



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



In the matter of:)
)
) ISCR Case No. 23-00506
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angelis, Esq., Department Counsel
For Applicant: *Pro Se*

10/26/2023

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On July 29, 2022, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On March 13, 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 J, Criminal Conduct. 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 Department of Defense after June 8, 2017.

Applicant answered the SOR on April 7, 2023, and requested a hearing before an administrative judge. The case was assigned to me on August 30, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 30, 2023, and the hearing was convened as scheduled on September 27, 2023. The Government offered eight exhibits, referred to as Government Exhibits 1 through 8, which were admitted without objection. The Applicant offered six exhibits, referred to as Applicant's Exhibits A through F, which were admitted without objection. Applicant testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on October 6, 2023.

Findings of Fact

Applicant is 44 years old and married with three children. He has a high school diploma and two semesters of college. Applicant is employed by a defense contractor as an Aircraft Structures Mechanic. He is seeking to obtain a security clearance in connection with his employment.

Amendment to the Statement of Reasons

Department Counsel, pursuant to ¶ E.3.1.13. of the Directive 5220.6, dated January 2, 1992, (as amended) moved to amend the March 13, 2023, Statement of Reasons (SOR) in this case by adding allegations 2.c., 2.d., 2.e. and 2.f under Guideline J on July 28, 2023. Applicant had no objection, and four additional allegations were included under Guideline J.

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.

1.a. Applicant started using marijuana in 1992, at the early age of 13 while in middle school, mainly on the weekends. By high school he was using marijuana a few times during the week and during the weekends. After high school, Applicant was using marijuana on a regular basis, several times during the week and on the weekends. Applicant stated that his friends would sell it to him, until he got his medical marijuana card, and then he purchased it at a dispensary. He continued to use marijuana at this frequency until about April 2022, when he was hired by his current employer. He explained that it took him about eight months from the date he applied to the date he was hired. He stated that he started tapering off his use of marijuana in December 2021, and he last used it in April 2022. Applicant stated that his employment with a defense contractor has inspired him to stop using marijuana or any other illegal drug in the future.

Applicant stated that his wife still smokes marijuana a few times a week. She goes outside to smoke it and does not smoke it in Applicant's presence. (Tr. p. 27.) She has a medical marijuana card and purchases it from a dispensary.

1.b. Applicant also used methamphetamines from about October 2017 to May 2018. He explained that when he learned that he was going to be the father of twin daughters with lots of responsibility going forward, he thought that using methamphetamines could help him accomplish his many tasks. He knew that one of his friends used it and so he purchased it from his friend, first on a monthly basis, and then weekly. He normally used methamphetamines by himself, but he has used it with his family members including his cousin, who has now stopped using it, and his brother-in-law, who died of a heroin

overdose. After his twins were born, Applicant realized that he should stop using it before he is unable to stop. Applicant's wife does not use methamphetamines.

Guideline J - Criminal Conduct

The Government alleges that Applicant has engaged in criminal activity that creates doubt about a person's judgment, reliability, and trustworthiness and calls into question a person's ability or willingness to comply with laws, rules, and regulations. The allegations are discussed in chronological order.

2.f. In November 1999, Applicant was convicted of Larceny. Applicant explained that he had been out of high school for about two years or so when he was caught stealing some cassette tapes from a record store. (Tr. p. 34.) He was required to perform eight days of community service and pay a fine. (Government Exhibit 4.)

2.e. In March 2004, Applicant was arrested for having a receptacle containing cannabis or having cannabis products in his possession while driving, failure to provide proof of financial responsibility, failure to properly restrain passengers, and driving while his license was suspended or revoked. The day of his arrest, Applicant was stopped and had marijuana in his car. Applicant stated that he was a horrible driver. He had received a number of tickets and did not respect the fact that a driver's license is a privilege. He was young and immature. He stated that he has learned a tough lesson from his past experiences. On this occasion, Applicant was convicted of driving while his license was suspended or revoked. He was sentenced to 36 months of probation and required to perform 145 hours of community service. (Government Exhibit 5.)

2.d. In September 2007, Applicant was convicted of driving under the influence of alcohol. He was sentenced to 36 months of probation, required to attend a three-month alcohol and drug education and counseling program, and required to pay a fine. He was alternatively permitted to serve 13 days in jail in lieu of the fine. Applicant explained that he had gone out to several bars drinking with his cousin and friends. After drinks they went to his cousin's apartment to spend the night. A friend with them wanted to go home, and so Applicant was taking him when he swerved out of the lane, and the police officer pulled him over. Applicant underwent the field sobriety test and was arrested. (Government Exhibit 6.)

2.b. In August 2014, Applicant was arrested and charged with driving under the influence of marijuana. He pled guilty, and was sentenced to probation and required to complete a rehabilitation program. This was Applicant's second offense for driving under the influence. Applicant's license was suspended for about one year as a result of this arrest. (Government Exhibit 7.)

2.c. In February 2015, Applicant was arrested for driving on a revoked or suspended license due to driving under the influence, which violated the terms of probation imposed as a result of the October 2014 conviction for driving under the influence of drugs. He was sentenced to 36 months of probation and 10 days in jail that he served in June 2015.

Applicant violated the terms of this probation. He explained that many times he got rides from his friends and family members, but other times he still drove without a license. (Tr. p. 40, and Government Exhibit 8.)

2.a. In March 2017, Applicant was arrested and charged with possession of illegal drugs. Applicant explained that he was on his way home from work and went to get gas. He was driving away from the gas station when the police pulled him over. Applicant had been smoking methamphetamine and had a pipe in his cup holder. The officer searched the vehicle, found the pipe, and arrested the Applicant. Applicant was required to attend a rehabilitation program and during the program he stopped using methamphetamines. (Tr. p. 42.) Applicant stated that he attended Alcoholics Anonymous (AA) meetings for about a year and a half. After completing the meetings that were court ordered, he continued going. He felt good about discussing with others the struggles they had in common. He last attended AA meetings sometime in late 2018. Applicant has never been offered or received an alcohol or drug rehabilitation program, whether inpatient or outpatient. He quit using marijuana and methamphetamine on his own. (Government Exhibit 2.)

Applicant stated that he now has a family and children to provide for and show that he is responsible. He stated that he is a role model for his children. He does not hang around drug users or old friends. His life now it to make sure his children are prepared for their soccer games and their gymnastic events. His current employment and his desire to possess a security clearance is also his motivation to have a better life. He now realizes that he no longer needs to use illegal drugs. They do not help him to be productive, it is just a waste of time and money.

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 two conditions that could raise a security concern and may be disqualifying:

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

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

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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 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 demonstrate full mitigation. For 28 years, Applicant abused marijuana and/or methamphetamines. Marijuana was clearly his drug of choice. He stated that he stopped using marijuana in April 2022. He now has only about a little more than a year of sobriety. Time will only tell if he remains drug free. With hard work and discipline, Applicant may eventually get to where he wants to go, as the rewards for good conduct are priceless, but at this time, with his long history of drug use, he has not yet shown sufficient time in a drug free lifestyle to convince the Government that he will not return to his old ways. At this time, he has not shown the pattern and practice of sufficient good judgment, reliability and trustworthiness necessary to be eligible for access to classified information.

Guideline J; Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness;
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted; and
- (d) violation or revocation of parole or probation, or failure to complete a court-mandated rehabilitation program.

Applicant committed numerous violations of the law, including driving under the influence of alcohol, driving under the influence of drugs, possession of illegal drugs, driving while license suspended or revoked, and violation of probation, among others. The aforementioned disqualifying conditions have been established.

Four Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;
- (b) the individual was pressured or coerced into committing the act and those pressures are no longer present in the person's life;
- (c) no reliable evidence to support that the individual committed the offense; and
- (d) there is evidence of successful rehabilitation; including, but not limited to the passage of time without recurrence of criminal activity, restitution, compliance, with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

There is no question that Applicant is working hard to improve his life and is focused in the right direction. He has not violated the law for several years. Hopefully, he will continue to improve his life and stay crime free. However, at this time, his long history of criminal conduct creates doubt concerning his judgment, reliability, trustworthiness, and ability or willingness to abide by law, rules, and regulations. None of the mitigating conditions establish full mitigation.

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, and Guideline J, in my whole-person analysis. To hold a security clearance is a privilege and not a right. While holding a security clearance one is expected to show honesty, responsibility and good judgment at all times. Applicant has only recently started to demonstrate a positive pattern of conduct and the level of maturity needed for access to classified information. However, at this time, he is not an individual with 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. Right now, he is not qualified for access to classified information, nor is it certain that sensitive information will be properly protected. More time is needed to determine that his past pattern of poor judgment is finally over for good. Applicant's decision to be responsible must establish a sustained pattern of good conduct. He may in the future be found to be eligible for access to classified information, but it will take work on his part to show that he can be drug free and without criminal conduct for a significant period of time to establish security clearance eligibility.

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, and Criminal 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, and 1.b:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a, through 2.f:	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