



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



In the matter of:)	
)	
-----)	ISCR Case No. 22-02045
)	
Applicant for Security Clearance)	

Appearances

For Government:
Aubrey De Angelis, Esquire, Department Counsel

For Applicant:
Pro se

October 3, 2023

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted her initial Electronic Questionnaires for Investigations Processing (e-QIP) on April 29, 2022. (Government Exhibit 1.) On February 10, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCAS CAS) (formerly Department of Defense Consolidated Adjudications Facility) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H (Drug Involvement and Substance Misuse). 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 within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) on February 28, 2023, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 22, 2023. The case was assigned to me on April 4, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 5, 2023. I convened the hearing as scheduled on May 11, 2023. The Government offered Government Exhibits 1 and 2, which were admitted without objection. Applicant testified on her own behalf and submitted Applicant Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on May 22, 2023. Applicant requested that the record remain open for submission of additional documentation. She submitted Applicant Exhibit B in a timely fashion, and it is admitted without objection. The record closed on June 16, 2023.

Findings of Fact

Applicant is a 37-year-old aircraft painter with a defense contractor (Company A). She has worked for Company A since March 2022. She is single and has a bachelor of fine arts degree. This is her first application for a security clearance and the first time she has worked for a defense contractor. (Government Exhibit 1 at Sections 12, 13A, 17, and 25; Tr. 15-17.)

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because she has used illegal drugs. She admitted all the allegations under this paragraph with explanations.

1.a and 1.c. Applicant used marijuana in edible form between about 2008 and June 2022. She would use it as a sleeping aid and to help with anxiety. From 2008 through 2020 she used it about ten times. Her use increased during the Covid-19 pandemic. She would purchase it from dispensaries between 2020 and 2021. Such purchases are legal in the state where Applicant resides (State One). She stopped using marijuana in January 2022, before her employment began with Company A. Soon after her employment began, she came down with Covid-19. She admits that she used marijuana edibles twice in June 2022 to attempt to sleep and recover from Covid. She understands that her conduct was foolish and has repeatedly stated that she has no intent to use marijuana in the future. (Answer; Government Exhibit 1 at Section 23; Government Exhibit 2; Tr. 14-26.)

1.c. Applicant used hallucinogenic mushrooms on an infrequent basis while hiking with friends between 2020 and August 2021, before she began working for Company A. She no longer uses mushrooms on hikes and does not intend to use them in the future. (Tr. 28-30.)

1.d. Applicant states that she is a rule follower, understands the proscription against marijuana and mushroom use while holding a security clearance, and has evinced a credible intent not to use any illegal drugs in the future. She submitted a signed statement of intent stating that the future use of illegal drugs is grounds for revocation of her security clearance. (Applicant Exhibit A; Tr. 26-28.)

Mitigation

Applicant is a successful performer as shown in her initial year-end review. Her supervisor states, “[Applicant] has good values and a high work ethic, and she understands and adheres to company standards, conduct policies and procedures. [Applicant] demonstrates a great can-do attitude and drive to be a key player and bring more value to the . . . team.” (Applicant Exhibit B.)

Policies

When evaluating an applicant’s national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied 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. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, “Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth in 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (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.

Applicant used marijuana in edible form from 2010 until June 2022. She purchased marijuana from state-approved stores from 2020 through 2022. She also used hallucinogenic mushrooms about five times from 2020 through 2021. Both of the stated disqualifying conditions apply.

The following mitigating conditions under AG ¶ 26 have also been considered:

(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.

In my analysis, I have taken administrative notice of the Security Executive Agent (SecEA) "Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position," dated December 21, 2021. (Guidance.) In her Guidance, the SecEA noted the increased number of states that have legalized or decriminalized the use of marijuana (including State One) and sought to "provide clarifying guidance." She reaffirmed SecEA's 2014 memorandum regarding the importance of compliance with Federal law on the illegality of the use of marijuana by holders of security clearances. She provided further clarification of Federal marijuana policy, writing that this policy remains relevant to security clearance adjudications "but [is] not determinative." She noted that the adjudicative guidelines provided various opportunities for a clearance applicant to mitigate security concerns raised by his or her past use of marijuana.

Applicant used marijuana in edible form over several years as a sleep aid and to control anxiety. She only purchased and used it in State One, where such purchase and use are legal under state law. She used hallucinogenic mushrooms about five times. This conduct was in the past and she stated convincingly that it will not be repeated. She thoroughly understands the consequences of any future drug use or exposure. Viewing her marijuana and mushroom use in the context of the whole person, Applicant has

mitigated the security significance of her past drug involvement. Paragraph 1 is found for 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 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 national security 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 pertinent facts and circumstances surrounding this case. Applicant has mitigated her drug use. Her forthright disclosures on her e-QIP, during an interview with an OPM investigator, in DOHA interrogatories, and at her hearing minimized or eliminated the potential for pressure, coercion, or duress, and demonstrated her trustworthiness. Continuation or recurrence of substance misuse is unlikely. Overall, the record evidence does not create any doubt as to Applicant's present suitability for national security eligibility and a security clearance.

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:

FOR APPLICANT

Subparagraphs 1.a through 1.d:

For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS
Administrative Judge