



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



In the matter of:)	
)	
)	ISCR Case No. 22-01530
)	
Applicant for Security Clearance)	

Appearances

For Government: Aubrey M. De Angelis, Esq., Department Counsel
 For Applicant: *Pro se*
 09/27/2023

Decision

BENSON, Pamela C., Administrative Judge:

Applicant’s long history of using marijuana and lack of corroborating evidence of his recent abstinence of illegal drug use support a finding that the drug involvement and substance misuse security concerns are not mitigated. National security eligibility is denied.

Statement of the Case

On August 19, 2022, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The DCSA CAS took action 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 implemented by the DOD on June 8, 2017.

On March 8, 2023, Applicant responded to the SOR (Answer). He admitted the single SOR allegation under Guideline H. (SOR ¶ 1.a) He requested a determination on the written record. (Item 3)

Department Counsel submitted a file of relevant material (FORM), which Applicant received on April 3, 2023. Department Counsel's FORM included attachments labeled Items 1 through 5. DOHA provided notice to Applicant that he had 30 days from the receipt of the FORM to provide objections, rebuttal, extenuation, mitigation, or explanation, as appropriate. The notice added that Applicant's lack of response may be considered as a waiver of any objections, and that the Administrative Judge would make a determination based solely on information included in the Government's FORM.

Applicant's response to the FORM was due on May 3, 2023. He did not submit a response to the FORM within 30 days of receipt, and he did not raise objections to the authenticity or admissibility of Items 1 through 5. The case was assigned to me on July 28, 2023. I admitted Items 1 through 5 into evidence without objection.

Findings of Fact

Applicant is 48 years old. He has never been married but since May 2012, he has resided with his girlfriend. He does not have any children. He earned an associate degree in 1995. On February 25, 2022, while unemployed, he submitted a security clearance application (SCA) in support of his prospective employment with a government contractor. He was eventually hired by the government contractor in a quality control position. (Items 1, 4 and 5)

Drug Involvement and Substance Misuse

The SOR alleges under Guideline H that Applicant used marijuana with varying frequency from April 1992 to about January 2022. (SOR ¶ 1.a.) His use of marijuana continued for 30 years until shortly before he completed his SCA. (Items 1, 3 and 4)

Applicant disclosed on the February 2022 SCA that he had used marijuana between April 1992 and January 2022, "use as needed for [back] pain." When responding to the SCA's inquiry as to his intentions for future use of an illegal drug, he listed that he intended to use marijuana, as needed for his back pain, and while "not working." (Item 4)

Applicant was interviewed on April 5, 2022 by an authorized DOD investigator. Applicant admitted that he had used psilocybin mushrooms and LSD on two occasions between September 1990 and September 2015, which is not alleged in the SOR. Applicant also admitted he used marijuana at home. He obtained the marijuana from his friend. He last used marijuana in January 2022, and his motivation for using marijuana was to relieve his back pain. He acknowledged he did not have a medical prescription to use marijuana. He has never had any involvement with law enforcement for his illegal drug use, and he has never received treatment, or been diagnosed with a substance use disorder. He told the investigator that he is "unlikely" to use marijuana again since he is no longer motivated or interested in using it. (Item 5)

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(c), 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 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 out in AG ¶ 24:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse; and

AG ¶ 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant's admission and evidence in the FORM establish he used and possessed marijuana from about April 1992 to January 2022, as alleged. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

AG ¶ 26(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

AG ¶ 26(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 a 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 used marijuana for approximately 30 years and to at least January 2022, when he was 46 years old. Although he was candid about his intended future use of marijuana when asked on the SCA, I find his change of heart that he was “unlikely” to use marijuana again during his background interview two months later to be far-fetched and self-serving. For Applicant to claim that he is no longer interested or motivated to use marijuana is not convincing. 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). Drug involvement and substance misuse security concerns are not mitigated.

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 and the factors in AG ¶ 2(d) in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances

can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant's illegal use of marijuana occurred for a long period of time and a month before he completed his SCA. He was not a young, naive adult when he used marijuana. 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 granting 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
Subparagraph 1.a.:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is not clearly consistent with the interests of national security to grant or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge