



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



In the matter of:)	
)	
)	ISCR Case No. 23-00248
)	
)	
Applicant for Security Clearance)	

Appearances

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

11/13/2023

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On April 26, 2021, and July 5, 2022, Applicant submitted security clearance applications (e-QIP). (Government Exhibits 1 and 2.) On April 28, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse; and Guideline E, Personal Conduct. The action was taken under Executive Order 10865 (EO), *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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant answered the SOR on July 5, 2023, and requested a hearing before an administrative judge. The case was assigned to me on August 17, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on August 24, 2023, and the hearing was convened as scheduled on October 11, 2023. At the hearing, the Government offered three exhibits, referred to as Government Exhibits 1 through 3,

which were admitted without objection. The Applicant offered four exhibits, referred to as Applicant's Exhibits A through D, which were admitted without objection. He testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 20, 2023.

Findings of Fact

Applicant is 26 years old. He is not married and has no children. He has a Bachelor's degree in Aerospace Engineering with an emphasis in Astronautics. He holds the position of Systems Engineer. He is seeking to obtain a security clearance in connection with his employment.

Guideline H - Drug Involvement and Substance Misuse **Guideline E - Personal Conduct**

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose; and that he has engaged in conduct involving questionable judgment, which can raise questions about an individual's reliability and trustworthiness.

Applicant graduated from college with his Bachelor's degree in May 2021. After graduating, he obtained a job working with the military. He applied for and was granted a security clearance in April 2021. He continued working for the military from August 2, 2021, to June 20, 2022. Wanting a new working environment, he applied for and was hired by a defense contractor in June 2022. At that time, he applied for a higher level clearance which was granted in July 2022. (Tr. p. 31.)

Applicant has a ten-year history of illegal drug involvement, including the use and purchase of MDMA (ecstasy), LSD, and marijuana on various occasions from about 2012 until at least 2022. Applicant admitted each of the allegations set forth in the SOR. Applicant used marijuana daily, almost every week from 2012 until May 2021. (Applicant's Exhibit A.) He used marijuana after applying for a security clearance, while possessing a security clearance, and while working in a sensitive position. Applicant testified that from January 2022 to February 2023, he used marijuana four times. (Tr. p. 29.)

Applicant explained that he started smoking marijuana during his freshman year in high school because he got mixed up with the wrong crowd of friends. He explained that his best friend suffers from Chrons Disease and the use of marijuana has helped him with his condition. They have used marijuana together. Applicant testified that he last used marijuana in February 2023. (Tr. p. 21.) He stated that he has now stopped using marijuana, but that he still had friends and family that use it. (Tr. p. 22.) Applicant did not report his illegal use of marijuana to his company security office.

Applicant further admitted that he has also used illegal mind-altering substances such as MDMA (ecstasy) on 13 separate occasions, and LSD on six separate

occasions, during the period from 2012 until at least January 2022. (Tr. pp. 26-27.) The last time he used MDMA was on February 12, 2023. (Tr. 27.) Applicant explained that on this occasion when he used MDMA, he was trying to enjoy himself with a previous girlfriend who suggested that he use it to help him open up to his emotions. At the time, Applicant was working for a defense contractor, possessed a security clearance, and held a sensitive position. Applicant knew that the use of this drug was illegal, that it was against company security policies, and against Department of Defense security clearance regulations. (Tr. p. 28.)

Applicant completed a second Electronic Questionnaires for Investigations Processing dated April 26, 2021. Section 23 - Illegal Use of Drugs or Drug Activity, Illegal Use of Drugs or Controlled Substances, asked, "In the last seven years have you illegally used any drugs or controlled substances?" Applicant answered, "NO". (Government Exhibit 2.) This was a false answer. Applicant deliberately failed to disclose his use and purchase of illegal drugs discussed above.

Applicant completed an Electronic Questionnaires for Investigation Processing dated July 5, 2022. Section 23 - Illegal Use of Drugs or Drug Activity, Illegal Use of Drugs or Controlled Substances, asked, "In the last seven years have you illegally used any drugs or controlled substances? And, while possessing a security clearance have you ever illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance other than previously listed?" Applicant answered, "NO," to both questions. (Government Exhibit 1.) Applicant answered both questions falsely. He deliberately failed to disclose his use and purchase of illegal drugs discussed above.

Applicant stated that he lied in response to the questions on both of his security clearance applications concerning his illegal drug involvement because he was worried about how he would be perceived. He was afraid to reveal the truth. Drug use was something that he was not open with anyone about, including his parents and his grandfather. He kept his drug use to himself, and he did not tell his family, friends, or employers about it. (Tr. p. 31-32.)

Applicant's year end performance reviews from his manager for 2022, and his mid-year review for 2023, reflect that Applicant has been an excellent performer. He is considered to be a key team member. His leads can rely on his work and product deliveries to the higher management. He has demonstrated high ethics, reliability, and responsibilities in his leadership skills by taking ownership of his tasks immediately. (Applicant's Exhibits B and C.)

Letters of recommendation from team members of the Applicant attest to his reliability, dependability, and respectful character. He is a hard worker with a positive attitude who is always willing to help others despite being busy with his own work. He produces high quality, consistent, and rule-compliant work. He is well-liked and considered to be an excellent engineer. (Applicant's Exhibit D.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and common sense decision. 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. 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 clearance 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 as to 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 forth at 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.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (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.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns:

- (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.

None of the mitigating factors are applicable. Applicant deliberately used marijuana and MDMA (ecstasy) while possessing a security clearance and while working in a sensitive position, which is against security rules and regulations and Federal law. Applicant last used marijuana and MDMA in February 2023, just nine months ago. He states that he is no longer using illegal drugs. His actions are not mitigated.

Guideline E - Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(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 trustworthiness, or award fiduciary responsibilities.

The guideline at AG ¶ 17 contains conditions that could mitigate security concerns. None of the conditions are applicable:

(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 deliberately lied on two of his security clearance applications concerning his use and purchase of illegal drugs, as he did not want the Government to know the true extent of his illegal drug involvement. His attempt to conceal this material information from the Government on these forms shows immaturity, poor judgment, unreliability and untrustworthiness.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations and policies that apply to them. Applicant did not follow the rules. Instead, he chose to live his life to his convenience, and disregarded the law. Applicant used illegal substances while possessing a security clearance and while employed in a sensitive position. He also deliberately lied about his illegal drug use on two security clearance applications in an attempt to conceal this information from the Government. Applicant's conduct has been immature, irresponsible, and is inappropriate behavior, that shows poor judgment. Under the particular facts of this case, Applicant does not show the maturity level, integrity, and reliability necessary to access classified information. At this time, Applicant does not meet the eligibility qualifications for a security clearance.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant has not demonstrated the level of maturity needed for access to classified information. Applicant understands the requirements associated with holding a security clearance and knows that illegal drug use is not tolerated. Applicant is not an individual in whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse, and Personal Conduct security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.d.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a. and 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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge