



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



In the matter of:)	
)	
)	ISCR Case No. 23-00074
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
For Applicant: *Pro se*

08/02/2023

Decision

PRICE, Eric C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse. Eligibility for access to classified information is denied.

Statement of the Case

On February 14, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (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 on June 8, 2017.

Applicant responded to the SOR, and requested a decision based on the written record in lieu of a hearing on March 15, 2023. Department Counsel submitted the Government’s undated file of relevant material (FORM), including documents identified as Items 1 through 5. Applicant received the FORM on April 14, 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 responded to the FORM on May 12, 2023, and that is marked as Applicant Exhibit (AE) A. There were no objections by Applicant or Department Counsel, and all exhibits are admitted into evidence. The case was assigned to me on June 1, 2023.

Findings of Fact

After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Under Guideline H, the SOR alleges that Applicant purchased and used marijuana from about January 2002 until about January 2022, and that he purchased and used cocaine from about January 2008 until about April 2022. In response to the SOR, Applicant admitted all allegations. (Items 1, 2, 3)

Applicant is 39 years old. He received an associate degree in 2017 and a bachelor's degree in 2019. He married in November 2019 and his wife was pregnant with their first child when he responded to the FORM. He has been employed by a federal contractor since June 2022 as an IT Specialist. He has worked as a restaurant server since 2011. He has no military experience and has never held a security clearance. (Items 4, 5; AE A)

Applicant completed a security clearance application (SCA) in July 2022. He disclosed that he had purchased and used marijuana from January 2002 to January 2022. He first used marijuana in high school, characterized his use as casual, social and recreational, noted that marijuana was a regular part of his life in his early 20's, and that his frequency of use dropped considerably as he aged. He could not provide an accurate number of times that he had used marijuana. (Items 4, 5; AE A)

Applicant also reported that he had purchased and used cocaine from January 2008 to April 2022. He characterized his use as casual and social, noted that he usually used cocaine while drinking with friends and that his frequency of use varied from periods of regular use (weekly or bi-weekly) to periods where he would not use cocaine for years at a time. (Items 4, 5; AE A)

Appellant stated that he did not intend to purchase or use marijuana, cocaine or other controlled substances in the future, He identified three reasons why he no longer intended to use marijuana or cocaine: (1) he and his wife were trying to start a family which provided a source of motivation to clean up his life and facilitate his family's growth and prosperity; (2) he was inspired by a close friend, a high functioning alcoholic, who had completed rehabilitation, cleaned up his act to help raise his daughter and was now the happiest and healthiest Applicant had ever seen him, and (3) he was also motivated to stop using drugs and drinking by the recent death of a close friend who died from an overdose. He also stated that he had not misused prescription drugs in the previous seven

years, had not been ordered to or advised to seek drug counselling, and that he had not sought counseling or treatment for his drug use. (Items 4, 5; AE A)

Applicant was interviewed by a government investigator in August 2022 and authenticated the accuracy of the summary of that interview. His interview responses were consistent with his SCA disclosures and included the following additional information. (Items 4, 5)

He purchased marijuana from friends and used marijuana with friends and while alone. Marijuana made him feel high but after a while he started feeling useless and was not productive. He purchased and used cocaine for about 14 years. He purchased cocaine from within his social circle, never from people that he did not know. He used cocaine in homes and bars, often while drinking alcohol. His marijuana use was a big part of his life and widely known, and most of his friends were aware that he used cocaine. He has never grown, produced, or sold marijuana or cocaine. He has never had a positive drug test or been arrested. He reiterated and emphasized his motivations for and intent to abstain from future use of marijuana, cocaine, and other controlled substances. (Items 4, 5)

Applicant said that at some point in his mid-twenties, he felt dependent on cocaine but overcame it. He reduced his use and took up golf as a hobby. He reported that his cocaine use had strained his marriage when his spouse asked him to stop, he was unable to do so and then lied about it. He weaned himself from cocaine when he got married and tried to have a baby. After reducing his use, he lost his craving for cocaine. He last used cocaine after his friend died. (Item 5)

Applicant did not provide documents or evidence in response to the SOR, but did provide an email, signed statement, photo, and letter of intent to abstain from the illegal use of controlled substances in response to the FORM. (Item 3; AE A)

In his response to the FORM, Applicant reported that his wife was 15-weeks pregnant and included a photo of a recent ultrasound. He said that he had been drug free for over a year and reduced his alcohol consumption by “roughly 99.9 percent” to an occasional beer at dinner with his father-in-law. His “desire to indulge in drug use or consume alcohol is completely gone” and he is motivated to permanently maintain these positive changes in his life. He is particularly motivated by his desire and responsibility to provide a thriving home environment for his child. He reported that he no longer goes to bars, clubs or house parties where drugs and alcohol are commonly used. He expressed confidence in his efforts to quit using drugs permanently noting that he significantly decreased his marijuana and cocaine use in May 2021, when they started in-vitro fertilization treatment, and that he reduced his drug use until he stopped using marijuana in January 2022 and cocaine in April 2022. He reported that he no longer associates with people who use drugs, avoids environments where drugs are used, and submitted a notarized letter of intent to abstain from the illegal use of controlled substances dated May 12, 2023. (AE A)

Policies

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 as to potential, rather than actual, risk of compromise of classified information.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable.

"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." Directive ¶ E3.1.15. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). "[S]ecurity clearance determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988); see AG ¶ 2(b).

The protection of the national security is the paramount consideration. Under AG ¶ 2(b), any doubt "will be resolved in favor of the national security." 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.

Applicant's admissions and the evidence in the FORM establish two potentially disqualifying conditions under this guideline: AG ¶ 25(a) ("any substance misuse") and AG ¶ 25(c) ("illegal possession of a controlled substance, including . . . purchase"). The following mitigating conditions listed in AG ¶ 26 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; 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.

AG ¶ 26(a) is not established. Applicant's substance misuse was recent, frequent, occurred over a period of 20 years, and casts doubt on his current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) is not fully established. Applicant has acknowledged his drug involvement, stated that he has abstained from illegally using controlled substances since April 2022, disassociated from persons who use drugs, avoids environments where drugs are used, and submitted a notarized letter of intent to abstain from the illegal use of controlled substances in the future. However, the mitigating impact of his abstinence and other claimed actions are limited by his 20-year drug usage history including that he most recently used cocaine after the death of a friend about three months before submitting his SCA. See ISCR Case No. 11-00193 (App. Bd. Jan. 24, 2013). Additionally, he has provided no evidence corroborating his claims of abstinence, disassociation from persons who use drugs, or avoidance of environments where drugs are used. Because he requested a determination on the record without a hearing, I had no opportunity to evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

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 have incorporated my comments under Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d).

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by his drug involvement.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With a longer period of abstinence from substance misuse, he may be able to demonstrate persuasive evidence of his security clearance worthiness.

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.d:	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 security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge