



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



In the matter of:)
)
) ISCR Case No. 22-00077
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Esq., Department Counsel,
For Applicant: Frederic Nicola, Esq.

09/26/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On February 24, 2022, the Department of Defense (DOD) 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 (Exec. Or.) 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 DOD on June 8, 2017.

Applicant responded to the SOR on May 19, 2022 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on March 9, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on March 17, 2023, scheduling the matter for a video teleconference hearing on April 20, 2023. I convened the hearing as scheduled.

At the hearing, I admitted in evidence, without objection, Government Exhibits (GE) 1 through 3 and Applicant Exhibits (AE) A and B. Applicant testified and did not call any witnesses. At Applicant's request, I kept the record open until May 5, 2023, for her to provide additional documentation. She timely submitted documentation, which I marked as AE C and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on May 1, 2023.

Findings of Fact

Applicant admitted SOR ¶ 1.a and denied SOR ¶ 1.b. She is 38 years old, married, and she does not have any children. She graduated from high school in 2003. She has also received several technical certifications. She has owned her home since July 2019. As of the date of the hearing and since November 2022, she has worked as a business analyst for her employer, a DOD contractor. She has never held a security clearance. (Answer; Tr. at 5, 12-13, 14-15, 29, 33, 41-44, 53; GE 1-2)

Applicant lived in state A for 25 years until July 2019, when she moved to state B, where she currently resides. She has been taking medication prescribed by her neurologist for epilepsy since 2013. In 2015, she realized she was experiencing depression symptoms and she sought the care of a psychiatrist, who diagnosed her with depression. Under her psychiatrist's care, she took the maximum dose of a prescribed medication to manage her depression symptoms. Although she felt "somewhat better," her symptoms persisted. She consulted with her psychiatrist, who then wanted to switch her to a different medication. After researching online its possible detrimental side effects on her health and the potential that it would make her depression worse, she elected not to switch her medication. She stated, "that was the only treatment option that my psychiatrist offered me," and she did not discuss with her psychiatrist the possibility of a different treatment option or seek a second opinion. (Tr. at 13-14, 17-29, 30-32, 34, 46, 49, 52-53; GE 1-3; AE B, C)

Applicant researched the therapeutic benefits about the use of psilocybin mushrooms, a Schedule I substance under the Controlled Substances Act, to treat her persistent depression, and she decided to try it. She did not consult with her doctors about whether it would have an adverse effect on her prescribed medications. She purchased psilocybin mushrooms from an individual who grew it, whom she met through an acquaintance. She orally consumed four grams on five occasions between August 2018 and April 2019, at her home, to self-treat her depression. (SOR ¶ 1.a) This was the first time she used illegal drugs, and she has not used any illegal drugs since then. She did not inform her psychiatrist that she was self-medicating. She found that her use of psilocybin mushrooms significantly alleviated her symptoms, and she stopped taking them because she felt better. During this period, she continued to take her prescribed medications. When she moved to state B, her new psychiatrist reduced the amount of her prescribed medication, and she has found this dosage effective. Her spouse is aware of her use of psilocybin mushrooms. (Tr. at 13-14, 17-29, 30-32, 34-36, 39, 46-51, 53-54, 56; GE 1-3; AE B, C)

Applicant disclosed information about her use of psilocybin mushrooms on her November 2020 security clearance application (SCA) and during her March 2021 background interview. She stated on her SCA and indicated during her background interview that she intended to continue to use psilocybin mushrooms in the future if her symptoms returned. (SOR ¶ 1.b) At the hearing, she clarified that she meant she would consider using it under the care of her psychiatrist if it was legalized under federal and state law. (Tr. at 13-14, 17-32, 36-40, 55-57; GE 1-3; AE B, C)

Applicant is committed to seeking professional help with treating her depression in the future. Unlike her psychiatrist in state A, her psychiatrist in state B discussed with her other treatment options that they could explore should her symptoms return or worsen. She sees her psychiatrist and neurologist once every six months. She also has hobbies, to include yoga, gardening, and hiking, to help her cope with her depression. She stated that she does not socialize with anyone involved with drugs. If she were to find herself in a situation where illegal drugs are being used, she would leave. She intends to abide by her employer's policy against using illegal drugs. In April 2023, she signed a statement of intent to refrain from using any illegal substances, or abusing any legal substance, and that any violation would result in her losing her security clearance. (Tr. at 27-31, 39-41, 44-46, 54-55; AE A)

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(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."

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 Exec. Or. 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* Exec. Or. 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 for drug involvement and substance misuse is set out 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.

The guideline notes the following applicable conditions that could raise security concerns under AG ¶ 25:

- (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 psilocybin mushrooms from August 2018 to April 2019 to self-medicate her depression symptoms. She previously stated that she intended to continue to use psilocybin mushrooms in the future if her symptoms returned. AG ¶¶ 25(a), 25(c), and 25(g) are established.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided under AG ¶ 26. The following 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; 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 use of psilocybin mushrooms occurred from August 2018 to April 2019, more than four years ago. She disclosed information about her illegal drug use on her SCA and during her background interview, and she clarified at hearing that she would only consider using it under the care of her psychiatrist if it was legalized under federal and state law. She testified that she did not socialize with individuals who use illegal drugs, and she signed a statement of intent to abstain from all future drug involvement and substance misuse. The record evidence resolves doubts about Applicant's reliability, trustworthiness, and judgment. I found Applicant to be candid and credible at the hearing, and she has taken responsibility for her past drug use. I find that AG ¶¶ 26(a), 26(b)(1), and 26(b)(3) 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 my whole-person analysis. I had the opportunity to observe Applicant's demeanor during her hearing and found that she was credible and candid. Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	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 Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge