



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)	
)	
)	ISCR Case No. 21-00118
)	
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

02/01/2022

Decision

MASON, Paul J., Administrative Judge:

Except for his marijuana purchases and use, Applicant’s use of cocaine and other unalleged drugs between high school and July 2020, was experimental to sporadic and is mitigated by the passage of time. However, unlike his other drug use, Applicant purchased marijuana on an occasional basis, and used the drug at a higher frequency. Without corroborating character evidence showing abstinence and an environment depicting a drug free lifestyle for a significant period of time, Applicant has not overcome security concerns arising from the drug involvement guideline. Eligibility for classified information is denied.

Statement of Case

On August 11, 2020, Applicant certified and signed an Electronic Questionnaires for Investigations Processing (e-QIP) to obtain a security clearance required for employment with a defense contractor. After examining the background investigation, the Defense Counterintelligence Security Agency (DCSA) could not make the affirmative findings necessary to issue a security clearance. On June 25, 2021,

DOD issued a Statement of Reasons (SOR) to Applicant detailing security concerns under drug involvement and substance misuse (Guideline H). The action was taken under Executive Order (E.O.) 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 Security Executive Agent Directive 4, establishing in Appendix A the National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position (AGs), made effective in the DOD on June 8, 2017. Attached to the SOR is a DCSA letter dated June 25, 2021 instructing Applicant how to answer the SOR and how to indicate whether he wants a decision following a hearing or a decision on the administrative record. Enclosed with the letter is a copy of the current Directive.

Applicant's answer to the SOR is dated July 30, 2021. He elected to have his case decided on an administrative record instead of a hearing. On September 14, 2021, the Government sent Applicant a copy of the File of Relevant Material (FORM) containing evidence in support of the allegations in the SOR. Applicant received the FORM on September 23, 2021. He was given 30 days to provide additional information to explain, rebut, or mitigate the information furnished in the FORM. The Defense Office of Hearings and Appeals (DOHA) received no response to the FORM. DOHA assigned the case file to me on November 8, 2021.

Rulings on Evidence

On the second page of Department Counsel's FORM, in bold capital letters, appears the following statement, "**Important Notice to Applicant,**" Department Counsel advised Applicant that the personal subject interview (PSI, Item 5) would be excluded from evidence if he objected to the item. Alternatively, Department Counsel advised him that he could correct, update, or modify the PSI to improve its clarity or accuracy. Applicant did not object, and the exhibit was admitted into evidence. See, E3.1.20., DOD Directive 5220.6, page 52.

Findings of Fact

The SOR contains two allegations under Drug Involvement and Substance Misuse (Guideline H). Applicant admitted that he used marijuana, with his use ending over year ago. He admitted using cocaine, with his use ending over two years ago. Next to each answer, he cited a mitigating condition (E2.A8.1.3.1.) of the drug involvement guideline within the earlier edition of DoD Directive 5220.6 issued in April 1999. This SOR was issued on June 25, 2021 under the current Directive, which became effective on June 8, 2017. The origin of these allegations is the August 11, 2020 e-QIP in which Applicant voluntarily disclosed his use of illegal drugs and misuse of prescription drugs.

Applicant is 23 years old and single. He indicated that since November 2020, he has lived in a house owned by his parents. However, that date cannot be reconciled with August 11, 2020, the date the e-QIP was certified. (Item 4 at 9)

According to Applicant's August 2020 e-QIP, he entered his high school graduation date mistakenly as "June 2020," rather than the correct date of June 2016. He graduated from college in June 2020, with a bachelor's degree. In August 2020, he began his professional career with his current employer as an engineer and modeler. His previous job history for the past four years included student intern jobs during the school year or summer jobs when school was not in session. (Item 4 at 14-21)

In Applicant's August 2020 e-QIP, he indicated that he had used illegal drugs and misused prescription drugs in the last seven years. He estimated that he smoked marijuana from September 2015 to July 2020. He smoked the drug twice before college, daily to monthly during college, until July 2020, one month after graduating from college. Beginning in December 2016, he purchased the drug infrequently then at a monthly frequency from August 2017 to April 2019. He did not intend to use marijuana in the future because he did not want to jeopardize a potential security clearance. He used cocaine three times from April 2018 to April 2019, but would not use this drug again because of its adverse effect on him. He never purchased cocaine. (Item 4 at 39-42)

Applicant used ecstasy once in April 2017, but did not intend to use this stimulant in the future because he did not like the drug's effect on him even though the stimulants made him peppy. He never purchased ecstasy. He used LSD once in May 2017 and mushrooms once in March 2019. He did not purchase either drug. The two hallucinogens made him feel out of control. In the last seven years, Applicant used Adderall once in high school in 2016 and once in college in 2017. The drug made him more alert in completing school assignments. He regretted using the drug and did not intend to use it in the future. Applicant was never ordered or advised to seek treatment. None of the drugs in this paragraph are alleged in the SOR. I will not consider the forgoing drugs for disqualification purposes. (Item 4 at 39-42; Item 5 at 2)

Applicant furnished a PSI to an OPM investigator in September 2020. He provided the same account of illegal drug use and misuse of prescription drugs as he had in his September 2020 e-QIP. Except for marijuana, which Applicant purchased, he was given the other drugs by individuals he identified in his September 2020 PSI.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines, which should be applied with common sense and the general factors of the whole-person concept. All available, reliable information about the person, past and present, favorable and unfavorable, should be carefully reviewed before rendering a decision. The protection of the national security is the paramount consideration. AG ¶ 2(d) 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 applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Analysis

Drug Involvement and Substance Misuse

The security concern under the Drug Involvement/Substance Abuse Guideline 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.

AG ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

- (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 twice before college and daily to monthly while in college, with his last use in July 2020, a month after graduating from college and one month before he began working for his current employer. Initially he purchased the drug infrequently, beginning in December 2016, then monthly from August 2017 to April 2019. AG ¶ 25(a) applies to Applicant's illegal use of marijuana, a violation of federal law. Use of marijuana, a Schedule I drug, remains a controlled substance under the Controlled Substances Act, codified at 21 U.S.C. § 812(c). AG ¶ 25(c) applies based on Applicant's infrequent to monthly purchase of the drug for two years. His sporadic use of

cocaine occurred on three occasions and ended in April 2019, more than two years before he submitted his e-QIP in August 2020.

Applicant's use of cocaine, ecstasy, LSD, mushrooms, and Adderall is mitigated by the experimental to sporadic scope of the use, combined with the passage of time since the use ended. Applicant never purchased any of the above drugs. Regarding his marijuana use however, the Government has provided sufficient evidence to establish the above disqualifying conditions. Applicant has the burden to show that his drug use is mitigated.

AG ¶ 26. Conditions that could mitigate security concerns include:

(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.

Applicant's illegal marijuana use did not end until two months after he graduated from college. Smoking daily to monthly until July 2020 does not equate to infrequent use of the drug. There were no unusual circumstances surrounding the use. Applicant's overall marijuana use was aggravated by his increasing purchase of the drug between August 2017 to at least April 2019. AG ¶ 26(a) does not fully apply.

While Applicant has acknowledged his history of marijuana purchases and use, he has not provided evidence demonstrating a pattern of abstinence. He has not established that he has severed his documented ties with drug-using contacts or transformed his environment to one where drugs are not used. Lastly, he has not submitted a signed statement of intent to refrain from marijuana use in the future, understanding that future use will constitute grounds of revocation of security clearance eligibility. AG ¶ 26(b) does not apply.

Whole-Person Concept

I have examined the evidence under the guideline for drug involvement/substance misuse in the context of the nine general factors of the whole-person concept 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 access to classified information must be an overall common-sense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant is 23 years old and is a graduate of a reputable college. Most of his illegal drug use occurred in college and was probably aggravated by peer pressure from associates and college friends. The primary reason for denial of Applicant's application is the lack of independent, corroborating character evidence that reinforces a lifestyle free from the temptation of illegal drug use that Applicant capitulated to in college. Presently, insufficient time has passed to grant Applicant security clearance eligibility. Judging by the totality of the evidence, Applicant has not overcome the security concerns raised by the guideline for 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 H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason
Administrative Judge