



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



In the matter of:)
)
) ISCR Case No. 20-01327
)
Applicant for Security Clearance)

Appearances

For Government: Erin Thompson, Esq., Department Counsel
For Applicant: Ron Sykstus, Esq.

07/22/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Eligibility for access to classified information is granted.

Statement of the Case

On October 6, 2020, the Defense Counterintelligence and Security Agency issued to 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 (EO) 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 on June 8, 2017.

Applicant answered the SOR on November 2, 2020, provided a supplemental answer on May 13, 2021, and he requested a hearing before an administrative judge. The case was assigned to me on April 8, 2022. The Defense Office of Hearings and Appeals

(DOHA) issued a notice of hearing on April 22, 2022. I convened the hearing as scheduled on June 2, 2022. The Government offered exhibits (GE) 1 through 4. Applicant and six witnesses testified on his behalf. He offered Applicant Exhibits (AE) A through G. There were no objections to any exhibits offered, and they were admitted into evidence. DOHA received the hearing transcript on June 10, 2022.

Findings of Fact

Applicant admitted all of the allegations in the SOR in his November 2020 answer to the SOR. In his supplemental answer to the SOR, he admitted ¶¶ 1a, 1.b, 1.c, and 2.a. He denied SOR ¶ 1.d based on dates alleged. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 37 years old. He married in 2015 and has four children under the age of five years. He earned a bachelor's degree in 2007 and master's degree in 2015. He has worked for federal contractors since approximately 2011 and his present employer since 2019. He has held a security clearance since approximately 2011. (Tr. 15-22; GE 1; AE B, D, E)

Applicant used marijuana with varying frequency from February 2004 to April 2017. He testified that from 2004 to 2006, while in college, he used marijuana less than ten times. He used marijuana once in June 2009, while on a camping trip. He did not use marijuana from June 2009 to June 2016. He illegally purchased marijuana one time in 2016. He cooked this marijuana in brownies to eat. He used marijuana from June 2016 to February 2017, about five to seven times, while holding a security clearance. His explanation for using it was he was dealing with anxiety, sleep issues, and a back injury. His doctor had prescribed medication, but he did not like taking the drugs because they made him groggy. He used marijuana as a muscle relaxer. He now infrequently takes a prescribed medication for stress, anxiety, and sleep issues that has minimal side effects. He testified the last time he used marijuana was February 2017. (Answer to SOR; GE 4; Tr. 23-30)

Applicant used the prescription drugs Adderall and Ritalin from May 2012 to 2019. These drugs were not prescribed to him. He got the drugs from a friend. He was unaware this was inappropriate and was not overly concerned using these drugs. He swapped his prescribed Xanax with a friend who had Adderall and Ritalin. He infrequently used it while attending college and later night school in 2015, while earning his master's degree or when completing a big project to help him be more focused. He estimated he used his friend's prescription drugs about five or less times and did not take a whole pill. He no longer has contact with this friend since Applicant moved to a new state in 2019 that is a long distance away. His doctor was unaware he was using these drugs. (Tr. 30-32, 40-45,48-50; GE 4)

Applicant voluntarily disclosed his drug use on his security clearance applications (SCA) in 2011, 2018, and again in 2020. He indicated to the investigator during his background interview that he does not intend to use any illegal drug or drug that is not

prescribed to him in the future. He provided a signed written statement that he will not use illegal drugs in the future and acknowledging future involvement may result in revocation of his clearance. He also indicated in writing that he is willing to submit to random and scheduled drug testing. (Tr. 32-34; GE 1, 2, 3; AE G)

Applicant fully understands that illegal drug use is inconsistent with holding a security clearance. He understands this is regardless of whether he actually has access to classified information. (Tr. 35-36, 43)

After the birth of his first child in 2017, Applicant made a conscious decision that he must set an example for his children and illegal drug use was inconsistent with the model he wanted to represent. He is a different person since becoming a parent. He felt it was more important to be honest in disclosing his past drug use than to hide it and although disclosure was required, it was also the right thing to do. He does not regret being honest. He admitted he made errors in judgment that are in his past and has thought about the negative impact his past drug use could have on his family and his career. He asked for another chance. (Tr. 35-37)

Character witnesses testified on Applicant's behalf. They described him as honest, honorable, prodigious, forthright, disciplined, and trustworthy. They would never question his integrity. He is a devoted family man and father. He is devoted to his faith and is part of a team at his church. His supervisor testified that Applicant is highly respected at work for his attention to detail, and he ensures the project is completed on schedule. All but his wife, who testified for him, hold security clearances. All expressed they had no concerns about Applicant holding a security clearance. (Tr. 52-91)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(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 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 an 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 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 out 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse;

(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.

Applicant used marijuana with varying frequency from about February 2004 to February 2017. He purchased marijuana on one occasion in 2016. After being granted a security clearance, he used marijuana. Applicant used the prescription drugs Adderall and Ritalin from 2012 to at least 2018, without a prescription. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 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; and

(b) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the 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 being 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.

The primary concern is that Applicant used drugs while holding a security clearance, a serious transgression. Applicant voluntarily disclosed all of his past illegal drugs use in his SCAs, and background interview. His testimony was candid and forthcoming. He recognizes his errors in judgment. The defining point in his life was when he had his first child in 2017. He vowed to be a good role model. He understands his transgressions have serious consequences and is committed to leading a drug-free life. He no longer lives near a friend who provided him the prescription drugs. He signed a statement to abstain from all drug involvement acknowledging future involvement may result in revocation of his clearance. The evidence supports that Applicant has been leading an exemplary life and performing excellently at work. I do not believe he will use illegal drugs or drugs that are not prescribed to him in the future. I have considered all of the evidence and find AG ¶¶ 20(a) and 20(b) apply.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concerns for personal conduct:

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

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

Applicant used marijuana with varying frequency from February 2004 to February 2017. He illegally purchased marijuana in 2016. He used marijuana while holding a security clearance. He used prescription drugs that were not prescribed to him from 2012 to 2018. The above disqualifying condition applies

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(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; and

(e) the individual has taken positive steps to reduce the vulnerability to exploitation, manipulation, or duress.

The drug involvement security concerns discussed above were cross-alleged under the personal conduct security concerns. The same facts and analysis apply. In addition, use of drugs while holding a security concern is not a minor offense. I believe future misuse of drugs is unlikely to recur and he has taken steps to reduce vulnerability, exploitation, or duress through his commitment to remain drug-free and moving to a new state. Applicant's conduct was infrequent and did not appear to be for recreational use. I find there is sufficient evidence to apply the above mitigating conditions.

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 the 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 and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is a dedicated professional who is a devoted family man and father. He recognizes his past use of illegal drugs was inconsistent with being a role model for his children and was inconsistent with his employment while holding a security clearance. His use of drugs while holding a security clearance is a serious transgression. He has abstained from using illegal drugs for more than five years. Based on his honest disclosures in his SCAs, background interview, and testimony, I believe illegal drug use is in his past and he will not use illegal drugs or drugs not prescribed in the future. Although not an excuse, his drug use was not recreational. I find he is worthy of a second chance. In my whole-person assessment, I find the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct.

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.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge