



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



In the matter of:)
)
) ISCR Case No. 22-00342
)
Applicant for Security Clearance)

Appearances

For Government: Brian Farrell, Esq., Department Counsel
For Applicant: *Pro se*

11/01/2023

Decision

PRICE, Eric C., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse), E (Personal Conduct), and F (Financial Considerations). Applicant mitigated the security concerns raised by financial considerations, and personal conduct security concerns do not apply. However, he has not mitigated the security concerns raised by his drug involvement. Eligibility for access to classified information is denied.

Statement of the Case

On April 14, 2022, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H, E, and F. The action was taken under 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) promulgated in Security Executive Agent Directive 4 (SEAD 4), *National Security Adjudicative Guidelines* (December 10, 2016), for all adjudicative decisions on or after June 8, 2017.

Applicant answered the SOR (Answer) on June 1, 2022, and requested a hearing before an administrative judge. The case was assigned to me on May 8, 2023. On May 15, 2023, the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing scheduling the hearing via video teleconference. I convened the hearing as scheduled on June 7, 2023. The Government's exhibit list and pre-hearing disclosure letter, my June 6, 2023 email to the parties, and Applicant's undated memo titled "Contents and Witnesses" are marked as Hearing Exhibits (HE) I through IV. Department Counsel offered eight exhibits marked as Government Exhibits (GE) 1 through 8. Applicant testified, presented one witness, and offered five exhibits marked as Applicant Exhibits (AE) A through E. The record was held open until June 23, 2023, to permit Applicant to submit additional documents. He timely submitted AE F through H. There were no objections to the proffered exhibits and GE 1 through 8, and AE A through H are admitted in evidence. DOHA received the hearing transcript (Tr.) on June 20, 2023.

Findings of Fact

Applicant is 38 years old. He has been employed by the same company since August 2011 and has worked under a defense contract as a Client Field Technical Senior Analyst since 2014. He operated a small in-home computer business from 2008 to March 2010 and worked as resident easy tech for a retail company from March 2010 to May 2011. He was unemployed from about May 2011 to August 2011. He has held a security clearance since 2013. (GE 1; Tr. 36, 46, 62-66)

Applicant graduated from high school in June 2004, has attended an online university since May 2020, and is pursuing a bachelor's degree in Information Technology (IT). He has earned a number of IT and information security certificates. He never married and has no children. He has cohabitated with a significant other since October 2016. (GE 1; Tr. 40, 60-62)

The SOR alleges under Guideline H, that Applicant used marijuana from about November 2017 to about October 2020, and purchased marijuana in about November 2019. The SOR also alleges under Guideline H, and cross-alleges under Guideline E, that he purchased and used marijuana from about November 2017 to about October 2020, while granted access to classified information (SOR ¶¶ 1.a-1.c, 2.a). Under Guideline F, the SOR alleges that Applicant had approximately \$42,898 of delinquent debt. (SOR ¶ 3.a) In response to the SOR, Applicant admitted all SOR allegations with explanations, except for SOR ¶ 2.a, which he denied with explanation. (Answer)

Drug Involvement and Personal Conduct

Applicant visits family and friends in his birth state for about two weeks most years. Marijuana use has been legal in his birth state since about 2012. He used marijuana during his annual visits to his birth state from about November 2017 to October 2020. During each of those annual visits he smoked marijuana with his best friend and his best friend's spouse. He also purchased marijuana-infused chocolates (edibles) and consumed an edible most nights of each visit to help him sleep. In his December 2020

security clearance application (SCA), Applicant denied illegally using or purchasing any drug or controlled substance in the previous seven years, and he denied “ever” illegally using or otherwise being illegally involved with a drug or controlled substance while possessing a security clearance. (GE 1 at 26-27, GE 2 at 12-13; Answer; Tr. 41, 45-50, 68-69, 76-79)

During a March 2021 interview with a government investigator, Applicant disclosed that he smoked marijuana during visits to his birth state from 2017 or 2018 to October 2020. He said that he thought it was okay to smoke marijuana there because it was legal under state law. After being informed that federal law and DOD policy prohibiting marijuana use applied to security clearance holders even if marijuana use was permitted under state law, Applicant said that he would not use marijuana again. He said that he had smoked marijuana two to three times each visit over a period of about two weeks. He said that he would take one small inhalation of marijuana from an electronic cigarette and would feel more relaxed. He would sometimes consume marijuana edibles before going to bed. He purchased edibles in November 2019 for about \$30. He said that he ate one or two of the edibles and left the remaining edibles with his best friend and his best friend’s spouse. (GE 2 at 12-13)

In his June 2022 response to the SOR, Applicant stated that he ingested marijuana “only 5-12 days” during each annual visit to his birth state from about November 2017 to October 2020. (Answer) He said that he used marijuana primarily to help him sleep and would “eat a single 10 mg edible” before bed. (*Id.*) He said that he was not “high” from marijuana at any time, was always in command of his faculties, did not disclose any sensitive information, never left his friends’ house while under the influence of marijuana, and was never around anybody that he did not know or trust. (*Id.*) After learning that he was not permitted to use marijuana in his birth state, he did not consume anything containing marijuana, and told his friends that he was prohibited from using marijuana. His friends “respected it and not only didn’t offer [him] any, but even went outside anytime they wanted to use [marijuana].” (*Id.*) He said that he purchased a single pack of about 15 marijuana edibles in November 2019. “The people I was with only smoked, and did not take edibles, so I needed to purchase them myself. Any chocolates remaining once the trip was over, I left up there.” (*Id.*)

During the hearing, Applicant testified that he first used marijuana in about November 2017 “just on a whim [he] decided . . . I’m hanging out with some friends, having trouble sleeping, here let me try.” (Tr. 49, 68) He normally stayed with his best friend and his best friend’s spouse for seven to nine nights during each 12 to 13 day visit and spent the other nights with various family members. While staying in his friend’s home and playing video games with them, he would “take maybe a single hit [of marijuana] from one of the little vape pens” once or twice per visit. (Tr. 48-49, 77) He said that he had difficulty sleeping throughout the entirety of his visits so he consumed a single marijuana edible before going to bed every night except for the first and last night of his trip, including nights he stayed with family members. (Tr. 49, 78-79) He purchased edibles “one time per visit . . . [a]bout four times” and would leave any unused edibles with his best friend. (Tr. 79)

Applicant was aware that the use of marijuana was prohibited under federal law since at least 2013, when he received a security clearance. (Tr. 46) He said that he “wasn’t aware that [he] was being held specifically to federal [law] rather than, you know, state exceptions” and believed that he could legally use marijuana if it was legal under state law. (Tr. 47) Since learning that he was prohibited from using marijuana he has visited and stayed with his best friend and his best friend’s spouse. (AE D at 2) After he told them that he was prohibited from using marijuana with a security clearance, “they were very considerate and instead of using their vapes or whatever inside, they’d step out on the porch to use it, and [he] would of course if [he] was outside at that time, [he]’d go back in just to avoid any secondhand issues.” (Tr. 41)

Applicant submitted a signed statement of his intent to abstain from drug involvement at the hearing. (AE B; Tr. 69) He also provided results from seven urinalyses dated from March 2021 to February 2023 that tested negative for illegal substances. (AE A; Tr. 70) He testified that the results were from unscheduled urinalyses that he was required to take every 3-6 months, as part of the process to refill a pain medication that he had been prescribed for a shoulder injury since late 2020. (Tr. 70-71)

Financial Considerations

The SOR alleges that, as of January 2021, Applicant had enrolled approximately \$42,898 of debt into a debt resolution program and that the debt remained delinquent. In his Answer, Applicant acknowledged incurring debts but said that he had resolved all delinquent accounts. He attributed his financial problems to unanticipated expenses including replacement of home heating and air conditioning systems and a hot water heater, repair costs for flooding damage, fence repairs for damage caused by a fallen tree, and his pets’ health issues.

Applicant disclosed his financial difficulties and that he was working with a debt consolidation company (DCC) in his 2020 SCA. He discussed specific details of each debt and his debt resolution efforts during his background interview. He said that over a period of several years he had accrued delinquent debt because of unexpected expenses. He was current on his debts but could only afford minimum payments on some debts and continued to fall behind.

In about October 2019, he entered an agreement with a DCC to negotiate settlements with some creditors and was told to stop making payments on those debts. By March 2021, the DCC had resolved most delinquent debts with funds deposited monthly (\$584) by Applicant. In March 2021, he obtained a debt consolidation loan (\$24,413), and the DCC used the loan proceeds to resolve his remaining delinquent debts. He has been current on all credit accounts since then and, as of May 26, 2023, had reduced the debt consolidation loan balance to \$12,363 by making required monthly payments. He said that he had made all required monthly payments on a home mortgage since October 2016. Documentary evidence including credit reports from December 2020, June 2022 and May 2023 corroborate Applicant’s claims and testimony. These debts are resolved. (Answer; GE 1-8; AE C; Tr. 41-43, 50-55, 72-75)

Character Evidence

Applicant submitted letters from his cohabitant for the past seven years, and two friends that comment favorably on his overall character, honesty, reliability, trustworthiness, adherence to laws and rules, career focus, and commitment to safeguarding sensitive information. Each letter also noted that Applicant was unaware that his use of marijuana in a state where marijuana use was legal was prohibited for DOD security clearance holders, that once he learned otherwise he abstained from using marijuana and told them about the prohibition, and each recommended that he retain his security clearance. His cohabitant, a Master Level Clinical Mental Health Counselor and certified alcohol and drug counselor with six years of experience in addiction treatment, offered her personal but unofficial assessment that Applicant did not meet the criteria of someone suffering from any form of substance abuse or drug dependence, and that he has not demonstrated symptoms of a substance misuse problem. (AE C-E)

Applicant's regional service manager testified and authored documents that commented favorably about his work performance, sobriety at work, reliability, trustworthiness, and compliance with rules and regulations regarding safeguarding classified information. He testified that Applicant had a security clearance and access to classified information, and that he had communicated the issues with his security clearance renewal process including his marijuana use. (Tr. 28-39; AE G-H)

Any derogatory information not alleged in the SOR will not be considered for disqualifying purposes; however, it may be considered in the application of mitigating conditions, assessment of credibility, and in a whole-person analysis.

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 Misuse

The security concern relating to the guideline for drug involvement 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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable in this case include:

- (a) any drug abuse;
- (c) illegal drug possession, 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 admitted and other record evidence corroborated that he illegally used marijuana from November 2017 until about October 2020, that he purchased marijuana

in about November 2019, and that he used and purchased marijuana while granted access to classified information. AG ¶¶ 25(a), 25(c) and 25(f) apply.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

(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) and 26(b) are not fully established. Applicant used marijuana 10-12 times a year from about November 2017 to October 2020, while visiting a state where its use was lawful under state law. I find his corroborated claims that he has not illegally used controlled substances since October 2020 credible and he provided a signed statement of intent to abstain from illegal drug use. However, he used marijuana several years after completing an SCA that reflected DOD concerns about illegal drug usage, with knowledge that its use was prohibited under federal law and DoD policy, and while he had a security clearance and was granted access to classified information. He first used marijuana “on a whim” with his best friend and he then used marijuana more than 40 more times over a four-year period including smoking marijuana with his best friend one to three times each of those four years. He provided varying accounts of the number of times he used marijuana and purchased marijuana edibles. He continues to associate with and stay with his best friend and his best friend’s spouse, who continue to use marijuana while he stays with them, albeit apparently outside of his presence. This evidence is insufficient to convince me that recurrence is unlikely.

“An applicant who uses [controlled substances] after having been placed on notice of its security significance, such as using after having completed a clearance application, may be lacking in the qualities expected of those with access to national secrets.” ISCR Case No. 17-03191 at 3 (App. Bd. Mar. 26, 2019) (citing ISCR Case No. 17-04198 at 2 (App. Bd. Jan. 15, 2019) (“An applicant’s misuse of drugs after having been placed on notice of the incompatibility of drug abuse with clearance eligibility raises questions about

his or her judgment and reliability”)). The circumstances of Applicant’s use of controlled substances while holding a security clearance and granted access to classified information reflect poor judgment and raise questions as to his trustworthiness. I find Applicant’s evidence insufficient to resolve concerns about his current reliability, trustworthiness, and good judgment.

Guideline E: Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness, and ability to protect classified or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

SOR ¶ 2.a cross-alleges the conduct alleged in SOR ¶ 1.c. The record evidence discussed above including Applicant’s admissions potentially support application of the following disqualifying conditions under AG ¶ 16.

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information. This includes, but is not limited to, consideration of . . . any disruptive, violent, or other inappropriate behavior

Neither AG ¶¶ 16(c) nor 16(d) apply because the evidence is “sufficient for an adverse determination” under Guideline H.

Guideline F: Financial Considerations

The security concern under this guideline is set out in AG ¶ 18:

Failure to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information. Financial distress can also be caused or exacerbated by, and thus can be a possible indicator of, other issues of personnel security concern such as excessive gambling mental health conditions, substance misuse, or alcohol abuse or dependence. An individual who is financially overextended is at greater risk of having to engage in illegal or otherwise questionable acts to generate funds. Affluence that cannot be explained by known sources of income is also a security concern insofar as it may result from criminal activity, including espionage.

This concern is broader than the possibility that a person might knowingly compromise classified or sensitive information to raise money. It encompasses concerns about a person's self-control, judgment, and other qualities essential to protecting classified or sensitive information. A person who is financially irresponsible may also be irresponsible, unconcerned, or negligent in handling and safeguarding classified or sensitive information. See ISCR Case No. 11-05365 at 3 (App. Bd. May 1, 2012).

Applicant's admissions and record evidence establish two disqualifying conditions under this guideline: AG ¶ 19(a) ("inability to satisfy debts") and AG ¶ 19(c) ("a history of not meeting financial obligations"). The following mitigating conditions are potentially applicable:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, a death, divorce or separation, clear victimization by predatory lending practices, or identity theft), and the individual acted responsibly under the circumstances;

(c) the individual has received or is receiving financial counseling for the problem from a legitimate and credible source, such as a non-profit credit counseling service, and there are clear indications that the problem is being resolved or is under control; and

(d) the individual initiated and is adhering to a good-faith effort to repay overdue creditors or otherwise resolve debts.

AG ¶¶ 20(a) through 20(d) are established for the debts alleged in the SOR. Applicant's financial situation was damaged by circumstances partially or fully beyond his control. He acted responsibly by prioritizing and paying some of his debts, enrolling the remaining debts in a payment plan, obtaining a debt consolidation loan, timely making all required payments, and resolving all delinquent accounts before the SOR was issued. He has taken reasonable actions under his unique financial circumstances to address his delinquent debts and has established a "meaningful track record of debt reduction." See ISCR Case No. 07-06482 at 2-3 (App. Bd. May 21, 2008). There are clear indications that his financial problems are resolved and are under control. His debts were incurred under circumstances making recurrence unlikely and his financial conduct does not cast doubt on his current reliability, trustworthiness, or good judgment.

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.

I have incorporated my comments under Guidelines H, E, and F in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). I considered Applicant's age and maturity, work record, security clearance history, character evidence, and that he has not used marijuana since October 2020. I also considered his history of illegal drug use while granted access to classified information and his continued association with friends in an environment where marijuana is used, albeit outside of his immediate presence.

It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See *Dorfmont v. Brown*, 913 F. 2d 1399, 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

Applicant failed to meet his burden of persuasion and the record evidence leaves me with questions and doubts as to his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns raised under Guideline H, drug involvement and substance misuse.

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.c:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraph 3.a:	For 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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Eric C. Price
Administrative Judge