



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 22-01944
)
Applicant for Security Clearance)

Appearances

For Government: A. H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

06/02/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant failed to mitigate the drug involvement security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 7, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement). 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on January 24, 2023, and he elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on February 8, 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 February 14, 2023. He did not respond to the FORM. The case was assigned to me on April 28, 2023. The Government's documents, identified as Items 1 through 3, are admitted in evidence without objection.

Findings of Fact

Applicant admitted all the SOR allegations in his Answer. He is 25 years old. As of his February 2022 security clearance application (SCA), he was not married, and he did not have any children. He graduated from high school in 2016 and earned a bachelor's degree in December 2020. He has worked as an engineer for his employer, a DOD contractor, since December 2021. He has never held a security clearance. (Items 1-3)

Applicant used marijuana with varying frequency from approximately September 2014 to October 2022. (SOR ¶ 1.a) He used it recreationally and in states where recreational marijuana use is legal. He used it one to three times weekly while attending college, and then during weekends in social settings. As of the date of his SCA, he used it "rarely now, on holidays. [sic] major events, or visiting friends." He estimated that he used it approximately 500 times. He stated that his use of marijuana neither impaired his ability to graduate from high school or obtain his bachelor's degree, nor has it hindered him professionally. He obtained it from friends, or he purchased it in states where it is legal, and he used it with friends. He intends to continue using marijuana, citing to both his intention to use it infrequently as well as its medicinal benefits. (SOR ¶ 1.b) (Items 1-3)

Applicant also used hallucinogens, including psilocybin mushrooms and LSD, with varying frequency from approximately October 2014 to December 2021. (SOR ¶ 1.c) He used them recreationally, approximately one or two times yearly for a total of around 10 times, in small group settings, at live music concerts, and in private settings for medicinal purposes. He stated in his SCA that he used them "for positive life experiences, mental health therapy, and general well-being," and he found them to "increase creativity, connectivity, and short-term happiness." He obtained them from friends, or he purchased them. He intends to continue using hallucinogens, citing to his intention to use them in a professional setting as a safe and effective method for encouraging positive mental health, as well as his intention to use them rarely outside of such a setting. (SOR ¶ 1.d) He indicated during his April 2022 background interview that he socializes with individuals who use drugs. (Items 1-3)

Applicant also used stimulants not prescribed to him, including Adderall and Vyvanse, with varying frequency from approximately October 2017 to November 2020. (SOR ¶ 1.e) He stated in his SCA that he used Adderall "rarely," one to three times yearly for a total of seven times, "to increase focus in order to complete school work [sic] faster than I normally would." He indicated during his background interview that he also used Vyvanse four times from 2017 to 2020 for the same purpose. He obtained Adderall from an individual for whom it was prescribed, and he obtained Vyvanse from a fraternity brother. He stated in his SCA and Answer that he had not used Adderall since

graduating from college and he had no intention to use such substances in the future. (Items 1-3)

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

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse as:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant: "(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 "(g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse."

Applicant used marijuana with varying frequency between 2014 and 2022. He used hallucinogens with varying frequency between 2014 and 2021. He also used stimulants, not prescribed to him, with varying frequency between 2017 and 2020. He stated in his SCA, during his background interview, and in his Answer that he intends to continue using marijuana and hallucinogens. AG ¶¶ 25(a), 25(c), and 25(g) are established.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

(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;

(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

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended.

Applicant last used hallucinogens less than two years ago, and he last used marijuana as recently as October 2022. His use is recent enough that I cannot find that it is unlikely to recur. He indicated during his background interview that he continues to associate with individuals who use drugs. He did not provide a signed statement of intent to abstain from all drug involvement and substance misuse, and he intends to continue to use marijuana and hallucinogens. He used stimulants that were not prescribed to him. I find that none of the above mitigating conditions are established.

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 in this whole-person analysis. Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant failed to mitigate the drug involvement 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge