



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



In the matter of:)
)
) ISCR Case No. 21-02142
)
Applicant for Security Clearance)

Appearances

For Government: Kelly M. Folks, Esq., Department Counsel
For Applicant: *Pro se*

12/06/2022

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On October 13, 2021, the Department of Defense DOD issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse. 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 within the DOD on June 8, 2017.

Applicant answered the SOR on November 15, 2021, 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), and Applicant received it on June 10, 2022. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 5. Applicant did not submit a response. There were no objections by Applicant, and all Items are admitted into evidence. The case was assigned to me on June 24, 2019.

Administrative Matters

The Government requested that I take Judicial or Administrative notice of certain federal statutes, a letter, and guidance from the Director of National Intelligence regarding the prohibition of marijuana use under federal law and the applicability of it for agencies conducting adjudications of persons for proposed eligibility for access to classified information or to hold a sensitive position. I have taken administrative notice of the material provided.

Findings of Fact

Applicant admitted all of the SOR allegations. I have incorporated his admissions into the findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 28 years old. He obtained a general equivalency diploma in 2013. He is not married, but cohabitates with his fiancée and they have a two-year-old child. He has been employed by a federal contractor since August 2018. (Item 3)

Applicant completed a security clearance application (SCA) in August 2020. In it, he disclosed his illegal drug use and other drug involvement. Applicant was interviewed by a government investigator in December 2020, and provided additional information about his illegal drug use. (Items 3, 4)

From about January 2008 through at least May 2018, Applicant purchased, grew, used, and sold marijuana with varying frequency. In his SCA, he stated he would use marijuana regularly during this period, usually with friends, but sometimes on his own. He said regarding his frequency, he used it "multiple times daily for an amount of years." He further stated regarding his intent to use in future, "I do not intend to use this drug because it is federally banned." (Item 3)

From January 2009 through at least June 2016, Applicant used cocaine with varying frequency. In his SCA, he said that he experimented with cocaine about five to ten times during this period. (Item 3)

From about January 2009 through at least May 2016, Applicant used hallucinogenics, including LSD, mushrooms and research chemicals with varying frequency. He said he experimented with LSD about ten times, mushrooms twice, and research chemical about three to five times. (Item 3)

From about June 2013 through at least May 2015, Applicant used Ecstasy with varying frequency. He experimented with Ecstasy between five to ten times. (Item 3)

From May 2014 through at least May 2016, Applicant used prescription codeine, Percocet, and Xanax, not prescribed to him, with varying frequency. He used codeine about three to five times over a month, but ultimately did not like it and stopped. He also misused Percocet and Xanax on random opportunities maybe 10 to 15 times over a year. (Item 3)

During his background interview, Applicant stated he used drugs with his friends either at his home or at his friends' homes. Sometimes he would drink alcohol, but not to intoxication. He would purchase drugs and sometimes friends provided them to him, or they would pool their money and purchase drugs together. He said he was not dependent on drugs and has never received any treatment or counseling for his drug use. He is still friends with one of the people he used drugs with, but no longer does anything illegal with him. He had no plans to do anything with drugs in the future because it is illegal for those who work on government contracts. (Item 4)

Applicant told the investigator that he received a citation when he was 18 years old for possession of a small amount of marijuana. He went to court, pleaded guilty, was fined and completed 24 hours of community service. The citation was issued in March 2013. (Item 4)

In his SCA, Applicant stated that he grew three marijuana plants in his basement over a three-month period and never did again. He also confirmed that he would purchase marijuana from someone he knew and then would sell what he purchased to his friends. It was always a small amount, about a few grams. (Items 3, 4)

Applicant told the investigator that his life changed when he got an internship with a government contractor and then was hired for a permanent job. It also changed after he became a father and became engaged. (Item 4)

In Applicant's answer to the SOR and statement to the government investigator, he stated he did not grow up in a good environment. He had to help his mother raise his siblings after his stepfather committed suicide, and his mother had to provide for the family. He found the pressure of home life and peer pressure led him down the wrong path. He stated that in 2018, his life changed and he did not want to continue down that path. He enrolled in a technical program that instilled a new focus and gave him positive goals for his life. He participated in an IT internship program. He obtained a technical certification, was hired for a permanent job when he completed his internship, and most importantly he now is responsible for his family and being a positive and strong role model for his daughter. (Items 2, 4) He further stated:

I understand that I did not make wise choices as a youth and fully admit that I was not responsible and made decisions that will negatively impact me for the rest of my life. But I would like you to consider that I have worked hard

to turn my life around and be a productive and positive member of society along with raising a strong child in a safe environment so that she will not be subjected to the same negative opportunities and peers that I was. (Item 2)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines (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; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used multiple illegal drugs from 2008 to 2018. He also used legal drugs that were not prescribed to him. He received a citation in 2013 for possession of marijuana. He grew marijuana one time over three months. He purchased and sold marijuana to his friends. 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;
- (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; and

(c) changing or avoiding the environment where drugs were used.

Applicant has an extensive history of illegal drug involvement, including use, purchase, sale, and growing marijuana. He also used a myriad of other illegal drugs and misused legal drugs without a prescription. Although all of his actions were illegal, he has only one minor citation for marijuana possession.

I have considered Applicant's background of growing up in a difficult environment and having to help his mother raise his siblings after his stepfather committed suicide. This tragedy affected him and changed the trajectory of his childhood. He watched his mother attempt to provide for her children as a single parent. He openly admitted his inability to see a positive future and how the pressures of his home life and environment led him down the wrong path. He decided to change his life in 2018. He participated in an IT internship program. This opportunity offered him a chance to change the course of his life. He did not squander it, but embraced it. After he completed his internship, he was hired as a permanent employee. He has been employed more than four years. He is engaged and has a two-year-old child. He is focused on providing her a good life in a safe environment.

Applicant has not used illegal drugs since May 2018, more than four years ago. He began using them when he was young and has matured into a productive adult. He does not intend to use illegal drugs in the future. He self-disclosed all of his illegal drug involvement. He still associates with one friend with whom he formerly used drugs, but they do not engage in illegal drug use. He has disassociated from the others. He completed a training program, was hired full-time, became engaged, and is caring for his young child. I believe Applicant is committed to leading a drug-free life, and he will not use illegal drugs in the future. I believe he worked hard to move his life in the right direction and leave behind his past. I do not think he will jeopardize all that he has worked for by using drugs again. I find AG ¶¶ 26(a), 26(b) and 26(c) 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 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 Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under that guideline, but some warrant additional comment.

Applicant has changed the course of his life and is a productive member of society. I have considered his extensive illegal drug use. I have also considered the environment and circumstances of his early life. I have considered where his life was and where it is now. I do not believe he will use illegal drugs in the future. Applicant has met his burden of persuasion. The record evidence leaves me without questions and 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.

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 F: | FOR APPLICANT |
| Subparagraphs 1.a-1.f: | 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