



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



In the matter of:)	
)	
)	ISCR Case No. 21-00337
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicholas Temple, Esq., Department Counsel
 For Applicant: *Pro se*
 02/27/2023

Decision

BENSON, Pamela C., Administrative Judge:

Applicant’s illegal use of marijuana and other controlled substances occurred predominantly during his high school and college years. He has matured and he is remorseful about his history with illegal drugs. He was forthright about his illegal drug involvement on his security clearance application, and he has made positive changes in his life. Applicant mitigated the drug involvement and substance misuse security concerns. National security eligibility is granted.

Statement of the Case

On April 1, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H (drug involvement and substance misuse). The CAF took action under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines implemented by the DOD on June 8, 2017.

On May 25, 2021, Applicant, through hired counsel, responded to the SOR (Answer). He admitted, with explanation, all the SOR allegations under Guideline H. (SOR ¶¶ 1.a through 1.j.) He requested a hearing before a Defense Office of Hearings and

Appeals (DOHA) administrative judge. When another assigned DOHA administrative judge contacted Applicant's counsel to set a hearing date, counsel reported he had not been retained by Applicant to represent him at a hearing. On June 23, 2022, Applicant elected to forego the hearing and requested a determination on the written record. (Items 2 and 5)

On October 19, 2022, Department Counsel submitted a file of relevant material (FORM) and provided a complete copy to Applicant. Department Counsel's FORM includes Items 1 through 5. DOHA provided notice to Applicant that he had 30 days from the receipt of the FORM to provide objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. The notice added that Applicant's lack of response may be considered as a waiver of any objections, and that the Administrative Judge would make a determination based solely on information included in the Government's FORM.

On November 18, 2022, Applicant received the FORM and its attachments. He did not submit a response to the FORM within 30 days of receipt, and he did not raise objections to the authenticity or admissibility of Items 1 through 5. The case was reassigned to me on January 26, 2023. I admitted Items 1 through 5 into evidence without objection.

Findings of Fact

Applicant is 29 years old. He has never been married and he does not have any children. He earned an associate degree in 2014, and two bachelor's degrees in 2016 and 2019. Since August 2020, he has worked for a government contractor as a software engineer. This is his first application for a DOD security clearance. (Item 3)

Drug Involvement and Substance Misuse

The SOR alleges under Guideline H that Applicant had used marijuana from 2010 to June 2020, and that he sold marijuana in 2014. It also alleged he used psilocybin mushrooms from 2014 to February 2020, and that he sold psilocybin mushrooms from July 2017 to May 2019 (on two or three occasions, and no more than six ounces on each occasion). (SOR ¶¶ 1.a, 1.b, 1.h, and 1.j.) It also alleges he used LSD (on three occasions) from 2016 to 2017, and he used cocaine (on two occasions) in November 2016 and February 2019. (SOR ¶¶ 1.c and 1.d.) The SOR also alleges that he used medications not prescribed to him, such as Hydrocodone (once) in July 2015, and Adderall (about ten times) from December 2013 to November 2015. (SOR ¶¶ 1.e and 1.f.) Also alleged is that in April 2012, he was charged with possession of marijuana and possession of paraphernalia. (SOR ¶ 1.g.) It is alleged that in August 2016, he was charged with felony possession of a controlled substance, and that he was convicted of three misdemeanors – possession of marijuana, possession of paraphernalia, and ingestion of an intoxicant other than alcohol. (SOR ¶ 1.i.) Applicant admitted all of the allegations, with detailed explanations in his Answer to the SOR. (Item 1; Item 2)

Applicant stated that his illegal drug use, which was generally sporadic and recreational, occurred mainly during his high school and college years. In his Answer, he listed that he is remorseful for his past illegal drug use. He also believed a significant amount of time had passed since he last used any illegal drug, which was marijuana in June 2020. He explained that he is more mature and has consistently demonstrated good judgment in his career as a software engineer. He no longer associates with friends who use illegal drugs. (Item 2)

Applicant was in high school when he was charged in 2012 with possession of marijuana and possession of drug paraphernalia. He was not convicted of these charges. He abstained from using marijuana for about two years after this incident. In August 2016, Applicant, the driver of the car, and two other passengers were pulled over by the police for speeding. All four occupants were arrested for possession of a controlled substance, (hashish brownies), a felony, less than two ounces of marijuana, ingestion of intoxicant, other than alcohol, and drug paraphernalia (bong and pipe with residue). Applicant was 22 years-old at the time of this arrest. He pleaded guilty to three misdemeanor offenses. (Item 2 Exhibits D and E, Item 3, Item 4)

In May 2021, Applicant participated in a drug abuse evaluation and submitted documentation with his Answer. The record showed that he started smoking marijuana at age 16, and he progressed to daily use of marijuana from approximately age 17 to 18. After his 2016 offense, he smoked marijuana about two or three times a year until June 2020. He used Adderall without a prescription on about ten occasions during college to help him study. He took psilocybin mushrooms five to ten times, and LSD three times. He ingested unprescribed Hydrocodone one time. The counselor found Applicant to be very credible and noted that he fit the criteria for cannabis use disorder, mild, in remission. Applicant is considered to be in a low-risk category. (Item 2 Exhibit E)

Applicant was completely candid about his illegal drug use and drug-related arrests on his August 2020 SCA. He understands marijuana use is against federal law, and it is unacceptable for individuals possessing DOD security clearances to smoke marijuana, even if the state law makes it legal to do so. He signed a letter of intent declaring that that he had no intention of using any illegal drug in the future. (Item 2, Item 3)

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

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 . . . 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and 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

(d) diagnosis by a duly qualified medical or mental health professional (e.g., physician, clinical psychologist, psychiatrist, or licensed clinical social worker) of substance abuse disorder.

Applicant used marijuana from about 2010 to June 2020, and other illegal substances from about 2014 to February 2020. He sold marijuana in 2014 and sold psilocybin (he cultivated in college) on two or three occasions. His May 2021 substance abuse evaluation showed that he was diagnosed with cannabis use disorder, mild, in remission. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

AG ¶ 26(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

AG ¶ 26(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 a 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 used marijuana and other illegal substances over a long period of time, from about 2010 to at least June 2020. He tapered off using marijuana after his arrest in 2016 because he had matured, and he wanted to make positive changes in his life to be successful in his career. He has not used marijuana in nearly three years. His May 2021 substance abuse evaluation showed his disorder was in remission and is in a low-risk category. Applicant provided a letter of intent to never use marijuana again.

Applicant was candid with his history of illegal drug use and his involvement with law enforcement when he completed the SCA in August 2020. I find he is sincere in his commitment to remain drug-free, and he is unlikely to resume his use of marijuana or any other illegal substance. He stopped associating with friends who use illegal drugs, and he has abstained from using marijuana for nearly three years. Mitigating conditions AG ¶¶ 26(a) and 26(b)(1)(2) and (3) apply. Drug involvement and substance misuse security concerns are mitigated.

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 and the factors in AG ¶ 2(d) in this whole-person analysis.

The government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant's illegal use of marijuana and other controlled substances occurred predominantly during his high school and college years. He has matured and he is remorseful about his past involvement with illegal drugs. He was forthright about his drug-related offenses and provided full details about his illegal drug use history on his August 2020 SCA. He has made positive changes in his life and is aware that future illegal drug

use may jeopardize his career. Given the entirety of the record evidence, I conclude that Applicant mitigated the drug involvement and substance misuse 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:	FOR APPLICANT
Subparagraphs 1.a - 1.j.:	For Applicant

Conclusion

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

Pamela C. Benson
Administrative Judge