



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



In the matter of:)	
)	
)	ISCR Case No. 22-02067
)	
Applicant for Security Clearance)	

Appearances

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

01/11/2024

Decision

KATAUSKAS, Philip J., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for access to classified information. He failed to mitigate the security concerns stemming from his drug involvement and substance misuse and his personal conduct. Accordingly, this case is decided against Applicant.

Statement of the Case

Applicant submitted his security clearance application (SCA) on April 24, 2022. The Department of Defense issued Applicant a Statement of Reasons (SOR) on December 19, 2022, detailing security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. The DOD acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, *National Security Adjudicative Guidelines*, effective within the DOD as of June 8, 2017.

Applicant submitted a December 22, 2022 answer (Answer) to the SOR and elected a decision on the written record by an administrative judge of the Defense Office of Hearings and Appeals (DOHA). On August 23, 2023, Department Counsel submitted the Government's file of relevant material (FORM), including documents identified as Items 1 through 6 and sent the FORM to Applicant on the same day. He received the FORM on September 8, 2023. He was afforded 30 days after receiving the FORM to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not respond to the FORM. The SOR and the Answer (Items 1 and 3, respectively) are the pleadings in the case. Item 2 is administrative and has no probative value. Items 4 through 6 are admitted without objection. The case was assigned to me on December 6, 2023.

Findings of Fact

Applicant is 35 years old, has never married, and has no children. Since January 2017, he has taken college courses but has not earned a degree. Since April 2022, he has served full-time as an intern for a defense contractor. (Item 4.)

Under Guideline H, the SOR alleged that Applicant: (a) from about January 2010 until at least August 2020 used hallucinogenic mushrooms with varying frequency; (b) from about January 2004 until at least July 2020 used marijuana with varying frequency; (c) from about January 2017 until at least January 2019 used amphetamines with varying frequency; (d) from about January 2011 until at least January 2018 used cocaine with varying frequency; (e) from about January 2017 until at least April 2017 used heroin/opium with varying frequency; (f) from about January 2015 until at least January 2016 used prescription medication Adderall that was not prescribed for him; (g) from about January 2009 until about January 2020 purchased marijuana on various occasions; (h) in about January 2017 purchased cocaine; (i) from about January 2017 until about April 2017 purchased heroin/opium on various occasions; and (j) in about September 2013 was charged with Narcotic Equipment-Possession-of-Drug-Paraphernalia. (Item 1.) He admitted those allegations with no explanations. ((Item 3.) The 2013 charge of possession of drug paraphernalia resulted in a guilty finding (a misdemeanor) and fine. (Item 4.)

Under Guideline E, the SOR alleged that Applicant: (a) in about 2018 was terminated from his employment for testing positive for illegal drugs; and (b) in about 2010 or 2011 during a drug test administered by his employer, fraudulently submitted someone else's urine in place of his own. (Item 1.) He admitted those allegations with no explanations. (Item 3.)

The following are salient excerpts from Applicant's personal subject interview (PSI) (Item 5 at 4-6):

Applicant used marijuana from about January 2004 to July 2020. He used it daily from a pipe or a bong. He denied any adverse effects or that he became addicted to it. His usage was within his budget and cost between \$20 to \$40 per week. In about

February 2020, he decided to stop using for health and overall wellness reasons. He has no plans to ever return to using marijuana.

Applicant used mushrooms from about January 2010 to August 2020. He used infrequently, probably twice, and did not have favorable experiences. He did not get addicted to the drug.

Applicant used cocaine from about January 2011 to January 2018 socially fewer than five times. He did not get addicted to the drug and has no intention of using it in the future.

Applicant used heroin and opium from about January 2017 to April 2017. He did get addicted to heroin and was using it several times per day. It was costing him \$1,000 to \$1,500 per day. When he realized what was happening to him, he quit using the drug "cold turkey." It was causing him financial stress, and that was one of the reasons he stopped using the drug.

Applicant used Adderall from about January 2017 to January 2019. He had a prescription for about a month during that period (duration not stated) and knew its effects. After that, he had a friend who had a prescription and who gave him some on perhaps five occasions.

Applicant described himself as a free spirit when younger and was not afraid to experiment with illegal drugs. He was also curious about the effects of those drugs. He has since realized the danger of that attitude. He has decided that illegal substances will not help him have a brighter future and has made a conscious decision to stop all uses of illegal drugs. He has not had any treatment or cessation programs but stopped all uses on his own. He is adamantly against the use of any illegal drugs at this point in his life and has no intentions of using in the future.

Law and Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held, "the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials." *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines. The guidelines are flexible rules of law that apply together with common sense and the general factors of the whole-person concept. An administrative judge must consider all available and 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."

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, then the applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in seeking a favorable security decision.

Discussion

Guideline H, Drug Involvement and Substance Abuse

Under AG H for drug use, suitability of an applicant may be questioned or put into doubt because drug use can both impair judgment and raise questions about a person’s ability or willingness to with laws, rules and regulations:

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.

Marijuana, hallucinogenic mushrooms, amphetamines, cocaine, heroin, non-prescribed drugs, heroin, and opium are “controlled substances” listed on Schedules I through V of the Controlled Substances Act, 21 U.S.C. § 812 (c).

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including...purchase.

SOR ¶¶ 1.a through 1.i alleged Applicant’s years of a pattern of using (for heroin and marijuana also purchasing) the federally controlled drugs listed above. He unequivocally admitted those allegations.

Facts admitted by an applicant in an Answer to a SOR require s no further proof from the Government. ISCR Case No. 94-1159 at 4 (App. Bd. Dec. 4, 1995) (“any admissions [applicant] made to the SOR allegations . . . relieve Department Counsel of its burden of proof”); and Case No. 94-0569 at 4 and n.1 (App. Bd. Mar. 30, 1995) (“[a]n applicant’s admissions, whether testimonial or written, can provide a legal basis for an

Administrative Judge's findings"). Applicant admitted facts that trigger disqualifying conditions AG ¶¶ 25(a) through (c).

The next inquiry is whether Applicant's illegal drug use has been mitigated, The following three mitigating conditions under AG ¶ 26: for drug involvement and substance abuse may potentially apply:

- (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;
- (b) the individual acknowledges . . . his drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence . . . ; and
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended.

I considered mitigating condition AG ¶ 26(a). Applicant's illegal use of a host of drugs began in 2004 (marijuana). Although that is quite a while ago, it not only continued, it ultimately branched out to his illegal use of five other drugs. That train of usage only ended when for health and wellness reasons he decided to stop on his own in February 2020. Even so, the record shows that he continued to use marijuana until July 2020. His 2013 charge and conviction of possession of drug paraphernalia was just another episode in what would continue to be a history of drug use. His decades of illegal drug use is not mitigated under AG ¶ 26(a).

I considered mitigating condition AG ¶ 26(b). During the clearance investigation, Applicant was completely forthright in detailing his long history of illegal drug use, thereby satisfying the initial element of this mitigating condition. What is lacking, however, is any evidence of his actions to overcome his problem, other than his word that he decided in 2020 (February or July) to cease illegal drug usage. This mitigating condition also requires an applicant to show "a pattern of abstinence." After nearly 20 years of illegal drug use, three years of abstinence is hardly a sufficient pattern of abstinence. His illegal drug use is not mitigated under AG ¶ 26(b).

I considered mitigating condition AG ¶ 26(c). The record shows only that Applicant had, for a time, a prescription for Adderall. After that expired, he accepted the drug from a friend who had a prescription for that medication. Applicant's misuse of that medication is not mitigated by AG ¶ 26(c).

Guideline E, Personal Conduct

Under Guideline E for personal conduct, the concern is that "[c]onduct 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." AG ¶ 15. More specifically, AG ¶ 16(c) provides the following disqualifying condition:

credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information.

In this case, the SOR made two allegations under Guideline E. The first was that in 2010 or 2011 during a drug test administered by his employer, Applicant fraudulently submitted someone else's urine in place of his own. The second was that in about 2018 he was terminated from his employment for testing positive for illegal drugs. He admitted those allegations. His admitted conduct triggers disqualifying condition AG ¶ 16(c).

I have reviewed the entire record and the seven mitigating conditions in AG ¶¶ 17(a) through (g). There are no facts that would support any of those mitigating conditions.

Whole-Person Concept

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. AG ¶¶ 2(a) and (d)(1)-(9) (explaining the "whole-person" concept and factors). In my analysis above, I considered the potentially disqualifying and mitigating conditions and the whole-person concept in light of all the facts and circumstances surrounding this case.

Applicant leaves me with questions about his eligibility and suitability for a security clearance. For these reasons, I conclude that Applicant has not mitigated the security concerns arising under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct.

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 (Drug Involvement):	Against Applicant
Subparagraphs 1.a – 1.i:	Against Applicant
Paragraph 2, (Personal Conduct)	Against Applicant

Subparagraphs 2.a – 2.b:

Against Applicant

Conclusion

In light of all of the circumstances presented, it is not clearly consistent with the interests of national security to grant Applicant eligibility for access to classified information. Eligibility for access to classified information is denied.

Philip J. Katauskas
Administrative Judge