



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:)
)
) ISCR Case No. 22-02204
)
)
Applicant for Security Clearance)

Appearances

For Government: Tara Karoian, Department Counsel
For Applicant: *Pro se*

August 28, 2023

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On January 11, 2022, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On February 14, 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 Abuse. 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on March 10, 2023, and requested a hearing before an administrative judge. The case was assigned to me on May 15, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on May 24, 2023, and the hearing was convened as scheduled on July 19, 2023. At the hearing, the Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant offered four exhibits, referred to as Applicant's Exhibits

A through D, which were admitted without objection. She also testified on her own behalf. DOHA received the transcript of the hearing (Tr.) on July 28, 2023.

Findings of Fact

Applicant is 35 years old. She has a Bachelor's degree in Ceramic Art. She is employed by a defense contractor as a Research Project Manager. She is seeking to obtain a security clearance in connection with her employment.

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

Applicant has an extensive history of illegal drug use beginning in high school, involving marijuana, hallucinogenic mushrooms (psilocybin), ecstasy, and cocaine. Applicant has worked in the defense industry since 2010. She was hired by her current employer in November 2017, as an Engineer, Level 1, and has moved up quickly to her current position. She is applying for a security clearance for the first time.

Applicant began using marijuana in high school in October 2003 with varying frequency. Her use of marijuana continued through college and afterwards until about 2014. For the most part, from 2014 to 2017, Applicant stopped using all illegal drugs, including marijuana. From 2017 to January 2021, she made new friends and started using marijuana again, about once a month. She explained that she would occasionally hit someone's vape pen during a social event or if it were offered to her. (Tr. pp. 41-42.) She ate edibles twice, but found them to be too strong. She enjoyed marijuana as it helped her relax and helped her sleep. (Tr. p. 23.) Applicant has not used marijuana since about January 2021.

Applicant began using ecstasy in May 2004 while in high school. That summer she used it twice a month with her friends until about mid-August 2004. She did use ecstasy again until 2008, and continued to use it with varying frequency until about October 2020. (Tr. p. 29.)

Applicant used cocaine one time in high school in May 2004. She did not use it again until about 2018/2019. She stated that she used it about 15 times between 2018 and 2020/2021. (Tr. p. 23.) She did not particularly like it, and so she did not use it again until recently. She stated that she used it only on the weekends when she knew it would not impact her job. (Tr. p. 25.) She has a friend that she would use cocaine with, and when her friend moved, she made a conscious decision to stop using cocaine. (Tr. p. 26.) Applicant last used cocaine in January 2021.

Applicant has used psilocybin mushrooms a total of about eight times, three times from May 2004 to 2010; and five times between 2015 to May 2022. (Tr. p. 33.) She has also used LSD on three occasions, twice in college, and once in May 2020. (Tr. p. 33-34.) She does not want to use mushrooms again because they take her out of control. Applicant stated that she normally did not have to pay for her illegal drugs. Often her friends would provide them for her. (Tr. pp. 31-32.)

During her interview with OPM, Applicant indicated that she could potentially use mushrooms in the future. She stated that her opinions on the matter have changed. She stated that her two years of sobriety have made her feel the most balanced and clear that she has felt for some time. She enjoys this lifestyle. Her priorities have changed. She stated that she is now more focused on her career and building a future for herself. (Government Exhibit 2.)

From about 2014 to 2017 Applicant tapered off her marijuana use and was not using illegal drugs of any sort. (Tr. p. 34.) She explained that when she moved from State A to State B at the end of 2017, she was alone and had no friends. She made new friends and slowly accumulated people close to her who used illegal drugs.

Applicant stated that she was never addicted to any hard drugs. She is now trying to live a cleaner lifestyle. She stated that she is in a place of sobriety from illegal substances, accomplishing this on her own, and has even stopped smoking cigarettes. She has friends who casually participate in these substances, but their use does not impact her decisions. Her motivation for curtailing her illegal drug use was not prompted by her desire for a security clearance. She stated that she did not like the recovery process which took several days after using drugs, and she did not feel good during that time. (Tr. p. 38.) She also currently has a boyfriend who she has been dating since May 2022. He has a Top Secret clearance. They spend lots of time together and they do not do drugs. (Tr. p. 43.)

A letter from Applicant's best friend, who has known her for at least ten years, attests to her good character, hard-working nature, and commitment to values. She recognizes Applicant as an honest, intelligent, reliable, trustworthy individual. She knows that Applicant has partaken in illegal substances, but no longer feels that these experiences serve her and her growth, and has made the commitment to a drug-free lifestyle. (Applicant's Exhibit D.)

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.

Applicant's history shows a lifestyle of illegal drug use including marijuana, hallucinogenic mushrooms (psilocybin), ecstasy, and cocaine from October 2003 through January 2021. She used illegal drugs while in 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.

Applicant has used a variety of illegal drugs from about 2004 to about 2021. These drugs include marijuana, hallucinogenic mushrooms, ecstasy, cocaine and LSD. Some are very dangerous mind-altering drugs. Applicant used marijuana the most frequently. She has used illegal drugs while working in the defense industry before being hired by her current employer. She continued to use marijuana after being hired by her current employer in 2017, a defense contractor, and while holding a sensitive position in total disregard of DoD policies and Federal law. Applicant is expected to show a high level of maturity, trustworthiness and good judgment. In this case, Applicant has fallen short of meeting these eligibility requirements. In fact, given Applicant's extensive illegal drug involvement, she does not meet the requirements for eligibility to access classified information.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations and policies that apply to them. Very concerning is the fact that the Applicant is a 35-year-old college graduate who made the conscious choice to use a variety of illegal drugs over a period of many years while working in the defense industry. She has ignored Federal law. Under the particular facts of this case, Applicant does not show the requisite character of someone who has the maturity, integrity, good judgment, and reliability necessary to access classified information. At this time, Applicant does not meet the qualifications for access to classified information.

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 Guideline H in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant has not demonstrated the level

of maturity needed for access to classified information. This is not an individual in whom the Government can be confident to know that she will always follow rules and regulations and do the right thing, even when no one is looking. Applicant is not eligible for access to classified information, and does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many 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 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 H:	AGAINST APPLICANT
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Subparagraphs 1.a through 1.d.	Against Applicant
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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