illegal drug use. Applicant used illegal drugs while possessing a security clearance for at least nine years. Applicant admitted to using these drugs with friends and at music festivals. She provided no evidence that she has disassociated from her drug-using friends, and no longer attends events where illegal drugs are present. Furthermore, she did not provide a signed statement agreeing to abstain from future illegal drug use. While she gets some credit for abstaining for two years, she started using drugs again after her cannabis and cocaine use disorder diagnoses. AG ¶ 26(b) does not apply.

In her answer, Applicant admitted to being diagnosed with alcohol, cannabis, and cocaine use disorder. While she voluntarily attended an outpatient substance abuse program for several months, she has gone back to using illegal drugs and alcohol, despite her diagnoses. She failed to provide sufficient evidence of following treatment recommendations, or rehabilitation and aftercare requirements, and she has not provided prognoses from a qualified medical professional. AG ¶ 26(d) does not apply.

Applicant made a commitment to the government and her employer not to use illegal drugs when she initially applied for a security clearance. She was put on notice that illegal drug use is not permitted while possessing a security clearance, as there is an entire section of the SCA that asks about “Illegal Use of Drugs or Drug Activity.” Similarly, Applicant was asked by a government investigator about illegal drug use during her background interview. She admitted her intent to use illegal drugs in the future with friends and at concerts and music festivals. Her drug involvement and substance misuse clearly outweighs her professional commitments and responsibilities. Applicant’s drug use is recent and it occurred while she held a security clearance. She cannot be trusted to follow the rules and regulations required to handle and protect classified information.

The Appeal Board has held that “a person who broke a promise to abide by drug laws after having been placed on notice that drug use is not compatible with access to classified information has not demonstrated the quantum of reliability expected of those with access to classified information.” ISCR Case No. 16-03460 at 4 (App. Bd. May 24, 2018).

Guideline G, Alcohol Consumption

AG ¶ 21 details the personal conduct security concern:

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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 22 and the following are potentially applicable:

- (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;
- (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;

Applicant has a 2016 DWI arrest and conviction, and an admitted history of binge drinking alcohol to the point of impaired judgment. She attended a substance abuse program in 2017, and was diagnosed with alcohol use disorder. AG ¶¶ 22(a), 22(c), and 22(d) apply.

I have considered the mitigating conditions under AG ¶ 23. The following are potentially applicable:

- (a) so much time has passed, or the behavior was so infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or judgment;
- (b) the individual acknowledges his or her pattern of maladaptive alcohol use, provides evidence of actions taken to overcome this problem, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations; and
- (d) the individual has successfully completed a treatment program along with any required aftercare, and has demonstrated a clear and established pattern of modified consumption or abstinence in accordance with treatment recommendations.

Applicant has a history of binge drinking, and incurred a single DWI arrest in November 2016. She has not had any other incidents of DWI. She voluntarily attended a substance abuse program after her conviction in 2017. Despite her alcohol use disorder diagnosis and two and a half years of sobriety, she has resumed drinking alcohol. While Applicant claims that she now drinks in moderation, she did not provide sufficient evidence to show that her past alcohol abuse occurred under circumstances that are unlikely to recur, or that it no longer casts doubt on her current reliability, trustworthiness, or judgment. AG ¶ 23(a) applies to SOR ¶ 2(a), but not SOR ¶¶ 2(b)-2(d).

Applicant gets some credit under AG ¶¶ 23(b) and 23(d) for attending a substance abuse treatment program in 2017, and abstaining from alcohol use for two and a half years. However, since she started drinking alcohol again, she did not provide sufficient evidence showing that she established a pattern of modified alcohol consumption or that she has complied with her specific treatment recommendations after her alcohol use disorder diagnosis. AG ¶¶ 23(b) and 23(d) do not fully apply.

Guideline E, Personal Conduct

AG ¶ 15 details the personal conduct security 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes...

I have considered the disqualifying conditions for drug involvement under AG ¶ 16 and the following 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.

In her answer, Applicant admitted to falsifying her April 2019 SCA when she failed to report her illegal drug use or involvement with drugs while possessing a security clearance. Her explanation to her background investigator for not truthfully answering this question is not credible. She was able to provide the investigator with detailed information about years of use of illegal drug use while possessing a security clearance. Her failure to truthfully answer this question on her 2019 SCA was a deliberate falsification. AG ¶ 16(a) applies.

I have considered the mitigating conditions under AG ¶ 17. The following is potentially applicable:

(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.

Applicant deliberately failed to report her illegal drug use and drug involvement while possessing a security clearance on her 2019 SCA. In fact, she failed to report any drug use on her SCA. When confronted with her falsification, her rationale was not

credible. She also used illegal drugs after submitting her 2019 SCA, and told her background investigator in 2020 that she intended to use illegal drugs in the future. She failed to provide sufficient evidence showing that her failure to truthfully fill out her SCA occurred under circumstances unlikely to recur. AG ¶ 17(c) does not apply.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H, G, and E in my whole-person analysis.

In this case, Applicant offered little whole-person evidence to consider. Applicant broke her commitment to the government and to her employer to abstain from illegal drug use while possessing a security clearance and lied about it on her SCA. Her continued alcohol use, and expressed intent to use illegal drugs shows that she is not willing or able to control her substance abuse issues, and she puts her social life before her professional responsibilities. She does not possess the judgment, trustworthiness, and reliability to handle or protect classified information.

Applicant did not provide sufficient evidence to mitigate the drug involvement and substance misuse, alcohol consumption, and personal conduct security concerns. Applicant failed to clearly and convincingly commit to discontinue future drug involvement. All of this continues to cast doubt on her reliability, trustworthiness, and good judgment with respect to her eligibility for a security clearance. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility for a security clearance.

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.g:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraphs 2.b - 2.d:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is denied.

Ross D. Hyams
Administrative Judge