



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



In the matter of:)
)
) ISCR Case No. 22-01242
)
Applicant for Security Clearance)

Appearances

For Government: Gatha Manns, Esq., Department Counsel
For Applicant: *Pro se*

02/22/2023

Decision

Dorsey, Benjamin R., Administrative Judge:

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

Statement of the Case

On September 21, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement and substance misuse and Guideline F, financial considerations. On October 3, 2022, Applicant responded to the SOR and requested a decision based on the written record in lieu of a hearing.

The Government's written case was submitted on January 4, 2023. 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 on January 13, 2023. He responded on February 3, 2023, with a personal narrative and IRS Account Transcripts consisting of five pages (FORM Response). The case was assigned to me on February

15, 2023. The Government exhibits included in the FORM (Items 1-8) and the FORM Response are admitted in evidence without objection.

Findings of Fact

Applicant is a 33-year-old employee of a defense contractor for whom he has worked since May 2014. He earned a bachelor's degree in 2015 and has taken additional college courses without earning another degree. He has never married and has no children. (Items 3, 5, 8)

From about 2009 through December 2014, Applicant used marijuana with varying frequency. From about 2011 until about 2014, he purchased marijuana with varying frequency. During this timeframe, he used marijuana socially with friends and to help him sleep at night. In April 2015, he claimed that he had no intention to use illegal drugs in the future. Notwithstanding this marijuana usage, Applicant was granted a security clearance in about June 2015. He did not use illegal drugs between 2014 and September 2019. In about September 2019, while he held a security clearance, he used the illegal stimulant "Molly," or MDMA, on one occasion with friends before attending a concert. He volunteered his illegal drug use in his two Questionnaires for National Security Positions (SF 86), discussed it openly with the investigator during his security interviews in 2015 and 2020, and self-reported the September 2019 illegal drug use to his facility security officer (FSO). He has not used an illegal drug since September 2019. He claimed that he does not intend to use illegal drugs in the future. He acknowledged that he has made some poor choices related to illegal drug usage in the past, but that he has learned from his mistakes. He claimed that he understands that illegal drug use is not compatible with holding a security clearance. He claimed that he has "cut virtually all contact" with the friends with whom he used illegal drugs in the past. His reporting of derogatory information regarding his illegal drug use enhances his credibility with respect to these claims. (Items 2, 3, 5, 6, 8; FORM Response)

Applicant failed to timely file his 2017 and 2018 federal income tax returns despite being required to do so. His failure to timely file his 2018 federal income tax return was not alleged in the SOR. He was indebted to the IRS for delinquent federal taxes in the amount of \$1,100 for tax year 2017 and \$1,900 for tax year 2018. He reported this information on his SF 86. Any adverse information not alleged in the SOR, such as Applicant's late filing of income tax returns for the 2018 tax year cannot be used for disqualification purposes; however, it may be considered in assessing an applicant's credibility; in evaluating an applicant's evidence of extenuation, mitigation, or changed circumstances; in considering whether the applicant has demonstrated successful rehabilitation; and in applying the whole-person concept. (ISCR Case No. 15-07369 at 3 (App. Bd. Aug. 16, 2017)). (Items 2-5, 8; FORM Response).

Applicant filed his late 2017 federal income tax return with the IRS in September 2020. He filed his late 2018 federal income tax return with the IRS in March 2021. In February 2021, he made an arrangement with the IRS to pay his delinquent federal taxes for the 2017 and 2018 tax years. He had already made two payments on his delinquent federal taxes for the 2017 tax year in September 2020 and January 2021. He

satisfied his delinquent federal taxes for the 2017 tax year in July 2021. He satisfied his delinquent federal taxes for the 2018 tax year in June 2022. He claimed that he did not file his federal income taxes for the 2017 and 2018 tax years for several reasons, to wit: he was unfamiliar with the process; he unknowingly failed to withhold sufficient wages and incurred a larger tax obligation than he could afford; he had always received a tax refund in the past; and he did not have enough money to pay his federal taxes in addition to his other financial responsibilities. He claimed that he timely filed and paid all his federal income tax obligations before and after the 2017 and 2018 tax years. His reporting of derogatory information regarding his drug usage and federal tax deficiencies during the clearance process enhances the credibility of his claims. (Items 2-4, 8; FORM Response)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 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. 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 notes several conditions that could raise security concerns under AG ¶ 25. The following is potentially applicable in this case:

- (a) any substance misuse (see above definition);

- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant illegally used marijuana with varying frequency from 2009 until 2014. He illegally purchased marijuana with varying frequency from 2011 until 2014. He illegally used MDMA once in September 2019 while he held a security clearance. The above disqualifying conditions are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. The following 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 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 used marijuana for five years while he was in college and younger. He then stopped using and purchasing illegal drugs for five years. His abstinence from illegal drugs was interrupted by a one-time error in judgment three and one-half years ago. Acknowledging that this illegal drug use in 2019 was further exacerbated by his holding a security clearance, I believe his recent illegal drug use was infrequent enough that it is unlikely to recur. Given the totality of his past drug use, and its infrequency since 2014, I believe that he has established a sufficient period of abstinence from illegal drugs. He has also disassociated from drug using associates and contacts. Given his willingness to self-report derogatory information, I find his claims that he will not use illegal drugs again to be reliable. Along with his period of abstinence since his last use, I conclude his past, illegal drug use does not cast doubt on his current reliability, trustworthiness, and good judgment. The drug involvement and substance misuse security concerns are mitigated.

Guideline F, Financial Considerations

The security concern 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.

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

(f) failure to file or fraudulently filing annual Federal, state, or local income tax returns or failure to pay annual Federal, state, or local income tax as required.

Applicant failed to timely file his federal income tax return for the 2017 tax year. He owed the IRS delinquent federal taxes for the 2017 and 2018 tax years. The evidence is sufficient to raise the above disqualifying condition.

Conditions that could mitigate the financial considerations security concerns are provided under AG ¶ 20. The following are potentially applicable:

(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;

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts; and

(g) the individual has made arrangements with the appropriate tax authority to file or pay the amount owed and is in compliance with those arrangements.

Applicant has now filed his late federal tax returns for the 2017 and 2018 tax years. He made a payment arrangement with the IRS and paid his delinquent federal taxes. While I am aware that him "fixing" his federal tax deficiencies does not end the inquiry, I note that he remedied these tax deficiencies before the Government issued the SOR, in September 2022. He claimed that he has since timely filed and paid his federal taxes for the 2019, 2020, and 2021 tax years. His actions of staying current with his tax obligations after 2018 show reform and rehabilitation. I believe he has acted responsibly under the circumstances and he made a good-faith effort to resolve his tax issues. He made a payment arrangement with the IRS and complied with those arrangements. He has mitigated the financial considerations security concerns.

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 Guidelines H and F in my whole-person analysis.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the drug involvement and substance misuse and financial considerations 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.c:	For Applicant
Paragraph 2, Guideline F:	FOR APPLICANT
Subparagraphs 2.a-2.c:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Benjamin R. Dorsey
Administrative Judge