



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



In the matter of:)
)
) ISCR Case No. 22-02412
)
Applicant for Security Clearance)

Appearances

For Government: Jeff Nagel, Esq., Department Counsel
For Applicant: Jason R. Wareham, Esq.

01/05/2024

Decision

COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

Statement of the Case

On December 20, 2022, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E. The DOD acted 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 answered the SOR, through counsel, on February 23, 2023. He requested a hearing. The case was assigned to me on July 11, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 21, 2023, and the

hearing was held as scheduled on September 28, 2023. The Government offered exhibits (GE) 1-3, which were admitted into evidence without objection. The Government's exhibit list and pre-hearing discovery letter were marked as hearing exhibits (HE) I and II. Applicant testified, called three witnesses, and offered one exhibit (AE A), which was admitted without objection. His witness and exhibit list was marked as HE III. The record was closed upon completion of the hearing. DOHA received the hearing transcript (Tr.) on October 11, 2023.

Findings of Fact

Applicant admitted all the SOR allegations, except for SOR ¶¶ 1.c and 1.f, which he denied. Additionally, while acknowledging his erroneous answers as stated in SOR ¶¶ 1.a and 1.b, he denied his answers were deliberate falsifications. His admissions are adopted as findings of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact.

Applicant is 30 years old. He has worked for defense contractors since January 2018. He has a bachelor's degree in mechanical engineering. He is married but has no children. He has held a security clearance since 2018. (Tr. 11, 54-55; GE 1)

Under Guideline E, the SOR alleged that Applicant deliberately gave false information on his March 2018 security clearance application (SCA), and his March 2021 SCA when he failed to disclose his illegal drug use of marijuana, cocaine, and Adderall, at various times on both SCAs. It also alleged he failed to disclose his purchases of marijuana, at various times, on both SCAs. (SOR ¶¶ 1.a-1.f)

Applicant's answers were false because he admitted using marijuana various times in 2014, 2015 and 2017. He admitted purchasing marijuana at various times in 2014 and 2015. He admitted using cocaine once in 2016 and once in 2017. His last use of illegal drugs was in 2017. (None of this conduct was alleged in the SOR and it will not be used for disqualification purposes. It may be used for credibility, mitigation, and for a whole-person assessment.) Applicant admitted intentionally falsifying his answers to the March 2021 SCA concerning his past drug use and purchases. He did so because he was afraid that if he answered truthfully on his March 2021 SCA, the inconsistency of his answers with his March 2018 SCA answers would cost him his job. (Tr. 24-25, 27, 30; GE 2, 3)

At the time Applicant filled out his first SCA in March 2018, he was working for his first defense contractor (DC1). He admitted the falsity of the information that he submitted on his 2018 SCA concerning his past drug use and purchases, but denied any deliberate intent to deceive with that information. Rather, he maintains that he misunderstood the question and provided the negative response based upon his misunderstanding. He believed the question was asking him if he was currently using any illegal drugs or if he had a drug addiction problem. He maintained that he had no reason to report to his security officer or any other management official his false answers on this 2018 SCA any time before his realization that he misunderstood the questions, which did not occur until

he was completing his March 2021 SCA. Applicant testified that he did not undergo a background interview with an investigator after submitting his March 2018 SCA. There is no evidence in the record of a background interview after he submitted his March 2018 SCA, or before completing his March 2021 SCA. (Tr. 23-24, 45; GE 1-2)

The Section 23 of the SCAs states as follows:

In the last seven years, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance?

In the last seven years, have you been involved in the illegal purchase . . . of any drug or controlled substance?

Applicant responded with “No” answers to both the above questions. (Tr. 23; GE 1-2)

Applicant testified that he considers himself a detailed-oriented person. A witness also acknowledged that Applicant was detailed oriented in his work where he had to comprehend schematics and planning documents. (Tr. 45, 75)

Applicant denied that he misused the prescription drug Adderall and therefore his March 2018 SCA answer indicating the same was not a deliberate false answer. He was prescribed Adderall while in college. His doctor recommended taking the medication in the morning with food. Sometimes he took the medicine in the evenings so he could stay awake to study. Upon completing interrogatories in December 2022, he stated that it was wrong and illegal for him to do so (taking Adderall in the evenings). Since supplying that answer, he has come to realize that he did not misuse the prescription because he never exceeded the prescribed dosage and while the recommended dosage taking time was in the morning, there was no legal prohibition preventing him from taking the medication later in the day, as needed. (Tr. 25, GE 3 (See interrogatory narrative answers under “**II. DRUG USE**”); SOR Answer)

In March 2021, Applicant was hired by a second defense contractor (DC2), his current employer. He completed a new SCA in March 2021. He testified that when he was completing the drug use/abuse section of this SCA, he realized that he had misunderstood the related questions listed above when he completed his March 2018 SCA. At this moment, he understood that the questions were asking whether in the past seven years he had used or purchased illegal drugs and that his March 2018 SCA answers were false. He again answered falsely to the March 2021 SCA drug questions knowing they were false at the time. (Tr. 27, 30, 47; GE 1)

These answers were false because he admitted using marijuana various times in 2014, 2015 and 2017. He admitted purchasing marijuana at various times in 2014 and 2015. He admitted using cocaine once in 2016 and once in 2017. His last use of illegal drugs was in 2017. (None of this conduct was alleged in the SOR and it will not be used

for disqualification purposes. It may be used for credibility, mitigation, and for a whole-person assessment.) Applicant admitted intentionally falsifying his answers to the March 2021 SCA concerning his past drug use and purchases. He did so because he was afraid that if he answered truthfully on his March 2021 SCA, the inconsistency of his answers with his March 2018 SCA answers would cost him his job. (Tr. 24-25, 27, 30; GE 2, 3)

On March 11, 2021, Applicant signed and certified his SCA answers were true, complete, and correct, after acknowledging the warning under 18 USC 1001, which sets forth the consequences of providing intentionally false information. He claims that he felt guilty almost immediately about intentionally providing false answers on his March 2021 SCA after he completed it. He even lost sleep thinking about his dishonest answers. He did not inform his supervisor or facility security officer about what he did. Instead, he waited approximately seven weeks until his background interview on April 28, 2021, to bring it up with the investigator. He initially testified that he thought his background interview was just two weeks after he completed his March 2021 SCA. (Tr. 28-29, 49, 58; GE 1, 3)

During Applicant's April 28, 2021, background interview, after he was administered the oath, he immediately admitted his past drug use and history. He admitted giving false information about his past drug use on his 2021 SCA, as well as on his 2018 SCA. He told the investigator he did this because he was scared that he would not get a clearance and might lose his job. There is no mention of Applicant stating he misunderstood the 2018 SCA questions about past drug use. He further expressed his regrets for providing the false information. (GE 3 (See enhanced subject interview))

Applicant regrets his poor decisions. To help with his future decision-making, he completed an education program entitled "Discovering Better Choices." He learned that he cannot let his own moral values be compromised by the decisions he makes. He must be honest and accept the consequences of his actions. (Tr. 32-33; AE A)

Applicant had three witnesses testify for him. Two of the witnesses know him through his current job. Both spoke highly of his honesty, trustworthiness, work ethic, and communication skills. Both recommended that he continue to have access to classified information. The third witness is a family friend who has known Applicant since he was a child. This witness is also a retired military officer who held a security clearance. He described Applicant as honest, truthful, and reliable. He knows that Applicant deeply regrets his actions that brought him here. He has no security concerns about Applicant. (Tr. 60-61, 63-64, 71-75, 80, 83-86)

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 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(a), the entire process is a careful weighing 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 E, Personal Conduct

AG ¶ 15 expresses the personal conduct security concern:

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.

16. Conditions that could raise a security concern and may be disqualifying include:

(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.

Applicant admitted that he deliberately provided false information on his March 2021 SCA concerning his past use of marijuana and cocaine, and his past purchases of marijuana. AG ¶ 16(a) applies to SOR ¶¶ 1.d and 1.e.

In both the March 2018 SCA and March 2021 SCA, Applicant denied any misuse of Adderall and the Government failed to produce substantial evidence to the contrary. Deliberate falsifications as alleged in SOR ¶¶ 1.c and 1.f were not established.

As far as the alleged falsifications of Applicant's March 2018 SCA, as stated in SOR ¶¶ 1.a and 1.b, Applicant denied any deliberate falsifications. He claimed that he misunderstood the question at the time and answered it based upon his misunderstanding. He believed the question was asking about any current drug use or drug addiction problems. I do not find Applicant's denial and explanation credible. I draw this conclusion based upon several factors. (1) Applicant is a college-educated engineer; (2) Both he and a witness describe Applicant as a detail-oriented person; (3) A plain reading of the questions at issue reveals, without any ambiguity, the questions ask about any drug use and purchases in the last seven years. There is no language in the questions asking about "current" use or purchases or "addiction problems;" (4) Applicant admitted his falsifications to an investigator when interviewed in April 2021, however, he failed to tell the investigator that he misunderstood the questions on his March 2018 SCA; (5) He admitted to his investigator and during his testimony that he was afraid that if he provided truthful information, he would lose his job.

Based upon the above factors, I conclude that Applicant deliberately provided false information on his March 2018 SCA concerning his past use of marijuana and cocaine, and his purchases of marijuana. AG ¶ 16(a) applies to SOR ¶¶ 1.a and 1.b.

I have also considered all of the mitigating conditions for personal conduct under AG ¶ 17 and considered the following relevant:

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

(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; and

(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.

Applicant did not make prompt good-faith efforts to disclose his falsifications on his March 2018 SCA. He failed to inform his security officer or company officials. Since I did not find his explanation as to why he gave false information on his March 2018 SCA credible, I do not find his argument compelling that he did not inform anyone because he was unaware there was a problem with his answers until he completed his March 2021 SCA. He had a chance to “come clean” when he completed his March 2021 SCA by answering the drug questions honestly, but he chose to lie about them once again. While I will give Applicant some mitigation credit for telling his background investigator about his previous falsifications on both SCAs, this disclosure is insufficient to overcome the totality of his lack of trustworthiness. Although he ultimately disclosed his drug use and purchases during his 2021 background interview, he was granted a security clearance in 2018 based upon his earlier false statements. Deliberately providing false information on an SCA is not a minor offense. It strikes at the heart of the security clearance investigation process. AG ¶¶ 17(a), 17(c), and 17(d) do not fully 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 considered the good character testimony offered by Applicant’s witnesses. I also considered his completion of the Discovering Better Choices education program. However, I also considered he deliberately falsified both his March 2018 SCA, which resulted in him receiving a security clearance, and his

March 2021 SCA. He failed to provide sufficient evidence to mitigate personal conduct security concerns.

Overall the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns under Guideline E.

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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.b, 1.d-1.e:	Against Applicant
Subparagraphs 1.c, 1.f:	For 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Robert E. Coacher
Administrative Judge