



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



In the matter of:)	
)	
)	ISCR Case No. 23-00171
)	
Applicant for Security Clearance)	

Appearances

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

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On March 29, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse security concerns. 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 (AG) effective on June 8, 2017.

Applicant answered the SOR on April 12, 2023 and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on May 17, 2023. He was afforded an opportunity to file objections and submit material in refutation,

extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 2 through 4 (Item 1 is the SOR). Applicant did not provide a response to the FORM. There were no objections to any of the evidence submitted and all exhibits are admitted into evidence. The case was assigned to me on August 30, 2023.

Findings of Fact

Applicant admitted all of the SOR allegations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 31 years old. He is a high school graduate. He married in 2016 and has no children. He was employed by a in the private sector from 2016 to November 2021, when he was hired by a federal contractor.

Applicant completed a National Security Questionnaire (SF 86) in June 2022. In it he disclosed that from January through May 2019, he used a vape pen containing tetrahydrocannabinol (THC), a federally controlled substance that is the principal psychoactive ingredient in marijuana. He occasionally used it on his day off or on the weekends to relax and sleep. He estimated that during this period he used it between 30 and 50 times. He reported that he enjoyed the relaxing aspect of the drug but did not like the impact it had on his motivation and drive. He was also hiding it from his wife at the time, and that ruined any enjoyment or relaxation he gained from using it. He does not intend to use illegal drugs in the future. It was illegal where he was using it at the time. (GE 3)

Applicant also disclosed on his SF 86 that from August 2021 to September 2021 he used his wife's prescription of Flexeril, a muscle relaxant. He explained he injured his back while doing yard work and used two to three pills for several week of his wife's prescription that she did not intend to use. He used approximately 10-15 total pills. He disclosed to the government investigator In July 2022, that he previously had his own prescription for the drug but ran out. In his SOR answer, he explained that although he previously had a prescription for this drug, he understands the use of his wife's prescription was unacceptable. He has no intention to ever use this substance again without a valid prescription. (GE 2, 3, 4)

Applicant disclosed on his SF 86 that in May 2022, he used two pills of his wife's prescription for Tramadol over a two-day period when his allergies were bad. He stated in his SOR answer that at one time he had a valid prescription for Tramadol for his allergies and migraines so was aware of its benefits, but he understood that his use of his wife's prescription was unacceptable. He has sought medical treatment for his severe allergies. He has no intention of ever use this substance again without a valid prescription. (GE 2, 3, 4)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are 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, these guidelines are applied 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 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.

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 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

- (a) any substance misuse; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant used marijuana on various occasion from January 2019 to May 2019. He misused the medications Tramadol without a valid prescription twice in May 2022 and Flexeril on various occasions between August 2021 and September 2021. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 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 to overcome the 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 being 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 disclosed his use of THC by vaping and his misuse of prescription drugs on his June 2022 SF 86. He has not used THC since May 2019 because he did not like the impact it had on his motivation and drive. He was also hiding it from his wife at the time and that ruined any enjoyment. He indicated that at one time he had his own prescriptions for Flexeril and Tramadol but used his wife's prescription, rather than having his own prescriptions renewed, when he had back problems and allergies symptoms. He has no intention to ever use those substances again without a valid prescription.

It has been over four years since Applicant used THC. I considered the fact that he self-disclosed all his drug use. Based on his assertions, I find that sufficient time has passed since his last drug use and it is unlikely he will use illegal drugs again in the future. I find that although he was familiar with both prescription drugs because he had his own prescriptions in the past, his misuse was wrong. He understands this was inappropriate and intends to follow proper procedures in the future. Both mitigating conditions apply.

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.

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.

Applicant has met his burden of persuasion. The record evidence leaves me with no questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant mitigated the security concerns arising 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: FOR APPLICANT

Subparagraphs 1.a-1.c: For Applicant

Conclusion

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

Carol G. Ricciardello
Administrative Judge