



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



In the matter of:)	
)	
)	ISCR Case No. 22-01625
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian Esq., Department Counsel
For Applicant: *Pro se*

01/12/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his use of marijuana and his failure to disclose it, as required, on his security clearance application. Clearance is denied.

Statement of the Case

On December 5, 2023, the Department of Defense Consolidated Adjudication Services (DCSA CAS) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines H, drug involvement and Guideline E, personal conduct, explaining why it was unable to find it clearly consistent with the national security to grant him security clearance eligibility. The DCSA CAS took the action 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

On December 23, 2023, Applicant answered the SOR allegations, admitting the allegations and requesting a decision on the written record instead of a hearing. On February 22, 2023, the Government prepared a File of Relevant Material (FORM), consisting of a brief, together with four attachments (Items 1 – 4) in support of its position. Applicant received a copy of the FORM on April 5, 2023, and was given 30 days to file a response. Applicant filed a response, and on June 1, 2023, the case was assigned to me.

Findings of Fact

Applicant is a 27-year-old man with a high school education. He served in the U.S. Army National Guard from 2014 to 2020. During his stint in the National Guard, he was deployed in a combat zone overseas for six months between December 2016 and June 2017. (Item 4 at 2) His discharge was honorable.(Item 3 at 11) He has been working for a defense contractor as a computer specialist since 2018.

Applicant is highly respected on the job. An intern who met and worked with him in 2022 considers him a role model with a superior work ethic and a keen attention to detail. (Item 2 at 3) Per a coworker, Applicant has incredible leadership and trustworthiness skills. (Item 2 at 4)

Between January 2020 and April 2020, Applicant used marijuana twice. The first time, he smoked it in a bong pipe, shared with friends, and the second time, he ingested it in edible form.(Item 4 at 4) Applicant had a security clearance when he used marijuana. Before using the marijuana, he had spoken with other people with security clearances who used marijuana and they advised him that it was not a big deal. (Item 4 at 5) Applicant's marijuana use occurred while granted access to classified information. (Item 2 at 1)

Applicant attributes peer pressure for his decision to smoke marijuana. Specifically, his then-roommate pressured him constantly to use it. (Item 2 at 1) Applicant has not used marijuana since the April 2020 episode. In December 2022, he moved out of the apartment that he shared with the marijuana-smoking roommate and executed an affidavit expressing his intent never to use marijuana again. (Item 2 at 2)

Applicant falsified a security clearance application, completed in 2021, when he failed to disclose his marijuana use and the fact that he used marijuana while possessing a security clearance. (Item 2 at 1) In his SOR answer, he contends that he did not disclose the marijuana use on his application because he did not remember the instances when he used it. (Item 1 at 2) During an investigative interview in January 2022, he told the investigative agent that he did not disclose the marijuana on the security clearance application because he thought he was only required to disclose hard drugs like heroin or cocaine. (Item 4 at 4)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing

that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall adjudicative goal is a fair, impartial, and commonsense decision. 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, 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 to obtain a favorable security decision.

Analysis

Guideline E, Personal Conduct

Under this guideline, “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.” (AG ¶ 15) Moreover, “of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. (*Id.*)

Applicant’s failure to disclose marijuana use on his 2021 security clearance application raises the issue of whether AG ¶ 16(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 or trustworthiness, or award fiduciary responsibilities,” applies. Applicant’s explanation for omitting his marijuana use on the security clearance application that he told the investigative agent during an interview contradicted the explanation he provided in response to the SOR. These conflicting responses fundamentally undercut his credibility. Consequently, I conclude that AG ¶ 16(a) applies without mitigation. Applicant failed to mitigate the Guideline E security concern.

Guideline H, Drug Involvement and Substance Misuse

Under this guideline, “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.” (AG ¶ 24) Applicant’s use of marijuana while granted access to classified information triggers the application of AG ¶ 25(a) “any substance misuse,” and AG ¶ 25(f), “any illegal drug use while granted access to classified information or holding a sensitive position.”

Applicant now acknowledges his marijuana use. Further, he moved from the apartment that he shared with an individual who constantly pressured him to use marijuana. Having relocated from the source of his peer pressure, the mitigating conditions set forth in AG ¶ 26(b)(1), “disassociation from drug using associates and contacts,” and AG ¶ 26(b)(2), “changing or avoiding the environment where drugs were used,” apply.

Applicant provided a signed statement of intent to abstain from marijuana use in the future, understanding that future use would be grounds for the revocation of his national security eligibility. (See AG ¶ b(3)) Given Applicant’s falsification of his security clearance application, his reassurance that his use will not recur has minimal probative value. In sum, I conclude Applicant failed to mitigate drug involvement security concern.

Whole-Person Concept

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

(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.

I considered the whole-person concept in my application of the disqualifying and mitigating conditions of the guidelines, and they do not warrant a favorable conclusion.

Formal Findings

Formal findings for 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the security interests of the United States to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge