



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



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| In the matter of: |) | |
| |) | |
| |) | ISCR Case No. 22-02623 |
| |) | |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: Christopher Snowden, Attorney At Law, The Edmunds Law Firm

10/25/2023

Decision On Remand

Lokey Anderson, Darlene D., Administrative Judge:

On October 12, 2023, the Appeal Board remanded the Administrative Judge’s decision dated August 8, 2023, finding that it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. The Administrative Judge was ordered to correct the harmful error and issue a new decision. The following is the new decision.

On May 16, 2022, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On February 15, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS), formerly Department of Defense Consolidated Adjudication Facility) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Abuse. 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on April 10, 2023, and requested a hearing before an administrative judge. The case was assigned to me on May 15, 2023. The Defense Office of Hearings and Appeals issued a notice of hearing on May 18, 2023, and the hearing was convened as scheduled on June 22, 2023. At the hearing, the Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant offered ten exhibits, referred to as Applicant's Exhibits A through J, which were admitted without objection. He also testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on July 5, 2023.

Findings of Fact

Applicant is 26 years old. He has a Bachelor's degree in Industrial Engineering and a minor in Mathematics. He is employed by a defense contractor as a Project Manager. He is seeking to obtain a security clearance in connection with his employment.

Guideline H - Drug Involvement and Substance Misuse

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, which can raise questions about an individual's reliability and trustworthiness.

Applicant has an extensive history of purchasing and using illegal drugs including marijuana, cocaine, hallucinogenic mushrooms, Lysergic Acid Diethylamide (LSD), and the use of prescription drugs not prescribed to him include Adderall, Vyvanse, Tramadol, Vicodin and Xanax. Applicant was hired by his current employer on July 8, 2021. He submitted his application for a security clearance in May 2022. Applicant admitted to each of the allegations set forth in the SOR except allegation 1.i., concerning the sale of marijuana.

1.a. and 1.b. Applicant attended college from August 2015 to December 2020. He stated that he started using marijuana in college, in July 2015, and continued using it until March 2022, consuming it about five to seven times a week. (Tr. p. 38.) Given the seven years he has used marijuana, he admits to using it over 1,000 times. (Tr. p. 63.) He would normally use it in social settings with his friends. During the years he used marijuana he also purchased it about once or twice a month to supply his habit. (Tr. p. 43.)

In July 2021, Applicant began working for a defense contractor in a sensitive position. He continued to use marijuana while holding a sensitive position until at least March 2022, in total disregard for his security responsibilities. Applicant testified from his personal knowledge that there are people at his company who use marijuana and who hold security clearances. Applicant provided the names of two of these employees. (Tr. p. 72.) He mentioned that there are others, but he has only learned about them through the grapevine.

Applicant stated that he last used marijuana in March 2022. He stated that he stopped using it because he became aware of its potential security implications and because he wanted to change his lifestyle.

1.c. and 1.d. Applicant has used and purchased cocaine nine times from about 2015 to April 2021. He used cocaine in social settings with his friends. He stated that he did not enjoy it. He also used and purchased hallucinogenic mushrooms three times from September 2016 to about March 2021. He did not particularly enjoy this experience either. (Tr. p. 47-48.)

1.e. Applicant has used and purchased prescription medications, namely Adderall and Vyvanse not prescribed to him, from about August 2016 to November 2018. He explained that he used it as a study aid. He would usually use these drugs with friends in his study group.

1.f. Applicant used Tramadol on one occasion in October 2017. He remembers that he had pain from a laceration on his hand. His sister had a pill left over from her wisdom tooth removal, and she gave it to him.

1.g. Applicant used Vicodin on one occasion in about July 2018. He suffered a hamstring injury while playing intramural football and a friend offered his Vicodin to him.

1.h. Applicant used and purchased Lysergic Acid Diethylamide (LSD) on two occasions, once in March 2017, and again in May 2017. He acknowledges that he was young and naïve at the time. He was outdoors in a nature setting or going on a hike at the time he used it. He stated that he did not really enjoy it, and he understood the risks associated with the drug.

1.i. Applicant denied that he ever sold marijuana. However, he admitted that in 2017, on one occasion, he was the middleman responsible for taking the marijuana to a friend of his, and then returning the money to another friend who owned the marijuana. (Tr. p. 55-56.) Applicant stated that he did not receive any money for his efforts.

1.j. Applicant used and purchased Xanax not prescribed to him on two occasions in about August 2015.

Applicant admitted that he made a knowing and conscious decision to use these drugs when he did so, and he knew that he was violating both state and Federal law when he used marijuana, cocaine, LSD, and hallucinogenic mushrooms. (Tr. pp. 63-66.)

Letters of recommendation from Applicant's Senior Manager and other professional colleagues, including a roommate, attest to Applicant's high level of maturity and job responsibility. Applicant is considered to be a highly driven professional and the go-to person as an expert in certain areas as an Engineer and Data Analyst. Applicant's good character, work ethic, and commitment to the principles of integrity and confidentiality are noted. However, only one individual who provided a

letter of recommendation for Applicant makes any reference to being aware of Applicant's history of illegal drug use, and characterizes it as occurring prior to his employment with the company, which is not accurate. Applicant testified that he did not show the SOR to any of those who submitted letters on his behalf, and although he only verbally discussed some of the allegations with them, he did not provide them with specifics. Applicant testified that his Senior Manager, who has supported him, told the security officer that if Applicant were to be denied his security clearance, steps would be taken to keep him on the program. (Tr. p. 75, and Applicant's Exhibits E and I.)

Hair Drug Test results dated March 1, 2023; March 24, 2023; May 11, 2023; and June 8, 2023, were negative. (Applicant's Exhibits B and H.)

Applicant submitted a statement of intent dated March 23, 2023, declaring that he will never misuse substances in the future. He stated that he plans to abstain from all drug involvement and substance misuse and acknowledges that any future involvement or misuse is grounds for revocation of national security eligibility. (Applicant's Exhibit C.)

Notes concerning Applicant's performance appraisals indicate that he was an excellent performer in 2021, and that he continues to be impressive, showing outstanding job performance. He is described as a hard worker whose skill and diligence has helped to make the projects successful. He continues to be an extremely valuable member of the team as he continues to expand his knowledge and understanding of various aspects of his job responsibilities. (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 commonsense decision. According to AG ¶ 2(a), 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.”

A person who applies for access to classified information seeks to enter 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 protect or 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.

Applicant has a long history of drug abuse, as set forth in the Findings of Fact. More specifically, from July 2021 through March 2022, Applicant continued to use marijuana while employed with a defense contractor and while holding a sensitive position. AG ¶ 25a, 25c, and 25f are applicable.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions demonstrate full mitigation:

- (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 provided a signed statement of intent to abstain from all drug involvement in the future. However, he has an extensive history of illegal drug use, involving a wide variety of illegal drugs, used on various occasions over a recent seven year period, from about July 2015 to March 2022. These facts, coupled with his continued use of marijuana after being hired by a defense contractor and while holding a sensitive position, support a finding that he fails to show the requisite character and judgment required to meet the eligibility requirements for access to classified

information. Some of the drugs he used are very dangerous mind-altering drugs. It is noted that Applicant's drug of choice was clearly marijuana, as he used it most frequently, in upwards of 1,000 times. He continued to use marijuana after being hired by a defense contractor and while holding a sensitive position. Applicant completely disregarded DoD policies and company rules and regulations. In order to meet the eligibility requirements for access to classified information, Applicant is expected to show a high level of maturity, trustworthiness and good judgment. In this case, Applicant has fallen short of meeting these eligibility requirements.

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 is a fairly recent college graduate who used a wide variety of illegal drugs before he entered the defense industry, and he continued to use marijuana after he began working for a defense contractor and while holding a sensitive position. Applicant has disregarded DoD policies and company security rules and regulations. Under the particular facts of this case, at this time, Applicant does not show the requisite character or judgment of someone who has the maturity, integrity, good judgment, and reliability necessary to access classified information. At this time, Applicant does not meet the qualifications for access to classified information.

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 Guideline H 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. This 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 is not qualified for access to classified information, and does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many 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 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:

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| Paragraph 1, Guideline H: | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.j. | 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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge