



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



In the matter of:)	
)	
)	ISCR Case No. 22-01468
)	
Applicant for Security Clearance)	

Appearances

For Government: Mark D. Lawton, Esq., Department Counsel
For Applicant: *Pro se*

05/02/2023

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

On September 1, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. The DOD acted 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) implemented by the DOD on June 8, 2017.

Applicant answered the SOR on September 1, 2022. (This date may be incorrect, but it is listed as such in his SOR answer.) He requested an in-person hearing. The case

was assigned to me on December 1, 2022. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 13, 2022, and the hearing was held as scheduled on January 26, 2023. The Government offered exhibits (GE) 1 through 3, which were admitted into evidence without objection. The Government's exhibit list and pre-hearing discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified and offered exhibits (AE) A-D, which were admitted without objection. On April 6, 2023, Applicant requested that I reopen the record to allow him to submit an additional document (AE E). Without objection from Department counsel, I reopened the record and admitted into evidence AE E. DOHA received the hearing transcript (Tr.) on February 3, 2023.

Findings of Fact

Applicant admitted all the SOR allegations. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 36 years old. He has worked for a defense contractor since May 2018. He has taken some college courses. He is married and has two children, ages five and one. He has held a security clearance since 2019. (Tr. 5-6, 21, 26; GE1)

Under Guideline H, the SOR alleged Applicant used marijuana from October 2010 to June 2021 (SOR ¶ 1.a); that he used and purchased marijuana from about March 2019 to about 2021, while having access to classified information (SOR ¶ 1.b); and that he purchased marijuana from January 2011 to December 2020 (SOR ¶ 1.c).

Under Guideline E, the SOR alleged that Applicant deliberately gave false information on his June 2018 security clearance application (SCA) when he failed to disclose his illegal drug use and purchases as stated in SOR ¶¶1.a-1.c above. (SOR ¶ 2.a)

Applicant admitted all of his illegal drug use and purchases, and his deliberate false answer given on his 2018 SCA. He began using marijuana in 2010 and starting purchasing it in 2011. He used marijuana on a daily basis from 2011 through June 2021. He purchased marijuana from 2011 through December 2020. He claimed that his use and purchase of marijuana was because he suffered from anxiety and using marijuana helped him with it. He admitted that he was never diagnosed by a medical professional before March 2021 with anxiety. At that time, his primary care doctor prescribed him the drug Escitalopram, which is an anxiety medication, but he did not know if he was formally diagnosed with anxiety. He originally took the medication once a day, but now takes it on an as-needed basis. He has never seen a psychologist or a psychiatrist about a possible anxiety disorder. He claims he has not used marijuana since June 2021. (Tr. 20, 22-23, 27, 29-31; GE 3; AE D; SOR answer)

Applicant filled out an SCA in June 2018. In Section 23 of the SCA, he was asked if, within the last seven years, he had used any illegal drugs or controlled substances. He

answered “no.” That answer was false because Applicant was using marijuana on a daily basis before he completed the SCA and at the time he filled out the SCA. He admitted his answer was false. He answered falsely to conceal his past use of marijuana. He was aware his employer had a drug-free work policy, and he signed an agreement to adhere to that policy. He was also aware that using marijuana violated federal and state law. He also understood that he was granted a security clearance in 2019 based upon his false answer to Section 23 of his 2018 SCA. He continued to use marijuana after being granted a security clearance in 2019 through June 2021. (Tr. 20, 22-27; GE 2)

Applicant admitted that from May 2021 through June 2021, when he claims to have stopped using marijuana, he had access to classified information. He claimed he did not purchase marijuana during this same time frame. As of the date of his background interview in July 2021, he had not disclosed his marijuana use to his employer. (Tr. 32-33; GE 3, p.6)

Applicant completed and submitted a second SCA in June 2021. He admitted using marijuana in this SCA beginning in 2010, with his most recent use in June 2021. He also admitted using marijuana while possessing a security clearance. He admitted purchasing marijuana about once a week from 2011 to December 2020. He also stated that he was now taking medication to prevent further use of marijuana. During his testimony, he explained that the reason he decided to fully disclose his previous marijuana use and purchases at that time was because he just had his second child, he now had prescription medication to aid his anxiety, and he felt it was the right thing to do now that he actually had access to classified information. (Tr. 33-34; GE 1)

Applicant completed a 30-day inpatient drug treatment program beginning in February 2023 and ending in March 2023. He followed that with a “stepped down” 30-day program from which he was discharged on March 31, 2023. All this treatment post-dated his hearing in January 2023. The letter from the treatment program does not provide a diagnosis, prognosis, or a treatment plan for Applicant. He participated in family counseling where apparently his drug use was discussed. No further information was provided and that counseling ceased in May 2021. His wife does not use marijuana, nor do family members or friends with whom he associates. (Tr. 34-36; AE E)

Applicant provided letters of support from two work supervisors and a personal friend. Both of his work supervisors expressed the opinion that he was a respected member of the team and presented no security issues. One of the supervisors stated that “to my knowledge, he doesn’t abuse alcohol or drugs.” Applicant admitted that he did not tell either supervisor about his past drug use for fear that knowing that information might impact their professional opinion of him. His personal friend wrote that he was aware of Applicant’s prior drug use, but nonetheless believes that he does not pose a security risk. (Tr. 39; AE A-C)

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 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(a), the entire process is a careful weighing 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. Under Directive ¶ E3.1.15, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 Abuse

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable in this case include:

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

Applicant's use of marijuana, between 2010 and June 2021 is supported by his admissions and other evidence. His purchase of marijuana, between 2011 and December 2020 is supported by his admissions and other evidence. He used marijuana while having access to classified information from May 2021 to June 2021. There is insufficient evidence to support that he purchased marijuana during the time frame that he had access to classified information. I find all the above disqualifying conditions apply, except to the language about his purchase of marijuana while having access to classified information.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

- (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, and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant used marijuana on a daily basis between 2010 and June 2021. Given his pattern of use, his claimed abstinence beginning in 2021 is not sufficient to overcome his prolonged marijuana use. Although he asserts that he will not use marijuana now that he has prescription medication for his anxiety, he first saw the physician who prescribed his anxiety medication in March 2021. He continued to use marijuana after that date. His claimed recent abstinence is insufficient to convince me that recurrence is unlikely. The frequency and recency of his past use, and his uses while holding a security clearance and, more specifically, after having access to classified information, and after he completed a first SCA in 2018 cast doubt upon his current reliability, trustworthiness, and good judgment. Neither AG ¶¶ 26(a) or 26(b) apply. While he recently completed a drug treatment program, he did not present evidence of a favorable prognosis by a qualified medical professional. AG ¶ 26(d) does not apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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.

16. Conditions that could raise a security concern and may be disqualifying include:

(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.

Applicant admitted that he deliberately provided false information on his 2018 SCA. AG ¶ 16(a) applies.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following relevant:

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

(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; and

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's use of marijuana after he was granted a security clearance, gaining access to classified information, and his failure to disclose his continued use of marijuana to his employer cause significant concerns. He was well aware of his responsibilities to disclose his drug use in 2018 when he completed his SCA, but he failed to do so. He did not make a prompt, good-faith effort to correct his previous falsifications. Although he ultimately disclosed his drug use and purchases when completing his 2021 SCA, he was granted a security clearance in 2019 based upon his earlier false statements. Deliberately providing false information on an SCA is not a minor offense. It strikes at the heart of the security clearance investigation process. These actions raise questions about Applicant's reliability, trustworthiness, and judgment. Although Applicant claims he will not use illegal drugs in the future, his credibility is suspect. While he recently received drug treatment, no prognosis was forthcoming and therefore, it is too soon to determine what overall impact that will have. AG ¶¶ 17(a), 17(c), and 17(d) do not fully 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 considered Applicant's anxiety issues, his recent drug treatment, and his letters of support. However, I also considered Applicant's history of marijuana use and his continued use after obtaining a security clearance. He also deliberately falsified his 2018 SCA, which resulted in him receiving a security clearance. He failed to provide sufficient evidence to mitigate the drug involvement and personal conduct security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guidelines H and E.

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
Subparagraphs 1.a 1.c:	Against Applicant
Subparagraph 1.b:	Against Applicant (except the language, "and purchased," which I find in favor of Applicant)
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge