



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



In the matter of:)	
)	
)	ISCR Case No. 22-02132
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: *Pro se*

July 27, 2023

Decision

CEFOLA, Richard A., Administrative Judge:

On April 12, 2022, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On November 18, 2022, the Department of Defense Counterintelligence and Security Agency (DCIS CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective June 8, 2017.

Applicant answered the SOR in writing on February 8, 2023, and requested a hearing before an administrative judge. Defense Office of Hearings and Appeals (DOHA) received the request on March 15, 2023. I received the case assignment on March 15, 2023. DOHA issued a Notice of Hearing on March 22, 2023, and I convened the hearing as scheduled on April 12, 2023. The Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified and submitted Exhibits (AppXs) A through X, which were received without objection. DOHA received the

transcript of the hearing (TR) on April 21, 2023. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied. However, with the passage of time, and with continued abstinence from the use of Federally recognized illegal substances, Applicant may seek a security clearance in the future.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 28 years old, unmarried, and has no children. (GX 1 at pages 5, and 22~23.) He has a PhD in Philosophy in Counseling Psychology. (AppX Y at page 1.) He has worked for a defense contractor since March of 2022. (TR at page 19 line 20 to page 21 line 21.)

Guideline H – Drug Involvement

1.a. and 1.g. Applicant admits he used marijuana between 75~100 times during the time period December of 2013 to May of 2022, a period of about nine years. He heaviest usage was in 2017, and Applicant used marijuana at least once after executing his e-QIP in April of 2022. (TR at page 22 line 4 to page 26 line 25, and at page 36 line 19 to page 38 line 4.)

1.b. Applicant admits that he purchased marijuana from about September 2016 to about November of 2021, a period of about five years. (TR at page 29 line 1 to page 28 line 11, and at page 40 line 24 to page 41 line 17.)

1.c. Applicant admits that he used and purchased MDMA/Ecstasy three to four times during the time period March 2016 to October 2018, a period of about two and a half years. (TR at page 28 line 12 to page 31 line 2.)

1.d. Applicant admits that he used and purchased LSD three times during the time period April 2016 to August 2017, a period of about 16 months. (TR at page 31 line 3 to page 32 line 10.)

1.e. Applicant admits that he used and purchased cocaine three times during the time period February 2017 to April 2018, a period of about 14 months. (TR at page 32 lines 11~19.)

1.f. Applicant admits that he used and purchased hallucinogenic mushrooms once in about August of 2017, while visiting Amsterdam in the Netherlands. (TR at page 34 line 24 to page 35 line 14.)

Applicant eschews any future illegal drug usage, and has signed two letters of intent in 2023 in that regard. (AppXs S and T.) He has also submitted negative drug test results from March of 2023. (AppX V.) Applicant's testimony was forthright and his integrity was apparent.

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 useful 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 Executive Order 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 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 seven conditions that could raise a security concern and may be disqualifying. Two conditions are established:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Appellant used a plethora of illegal substances over a period of nine years. Therefore, AG ¶ 25 (a) and (c) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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.

Applicant's illegal substance misuse ceased less than a year prior to his hearing. Although he now signed letters of intent eschewing future usage, it is too soon to say nine years of drug involvement is not of present security significance. Drug Involvement and Substance Misuse is found against Applicant.

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 an 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.

AG ¶ 2(b) requires each case must be judged on its own merits. Under AG ¶ 2(c), the ultimate determination of whether to grant or continue national security eligibility 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. Applicant is clearly respected both at his workplace and in his community. (AppXs D~P.) However, overall, the record evidence leaves me with questions and doubts as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his drug involvement and substance abuse.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a.~1.g:	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.

Richard A. Cefola
Administrative Judge