



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



In the matter of:)
)
) ISCR Case No. 22-01018
)
Applicant for Security Clearance)

Appearances

For Government: Bryan Olmos, Esq., Department Counsel
For Applicant: *Pro se*

11/02/2022

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (drug involvement and substance misuse). Eligibility for access to classified information is denied.

Statement of the Case

On June 13, 2022, the Defense Counterintelligence and Security Agency (DCSA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on June 30, 2022, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on July 20, 2022. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections

and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM and responded on August 18, 2022 (FORM Response). The Government responded to Applicant's FORM Response on September 13, 2022, acknowledging that Footnote 1 in its July 20, 2022 FORM was an error, and consequently struck that footnote. The case was assigned to me on October 3, 2022. The Government's documents identified as Items 1 through 4 are admitted in evidence without objection.

Findings of Fact

Applicant admitted all of the SOR allegations in his Answer. He is 38 years old. He is married, and he has two minor children. He earned a bachelor's degree in 2006. He previously worked for a county government from 2007 to 2021. As of his October 2021 security clearance application (SCA), he worked as an application specialist and developer for his employer, a DOD contractor, since June 2021. He has owned his home since October 2021. He has never held a security clearance. (Answer; GE 1)

Applicant purchased and used marijuana with varying frequency from July 2001 through at least November 2021. He used marijuana more than once weekly, as a college student, between 2001 and 2006. Since college, he has used marijuana occasionally, less than once monthly, socially or as a sleep aid. He smoked marijuana out of a pipe, or he ingested it through gummies. It made him feel relaxed. He could not approximate the total number of times he has used marijuana. (Answer; GE 1, 2; FORM Response)

Applicant indicated during his December 2021 background interview that he could not recall if he used marijuana between May 2021 and August 2021. However, he did not use marijuana between August 2021 and November 2021. He indicated that he last used marijuana in November 2021, which was after he completed his SCA. He stated in his SCA that he did not have "a specific intention about when to use or how to use [marijuana], but any use would be occasional, socially or as sleep aid. It is not something I would seek out for regular use." (Answer; GE 1, 2; FORM Response)

Applicant indicated during his background interview that he did not have any future intent to use marijuana if his employment permitted him to use it, but he would stop using it if his employment prohibited it. In March 2022, Applicant declared his intention to abstain from future use of marijuana "while active with any contract work for the DOD." He continued to associate with individuals who used marijuana. He stated in his Answer, "it would be [undesirable]/unrealistic for me to stop associating with some of these individuals as they are life-long friends and/or family." He further stated, "[m]y close contacts would not say that my [marijuana] use has negatively impacted my ability to uphold my social and professional responsibilities." He has a long history of productive employment. (Answer; GE 1, 2; FORM Response)

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 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 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."

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 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. 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

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse as:

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 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant: "(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 "(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse."

Applicant used marijuana between 2001 and November 2021. He continues to associate with individuals who use marijuana. He also stated that he would not use marijuana in the future if the DOD employed him or if his employer prohibited it, but that he did not have a specific intent regarding marijuana use if his employer permitted it. AG ¶¶ 25(a), 25(c), and 25(g) are established.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

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

Applicant acknowledged that he still associated with individuals who use marijuana. In addition, his use of marijuana spanned a period of approximately 20 years. He used marijuana as recently as November 2021, after he completed his SCA. His declared intention, in March 2022, to abstain from future use of marijuana, was contingent on performing “any contract work for the DOD.” The record evidence continues to raise doubts about Applicant’s reliability, trustworthiness, and judgment. I find that AG ¶¶ 26(a), 26(b)(1), 26(b)(2), and 26(b)(3) are not established.

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 Guideline H in this whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the drug involvement security concerns.

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.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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge