



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



In the matter of:)	
)	
)	ISCR Case No. 22-01900
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: Pro se

June 23, 2023

Decision

Lokey Anderson, Darlene D., Administrative Judge:

Statement of the Case

On June 22, 2021, Applicant submitted a security clearance application (e-QIP). (Item 2.) On February 13, 2023, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse; and Guideline E, Personal Conduct. The action was taken 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) effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) with attachment dated February 20, 2023. (Item 1.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on March 6, 2023. A complete copy of the File of Relevant Material (FORM), containing three Items was received by Applicant on March 8, 2023. He was afforded an

opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted a response to the FORM consisting of four pages, which was admitted into evidence as Applicant's Response to the FORM. DOHA assigned the case to me on June 5, 2023. Items 1 through 3 will hereinafter be referred to as Government Exhibits 1 through 3.

Findings of Fact

Applicant is 41 years old. He is married and has two children. He is currently attending on-line college courses working towards obtaining his Bachelor's degree. He is employed by a defense contractor as an Inspector. He is seeking to obtain a security clearance in connection with his employment.

The SOR alleges that: a. from July 1998 to about August 2021, Applicant used marijuana with varying frequency; b. from about 2000 to August 2021, Applicant purchased marijuana with varying frequency; c. from about April 2018 to about August 2021, Applicant purchased and used marijuana after having been granted access to classified information; d. in about August 2001, Applicant was charged with possession of marijuana. Applicant admitted each of the allegations set forth in the SOR. (Government Exhibit 1, Applicant's Answer to SOR.)

Applicant began using marijuana in high school. Over the years, he has used it for a period, and then stopped for a period, and then started using it again. He has also purchased marijuana both in the edible and smoking forms. Applicant normally uses marijuana at home to relax, as he stated that he does not consume alcohol. Applicant stated that between 2009 and 2018, he completely abstained from using marijuana. He stated that he has stopped using marijuana and last used it in August 2021. (Government Exhibit 3.)

Applicant has worked in the defense industry for about twenty years. He has used marijuana with varying frequency for recreational purposes for over twenty years. He began working for his current employer in September 2008. He has also purchased marijuana many times over the course of these years. In 2001, he was charged with the illegal possession of marijuana. On this occasion Applicant was driving home when he was pulled over by the police for not wearing his seatbelt. Applicant had a marijuana cigarette in his glove box and was issued a citation. He pled guilty to a misdemeanor and was fined \$300. (Government Exhibit 3.)

Applicant first applied for a security clearance in 2009. He was denied a security clearance in September 2009, as his interim Secret clearance was revoked. He believes that he was denied his clearance because he did not turn in the additional information requested as part of the investigation by the due date. He stated that he was afraid that he would be terminated from his job because of his history, but he was not. Applicant re-applied for a security clearance a year later. This time it was granted. For the past eleven years he has had access to classified information. Applicant used

and purchased marijuana from at least April 2018, to August 2021, after having been granted access to classified information. (Government Exhibits 2 and 3.)

Applicant stated that while working for his current employer, and at times using marijuana, he has had access to classified information, and for about the past eleven years there have been no repercussions from this misconduct. He has maintained excellent credit, and is a homeowner, an active member of his church community, and is a soon to be graduate with a bachelor's degree in Computer Science. (Applicant's Response to the FORM.)

Two letters of recommendation were submitted on behalf of the Applicant, one from the Vice President of Human Resources, who is also the Facility Security Officer, and the other from the President of the company. Both individuals acknowledge that Applicant is an excellent and hard-working employee. Collectively, they state that Applicant has worked for the company for fifteen years. From the beginning, he has shown initiative to learn additional job responsibilities and an interest in advancing with the company. He is dependable, punctual, and maintains a heavy caseload. He goes above and beyond to train others in the department, while keeping up with his workload. He started as a machinist and has been promoted to a management position. He has done an outstanding job in his new position, and is well respected by his colleagues. (Attachments to Applicant's Response to the FORM.)

Policies

When evaluating an applicant's suitability for a security clearance, 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 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 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, 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 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 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 three conditions that could raise a security concern and may be disqualifying:

- (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.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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; 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.

None of the mitigating conditions are applicable here. It is noted that Applicant has signed a statement of intent to abstain from marijuana use in the future. His statement is not convincing considering the fact that his last use of marijuana occurred less than two years ago while having access to classified information. Furthermore, Applicant's history reveals that he has used and purchased marijuana off and on from July 1998 to about August 2021, a period of well over 20 years. His recent use and purchase of marijuana from about April 2018 to about August 2021, after being granted access to classified information shows a character defect. He completely disregarded Federal law that prohibits the use of illegal drugs, including marijuana. Given his long work history with defense contractors he knew or should have known that his conduct was illegal and against DoD rules and regulations. His conduct shows immaturity and raises questions about his ability or willingness to comply with laws, rules, and regulations. He has not shown the requisite good judgment, reliability, and trustworthiness necessary to be eligible for access to classified information.

Guideline E- Personal Conduct

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

(d) Credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of:

(3) a pattern of dishonesty or rule violations.

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing.

There are conditions mitigating security concerns under AG ¶ 17. However, none of them are applicable here.

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant claims that he has now stopped using marijuana. However, in the past, he has stopped using marijuana, and then returned to using it again. Based upon his long history of drug use, and the fact he has ignored DoD policy and procedure for over 20 years, there is no strong evidence in the record to show that he will be committed to a drug-free life-style. Also, the fact that he has used marijuana after having been granted access to classified information is egregious. None of the mitigating conditions are applicable here.

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 H, and E in my whole-person analysis. Based upon the facts and analysis set forth above, Applicant has failed to provide sufficient evidence to demonstrate that he meets the qualifications for a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse, 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 J:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d.	Against 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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge