



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



In the matter of:)	
)	
)	ISCR Case No. 23-00237
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: *Pro se*

11/17/2023

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On March 17, 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 5, 2023, and elected to have her case decided on the written the record in lieu of a hearing. Department Counsel submitted the Government’s file of relevant material (FORM), and Applicant received it on May 11, 2022. She was afforded an opportunity to file objections and submit material in refutation,

extenuations or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 3. Applicant did not provide a response to the FORM or object to any of the Government's evidence. Items 1 through 3 are admitted in evidence. The case was assigned to me on August 23, 2023.

Findings of Fact

Applicant admitted both SOR allegations. Her 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 26 years old. She is not married but cohabitates with her boyfriend. She has no children. She earned a bachelor's degree in 2019 and a master's degree in 2020. She works for a defense contractor and completed a security clearance application (SCA) in July 2022.

Applicant disclosed in her SCA that she started using marijuana when she was a freshman in high school in about June 2013. She stated:

Started experimenting with THC my freshman year of high school. Everyone in my friend group smoked THC regularly at the time. In college[,] my boyfriend at the time smoked THC everyday due to his chronic anxiety. I dated him for four years and would join him at night before bed 4-5 times a week.

Since I started using THC at 15 years old, I am unable to know the number of times I used THC. The nature of use was casual usually in a friend setting at night or on the weekends. When I graduated college at [X] State University my friend group drastically changed since I moved to [State A], and I did not use THC for at about 1 year and 3 months. (sic) A couple weeks ago I had visited an old friend who still used THC and I smoked once with her estimated date was 7/21/2022. This was late at night and at her apartment complex.

I do not intend to use THC in the future because I believe it to be a bad habit of my past that is a part of my rebellious teenage years that has lingered in my life far too long. THC is not important to me and my memories surrounding it are a mix of very bad and very good experiences neither outweighing the other. (Item 2)

Applicant disclosed that she purchased THC from roommates and friends that she associated with in high school and lived with in college. She said she did not need to purchase it often because her friends, boyfriend, or roommates always had it around. However, when she did purchase it, it was never more than 1-3.5 grams. Occasionally, her friends would not have THC and she would purchase it because it was "her turn" to

provide it. THC was illegal in the state where she attended high school and college and continued to be so during her period of use and purchase. (Item 2)

Applicant further disclosed in her SCA other illegal drugs she used. She stated: "I have experimented with mushrooms exactly four times." (Item 2) She noted the dates were from October 2019 to March 2022. She explained the nature of her use as follows:

I have experimented with mushroom exactly four times. The first time was with my roommate in college. We had nothing to do one night, and she asked me if I wanted to try them. I got sick, threw them up and nothing happened. The second was at my friend's birthday party on July 4th, 2021. There was a small group of six[,] four of us, four of which tried mushrooms while we kayaked down a river in [State C]. The third time was with a friend in graduate school at [University]. He had been wanting to try them for a while and I had told him about my experience. We tried them at my apartment then took a short walk at a trail near my apartment complex. The fourth was with the same friend 2 weeks later. We still had some from the last time and used them at my apartment. We did not go anywhere this time. (Item 2)

Regarding whether Applicant intended to use hallucinogenic mushrooms in the future she stated:

Mushrooms make me want to throw up every time I have used them. Also, they feel no different from having a beer or two in my experience. There is no real point in using them in my opinion. (Item 2)

Applicant disclosed that when she used mushrooms in March 2022 that she and a friend purchased them to share. She said: "I have only purchased mushrooms once[,] any other time I have tried them they were given to me." (Item 2) She further stated: "My friend had never tried them before and asked me if I would be able to get them for us. I knew someone who sold them, so we split the cost." (Item 2)

Applicant was interviewed by a government investigator in October 2022. She told the investigator that when she initially tried marijuana as a freshman in high school in June 2013 that she did not start using it regularly until 2015. She would smoke marijuana about once a month in backyards of friends' houses from 2015 to 2016. From 2016 to 2020, she vaped or ate edibles almost daily at friends' houses. From 2020 until July 2022, she would consume marijuana through vape or edibles twice a year on average. She purchased her drugs on occasion and it was freely provided at other times. She believed her drug use was immature, and she used it for social reasons. She told the investigator that she no longer socializes with anyone who uses drug illegally. She disclosed friends with whom she used drugs. She said she stopped smoking marijuana in July 2022 because she felt like she had outgrown that phase of her life. (Item 3)

Applicant told the investigator that her use of hallucinogenic mushrooms began in October 2019, and they were provided to her. She said in July 2021, she was at a birthday party for a friend and her friend's boyfriend provided her with mushrooms. In March 2022, she and her friend used mushrooms together and two weeks later used them again. She purchased the mushrooms. She did not believe her actions of using mushrooms was due to immaturity, but rather she used them for social reason. She listed her friends who are aware of her drug use, including her current boyfriend, and she revealed that at least two of the people she listed used drugs with her in the past. (Item 3)

Applicant did not provide a response to the FORM. It is unknown if her boyfriend, with whom she cohabitates, uses illegal drugs. It is unknown whether she continued abstaining from using marijuana since she completed her SCA in July 2022.

Any derogatory information that was not alleged in the SOR will not be considered for disqualifying purposes, but may be considered when making a credibility determination, in the application of mitigating conditions, and in a whole-person analysis.

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 THC with varying frequency from about June 2013 until July 2022. She used hallucinogenic mushrooms on four occasions between October 2019 and March 2022. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from drug involvement and substance misuse. 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 used THC with varying frequency from the 2013 to July 2022, the same month she completed her SCA. She stated that she used it in high school with her friends who smoked it regularly and then four to five times a week with her boyfriend while in college. She said she did not use it for a period after graduating from college, but then visited a friend who used THC, so she joined him. She attributed her use of THC to immaturity, social reasons, and being a rebellious teenage. Perhaps being immature is true, but she continued to use it after graduating from college and again in July 2022 shortly before completing her SCA.

Regarding Applicant's use of hallucinogenic mushrooms, she said she first used them in college and again at a friend's birthday party in 2021. In March 2022, another friend wanted to use them, so she purchased mushrooms for them to use, and they used them together on two occasions. She did not believe her actions of using mushrooms was due to immaturity, but rather she attributed her actions to social reasons. I am not sure exactly what that means but presumably she used them when she was in social settings or due to peer pressure.

Applicant stated in her SCA that she has abstained from THC use and does not intend to use it in the future. She also said she did not see the point in using mushrooms because she can get the same experience from consuming beer.

Applicant did not provide a response to the FORM or any additional evidence on whether she has continued to abstain from illegal drug use. I was unable to make a credibility determination of Applicant's sincerity and commitment to future illegal drug use. Applicant told the government investigator that she no longer socializes with people who use illegal drugs. I am not convinced that is the case, as she listed friends who are aware of her drug use and would not blackmail her. Some of these people are ones with whom she used illegal drugs. I was unable to determine if she no longer associates with these people or if she has changed her environment. I was unable to determine if her boyfriend uses THC or any illegal drugs.

There is insufficient evidence that Applicant's conduct was infrequent, happened under unique circumstances, and is unlikely to recur. Not enough time has passed to

conclude future drug use is unlikely. Without additional evidence, I find her illegal drug use casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) and 25(b) do not 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 failed to meet her burden of persuasion. The record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For these reasons, I conclude Applicant failed to mitigate 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge