



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



In the matter of:)	
)	
)	ISCR Case No. 22-02461
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: Ashleigh N. Berglund, Esq.

11/08/2023

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the personal conduct and drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On February 28, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse), Guideline E (personal conduct), and Guideline B (foreign influence). 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) implemented by the DOD on June 8, 2017.

Applicant responded to the SOR (Answer) on March 22, 2023, and elected to have the case decided on the written record in lieu of a hearing. The Government's written case was submitted on May 18, 2023. A complete copy of the file of relevant

material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received the FORM on June 13, 2023, and he responded to the FORM on June 29, 2023 (FORM Response). The case was assigned to me on September 28, 2023. The Government's documents identified as Items 1 through 4 and Applicant's FORM Response are admitted in evidence without objection.

SOR Amendment

In her FORM, Department Counsel amended the SOR and withdrew the foreign influence allegations under Guideline B in paragraph 3.

Findings of Fact

Applicant admitted all the SOR allegations in his Answer, with explanations. He is 24 years old. As of his May 2022 security clearance application (SCA), he was not married, he did not have any children, and he had lived with his parents and two younger siblings since December 2021. He graduated from high school in 2017. While in college, he interned for his employer, a DOD contractor, from May 2019 to July 2019, May 2020 to August 2020, and May 2021 to August 2021. He earned a bachelor's degree in December 2021. He was subsequently briefly unemployed before working part-time in data entry for a recruiting agency from February 2022 to April 2022. He has worked as a cyber systems engineer associate for his current employer since May 2022. He was first granted a security clearance in approximately May 2020, as part of his internships. (Items 1-3)

Applicant used marijuana, with varying frequency, from approximately 2017 through May 2021. He continued to use marijuana through May 2021, after he was granted a security clearance in May 2020. (SOR ¶ 1.a) He began using marijuana in college in 2017. He smoked it weekly with his college roommates and friends to relax. He contributed money towards the purchase of it. He did not use marijuana during his summer breaks from college when he lived at home, before he began his internship with his employer and passed a pre-employment drug screening, or during the summers of his internship. He stopped using marijuana because he realized he had grown out of such college behavior, and he did not want to use it anymore. He disclosed this information during his July 2022 background interview. (Answer; Items 1-2; FORM Response)

Applicant did not disclose his drug involvement in response to section 23 of both his October 2019 SCA and his 2022 SCA, which inquired about illegal use of drugs or drug activity. He marked "No," and did not disclose his marijuana use in response to a question on both SCAs that inquired whether he had illegally used any drug or controlled substances in the last seven years. He also marked "No" on his 2022 SCA, in response to a question that inquired whether he had ever illegally used or otherwise been illegally involved with a drug or controlled substance while possessing a security clearance, and he did not disclose his use of marijuana while holding a security

clearance. He disclosed on his 2022 SCA that he had a security clearance that was granted to him in May 2020. (Answer; Item 3)

Applicant indicated during his background interview that he did not disclose his marijuana use on his 2019 SCA because he thought it would affect his ability to obtain a security clearance. He also indicated that he intended to disclose his marijuana use on his 2022 SCA by correcting his negative responses from his 2019 SCA, but he forgot to do so. (Item 2)

In March 2023, Applicant signed a statement of intent stating, "I have no intention of smoking marijuana, or consuming any other controlled substances, presently or in the future." He expressed his regret and remorse over his actions. He stated that he is more mature and regrets that his actions have jeopardized his work. He stated that he no longer socializes with the friends from college with whom he used marijuana. He reiterated that he did not disclose his marijuana use on his 2019 SCA because he was afraid that it would affect his chances of obtaining his internship. He admitted that he did not disclose his marijuana use on his 2022 SCA because he was afraid it would affect his job. He stated:

I can only work to rectify the mistakes of my past. That is why I informed the [background] investigator that I wanted to "come clean" and subsequently disclosed my prior marijuana use. . . . my intent today is to get the record straight.

(Answer; Item 2; FORM Response)

Two individuals, a professional associate as well as a friend from college, attested to Applicant's trustworthiness, reliability, and judgment. The professional associate, who has known Applicant since June 2022, described Applicant as responsible, trustworthy, with a good work ethic. (Answer)

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

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse as:

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 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant: “(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 “(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana from 2017 to 2021. Although he used marijuana after he was granted a security clearance in 2020, there is no evidence that he used marijuana while granted access to classified information or holding a sensitive position. AG ¶¶ 25(a) and 25(c) apply, but ¶ 25(f) does not.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

(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.

Applicant used marijuana from 2017 through 2021. He used marijuana after he was granted a security clearance in 2020. Although he expressed his remorse, signed a statement of intent to abstain from smoking marijuana and any other controlled substances, and stated that he no longer socializes with the friends from college with whom he used marijuana, his last use is recent enough that I cannot find that it is unlikely to recur. I find that none of the above mitigating conditions are established.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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. . . .

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant marked “No” and failed to disclose his marijuana use in response to section 23 of his 2019 SCA. He also marked “No” and failed to disclose his marijuana use, to include such use while holding a security clearance, in response to relevant questions on his 2022 SCA. He admitted that he did not disclose his marijuana use on his 2019 SCA because he thought it would affect his ability to obtain a security clearance. He also admitted that he did not disclose his marijuana use on his 2022 SCA because he was afraid it would affect his job, after initially indicating that he simply forgot to correct his negative responses from his 2019 SCA. AG ¶ 16(a) is established.

AG ¶ 17 provides the following potentially relevant mitigating condition:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant did not make prompt, good-faith efforts to correct his omission regarding his relevant drug use on his 2019 SCA. AG ¶ 17(a) is not established for SOR ¶ 2.a. Although he disclosed his marijuana use during his July 2022 background interview, he lied when he indicated that he forgot to correct his negative responses from his 2019 SCA in response to the relevant drug-related questions on his 2022 SCA.

Only later did he admit that he did not disclose his marijuana use on his 2022 SCA because he was afraid it would affect his job. His omissions were not caused or contributed to by advice of legal counsel or of a person with professional responsibilities for security processes. His omissions are not minor, and they occurred as recently as 2019 and 2022. While he expressed his regret and remorse over his actions and stated that he wanted to rectify his past mistakes, his deliberate omissions in his SCAs raise questions about his reliability, trustworthiness, and judgment. As such, I find that AG ¶¶ 17(a), 17(b), 17(c), 17(d), and 17(e) are not 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 and Guideline E in this whole-person analysis. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the personal conduct and 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a - 2.b:	Against Applicant

Conclusion

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

Candace Le'i Garcia
Administrative Judge