



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



In the matter of:)
)
) ISCR Case No. 21-02188
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Esq., Department Counsel
For Applicant: *Pro se*

January 12, 2023

Decision

CEFOLA, Richard A., Administrative Judge:

Statement of the Case

On January 28, 2022, in accordance with DoD Directive 5220.6, as amended (Directive), the Department of Defense issued Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns under Guidelines I, H, F and E. The SOR further informed Applicant that, based on information available to the government, DoD adjudicators could not make the preliminary affirmative finding it is clearly consistent with the national interest to grant or continue Applicant’s security clearance.

Applicant answered the SOR soon thereafter, and requested a hearing before an administrative judge. (Answer.) The case was assigned to me on June 13, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on June 14, 2022, scheduling the hearing for August 24, 2022. The hearing was convened as scheduled. The Government offered Exhibits (GXs) 1 through 7, which were admitted into evidence. Applicant testified on his own behalf. The record was left open until September 30, 2022, for receipt of additional documentation. Applicant offered no

exhibits on his behalf. DOHA received the transcript of the hearing (TR) on September 6, 2022.

Findings of Fact

Applicant admitted to all the allegations in SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 32-year-old employee of a defense contractor. He has been employed with the defense contractor since 2019. Applicant has never held a security clearance. He is not married, and has no children. (TR at page 6 at line 21 to page 7 line 14, and GX 1 at pages 7, 13~14, 22~23 and 38~39.)

Guideline I – Psychological Conditions & Guideline E - Personal Conduct

1.a. and 4.a From about June of 2018 to about July of 2018, Applicant was hospitalized for Depression with suicidal ideation. He was diagnosed as suffering from a Major Depressive Disorder and Polysubstance Dependence – MDMA, Methamphetamines, Amphetamines, and Possibly Alcohol. (TR at page 33 line 18 to page 36 line 4, and GX 4.)

1.b. and 4.a. In about August of 2020, Applicant was diagnosed as suffering from a Bipolar 1 Disorder, Depressed Episode with Associated Features. (GX 5.)

1.c. and 4.a. In May of 2021, Applicant was evaluated by a licensed psychologist. He was diagnosed as suffering from an Unspecified Bipolar and Related Disorder, Unspecified Schizophrenia Spectrum and Other Psychotic Disorder, Unspecified Alcohol Related Disorder, and Stimulant Use Disorder, moderate, amphetamine type substance, in sustained remission. The psychologist further found that Applicant's mental health diagnoses may be a significant risk to Applicant's judgment, reliability or trustworthiness concerning classified information. (TR at page 24 line 24 to page 33 line 17, and GX 3.)

Guideline H - Drug Involvement and Substance Misuse & Guideline E - Personal Conduct

2.a. and 4.a. Applicant used the prescription drug Adderall without a prescription from about 2017 to about June of 2018. (TR at page 32 line 5 to page 36 line 5.)

2.b. and 4.a. Applicant used marijuana on various occasions from about 2006 to May of 2021. (TR at page 22 line 23 to page 23 line 1, and at page 36 lines 6~17.)

2.c. and 4.a. Applicant used cocaine on various occasions from about 2010 to August of 2018. (TR at page 23 lines 2~4.)

2.d. and 4.a. Applicant used MDMA on various occasions from about February of 2018 to July of 2018. (TR at page 23 lines 5~8.)

Guideline F - Financial Considerations & Guideline E - Personal Conduct

3.a. Applicant admits that he had a past-due credit card debt in the amount of about \$37,201. Applicant avers that he has a “monthly schedule of repayment,” but has offered nothing in support of his averment. (TR at page 17 line 11 to page 20 line 13, and GX 7 at page 7.)

Guideline E - Personal Conduct

4.a. has been discussed, above.

4.b. In about November of 2011, Applicant was charged with and convicted of Driving Under the Influence of alcohol or drugs. He was placed on probation for ten years. (GX 6.)

4.c. Applicant failed to disclose his past marijuana, cocaine and MDMA use in answer to “Section 23 - Illegal Use of Drugs or Drug Activity” on his August 8, 2019 Electronic Questionnaire for Investigations Processing (e-QIP). (TR at page 20 line 14 to page 23 line 8, and GX 1 at pages 35~36.) I find this to be a willful falsification.

4.d. Applicant failed to disclose his past marijuana, cocaine and MDMA use in his Response to Interrogatories on December 18, 2021. (TR at page 23 line 9 to page 24 line 23, and GX 2 at page 11.) I find this to be a willful falsification.

Policies

When evaluating an applicant’s 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 to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 protect or 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 Executive Order (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 I – Psychological Conditions

The security concern relating to the guideline for Psychological Conditions is set forth at AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required for there to be a concern under this guideline. A duly qualified mental health professional (e.g. clinical psychologist or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative inference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline at AG ¶ 28 contains five conditions that could raise a security concern and may be disqualifying. Three conditions are established:

- (a) behavior that casts doubt on an individual’s judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid,

manipulative, impulsive, chronic lying, deceitful, exploitative, or bizarre behaviors;

- (b) opinion by a duly qualified mental health professional that the individual has a condition that may impair judgment, stability, reliability, or trustworthiness; and
- (c) voluntary or involuntary inpatient hospitalization.

Appellant was hospitalized in 2018, and diagnosed as suffering from a Major Depressive Disorder and Polysubstance Dependence – MDMA, Methamphetamines, Amphetamines, and Possibly Alcohol. In 2020, he was diagnosed as suffering from a Bipolar 1 Disorder, Depressed Episode with Associated Features. More recently, in 2021, he was diagnosed as suffering from an Unspecified Bipolar and Related Disorder, Unspecified Schizophrenia Spectrum and Other Psychotic Disorder, Unspecified Alcohol Related Disorder, and Stimulant Use Disorder, moderate, amphetamine type substance, in sustained remission. The psychologist further found that Applicant's mental health diagnoses may be a significant risk to Applicant's judgment, reliability or trustworthiness concerning classified information. Therefore, AG ¶ 28 is established.

The guideline at AG ¶ 29 contains four conditions that could mitigate security concerns. Five conditions may be applicable:

- (a) the identified condition is readily controlled with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;
- (b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;
- (c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;
- (d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and
- (e) there is no indication of a current problem.

None of these apply. Psychological Conditions is found against Applicant.

Guideline H - Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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.

The guideline at AG ¶ 25 contains seven conditions that could raise a security concern and may be disqualifying. Two conditions are established:

- (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.

Appellant used illegal substances from about 2006 until May of 2021. Therefore, AG ¶ 25 (a), and (c) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. One condition may be 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.

Applicant's last usage of marijuana was in May of 2021, only a year prior to his hearing. It is too soon to find Applicant's 15 years of Drug Involvement and Substance Misuse is not of current security significance. Drug Involvement and Substance Misuse is found against Applicant.

Guideline F - Financial Considerations

The security concern relating to the guideline for Financial Considerations is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or

unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling, mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

The guideline notes several conditions that could raise security concerns under AG ¶ 19. Three are potentially applicable in this case:

- (a) inability to satisfy debts;
- (b) unwillingness to satisfy debts regardless of the ability to do so; and
- (c) a history of not meeting financial obligations

Applicant has a significant past-due credit card debt. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 20 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 20 including:

- (a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;
- (b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances; and
- (d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

Applicant's financial problems are ongoing. He has not demonstrated that future financial problems are unlikely. Mitigation under AG ¶ 20 has not been established. Financial Considerations is found against Applicant.

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. Two are potentially applicable in this case:

(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; and

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

Applicant falsified his 2019 e-QIP, and was not candid in his 2021 Response to Interrogatories. The evidence is sufficient to raise these disqualifying conditions.

AG ¶ 17 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 17 including:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully and;

(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.

None of these apply. Applicant was not candid with the Government as to his extensive, past drug abuse. Personal Conduct is found against Applicant.

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

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Psychological Conditions, Drug Involvement and Substance Misuse, Financial Considerations and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline I:	AGAINST APPLICANT
Subparagraphs 1.a~1.c:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a~2.d:	Against Applicant
Paragraph 3, Guideline F:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Paragraph 4, Guideline E:	AGAINST APPLICANT
Subparagraphs 4.a~4.d:	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Richard A. Cefola
Administrative Judge