



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



In the matter of:)	
)	
)	ISCR Case No. 23-00806
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff Nagel, Esquire, Department Counsel
For Applicant: Mathew Thomas, Esquire, Applicant’s Counsel

01/10/2024

Decision

CEFOLA, Richard A., Administrative Judge:

On March 25, 2022, Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP). On June 9, 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. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective June 8, 2017.

Applicant answered the SOR in writing on August 2, 2023, and requested a hearing before an administrative judge. I received the case assignment on August 31, 2023. DOHA issued a Notice of Hearing on September 8, 2023, and I convened the hearing as scheduled on October 12, 2023. The Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified and submitted Exhibits (AppXs) A through H, which were received without objection. DOHA received the transcript of the hearing (TR) on October 20, 2023. Based upon a review of the

pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 30 years old, unmarried, and has no children. He has a bachelor's degree in mechanical engineering. He works for a defense contractor. (TR at page 5 lines 10~18, at page 14 line 18 to page 21 line 8, and GX 1 at pages 5, 9, 23 and 24.)

Guideline H – Drug Involvement

1.a. Applicant admits that he used hallucinogenic drugs (including LSD, psilocybin mushrooms, and DMT) 9~12 times from about November 2018 until his last usage in November 2021, about two years ago. (TR at page 29 line 8 to page 30 line 14, at page 38 line 22 to page 39 line 2, at page 55 lines 12~20, at page 57 line 23 to page 58 line 8 (LSD), at page 61 lines 3~18 (psilocybin mushrooms), and at page 61 line 19 to page 62 line (DMT).)

1.b. Applicant admits that he used Ecstasy/MDMA about 32 times from about March 2015 to about August 2021. (TR at page 22 lines 17~21, at page 23 line 11 to page 24 line 25, at page 30 lines 14~18, and at page 62 line 18 to page 65 line 3.) He also purchased and distributed Ecstasy/MDMA on one occasion. (TR at page 43 line 17 to page 44 line 20.)

1.c. Applicant admits that he used the medication Xanax, which was not prescribed to him, about three times from about May 2018 to about August 2021. (TR at page 27 line 5 to page 28 line 13, and at page 48 line 16 to page 49 line 20.)

1.d. Applicant admits that he used Ketamine about 5~6 times, and purchased it on one occasion, from about January 2015 to about July 2021. (TR at page 22 line 8 to page 23 line 10, at page 23 line 20 to page 24 line 25, and at page 67 lines 8~15.)

1.e. Applicant used Whip Its (inhaled nitrous oxide from a balloon) on one occasion in March 2018. In December of 2018, he faked its usage to “fit in” with his party crowd. (TR at page 25 line 1 to page 27 line 4, and at page 47 line 8 to page 48 line 15.)

1.f. Applicant admits that he used marijuana and products containing THC 4~5 times from about November 2011 to about January 2017. (TR at page 21 line 13 to page 22 line 7, and at page 51 line 14 to page 52 line 24.)

Applicant's drug usage occurred as recently as two years ago, with a partying crowd he no longer associates with, and at a different situs from where he now lives. He

has eschewed future drug usage, regularly attends Narcotics Anonymous meetings, considers himself a high functioning addict, takes drug awareness courses, has passed numerous drug tests, and has a favorable assessment from a Certified Substance Abuse Counselor. (TR at page 28 line 23 to page 29 line 7, at page 33 line 4 to page 38 line 21, at page 39 line 3 to page 41 line 25, at page 51 lines 1~11, and AppXs D and E.)

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 useful 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 Executive Order 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 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 seven conditions that could raise a security concern and may be disqualifying. Two conditions are established:

- (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.

Appellant used numerous illegal substances from about March of 2015 until his last usage in November of 2021. He has also purchased and distributed Ecstasy/MDMA, and purchased Ketamine. Therefore, AG ¶ 25 (a), and (c) are established.

The guideline at AG ¶ 26 contains four conditions that could mitigate security concerns. Two conditions may be 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.

While Applicant has disassociated himself from his fellow partying drug users, moved to another county away from their influence, and has eschewed any future drug involvement, it is too soon to say that this admitted “high functioning addict” has “kicked his habit.” This should not dissuade Applicant from applying for a security clearance in the future, after a significant period of continued abstinence. For the present, however, Drug Involvement and Substance Misuse is found against Applicant.

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 an 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.

AG ¶ 2(b) requires each case must be judged on its own merits. Under AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility 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. Applicant is highly respected at his workplace and in his community. (AppXs F and G.) However, overall, at present the

record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his drug involvement and substance misuse.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a.-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.

Richard A. Cefola
Administrative Judge