



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



In the matter of:)
)
) ISCR Case No. 23-00561
)
Applicant for Security Clearance)

Appearances

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

01/22/2024

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is granted.

Statement of the Case

On March 24, 2023, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse. 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).

Applicant answered the SOR on March 30, 2023, and requested a hearing before an administrative judge. The case was assigned to me on September 20, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on September 27, 2023, and the hearing was convened as scheduled on November 2, 2023. The Government offered exhibits (GE) 1-2, which were admitted into evidence

without objection. The Government's exhibit index and discovery letter were marked as hearing exhibits (HE) I and II, respectively. Applicant testified, offered the testimony of one witness, but produced no exhibits at the hearing. I kept the record open and Applicant timely submitted one exhibit (AE A), which was admitted with no objection. DOHA received the hearing transcript (Tr.) on November 13, 2023.

Findings of Fact

Applicant admitted all the SOR allegations in her answer. Her admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is 25 years old. She works for a government contractor as a systems engineer. Her permanent employment began in August 2022, but previously she interned for the same employer while still attending college during the summer of 2021. There is no evidence that she was employed by this employer between August 2021 and August 2022. She began college in 2017, and completed her bachelor's degree in May 2022. She completed her security clearance application (SCA) in October 2022, after she became a permanent employee. She is single and has no children. (Tr. at 6, 18, 47-48; GE 1-2)

The SOR alleged Applicant used marijuana from May 2017 to June 2022. It further alleged she used ecstasy in December 2017; she used Adderall, not prescribed to her, in November 2020; she used cocaine in February 2021; and she used mushrooms from May 2022 to July 2022. The SOR also alleged that she intended to use marijuana in the future. (SOR ¶¶ 1a-1.f)

Applicant fully disclosed her drug history on her 2022 SCA and she further explained that history during her December 2022 background interview. During her testimony, she explained that her drug use was experimental during her college years. She described herself as naïve in high school, not having many friends, and did not engage in many activities. All that changed in college and she socialized more with people and wanted to show her friends she was not afraid to try things. This included experimenting with some drugs, which she now admits was foolish behavior. (Tr. 29-31; GE 1-2) She consistently described the extent of her drug behavior as follows:

Use of Marijuana: Applicant used marijuana by smoking it or ingesting edibles starting in about May 2017. She used marijuana no more than 30 times and her last use was in July 2022. She only purchased marijuana from state-run dispensaries. She indicated on her SCA that she would use marijuana in the future. During her background interview, she reversed that position and stated that she did not intend to use any illegal drugs in the future. During her testimony, on several occasions, she categorically stated she had no intentions to use marijuana in the future. I found her testimony sincere and credible. (Tr. 31, 33, 36, 40, 54, 57; GE 1-2)

Use of Ecstasy (MDMA): Applicant ingested one tablet of MDMA at a house party. She did not feel any effects from its use. At the time she ingested it, she thought it was

candy, but was later told it was MDMA. That was her only use of MDMA and she does not intend to use it in the future. I found her testimony credible. (Tr. 37; GE 1-2)

Use of Adderall: Applicant admitted ingesting 20 milligrams of Adderall, a prescription drug, in approximately December 2020. She did not have a legal prescription for the drug when she used it. She used it while in college to help concentrate on her studies. A friend suggested that she use it and supplied it. She has only used it that one time and has no intention to use it illegally in the future. I found her testimony credible. (Tr. 38-40; GE 1-2)

Use of Cocaine: Applicant used cocaine one time at a house party in approximately December 2021. She did not feel any effects from its use. The cocaine was supplied by a friend. That was her only use of cocaine and she does not intend to use it in the future. I found her testimony credible. (Tr. 39; GE 1-2)

Use of Mushrooms (Psychedelic): Applicant used mushrooms on two occasions while camping with friends in May 2022 and July 2022. She got sick after both uses. Those were her only uses of mushrooms and she does not intend to use them in the future. I found her testimony credible. (Tr. 39; GE 1-2)

Future Use of Marijuana: Applicant credibly testified that she has no intent to use marijuana in the future. Her father testified that she has matured significantly since leaving college. He also believes her SCA answer about using marijuana in the future was impacted by her knowledge that two of her grandparents were legally prescribed marijuana to manage pain as an opioid alternative. He thought that she might not have thought about the federal law implications. He also opined that based upon his personal familiarity with drug users, as a criminal defense attorney, he had no concerns that she was currently using any illegal drugs. Since college, she has moved to a different state from where her college friends who used drugs are located. Although she has been exposed to drugs recently (she was offered cocaine several weeks before the hearing), she has always refused the offers. She also removes herself from the situation and does not associate with the person offering drugs. She signed a written statement where she manifested her intent not to use any illegal drugs in the future. (Tr. 18-19, 31, 33, 54, 57; AE A)

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 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.

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 H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance abuse:

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.

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

- (a) any substance misuse; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant used marijuana up to 30 occasions between May 2017 and June 2022. She used cocaine once in 2021, MDMA once in 2017, Adderall, without a prescription, once in 2020, and mushrooms twice in 2022. On her 2022 SCA, she indicated that she intended to use marijuana in the future. I find that AG ¶¶ 25(a) and 25(g) both apply.

AG ¶ 26 provides conditions that could mitigate security concerns. The following potentially apply in this case:

- (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 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.

Applicant's use of cocaine, Adderall, MDMA, and mushrooms were infrequent and in the nature of experimental use when she was in college. She has not used any of these substances recently. Her marijuana use was more frequent, but ceased when she was permanently hired by her employer in August 2022. There is no evidence that she used marijuana while employed as an intern during the summer of 2021. When recently offered cocaine, she refused and stated that she would remove herself from the environment if it happened in the future. She no longer resides in the state where her college friends live. She provided a signed statement of intent to abstain from all illegal drug use in the future. Both AG ¶¶ 26(a) and 26(b) substantially apply.

I also note in accordance with the Director of National Intelligence's clarifying guidance letter concerning marijuana dated December 21, 2021, I have considered that the evidence here supports mitigation in the form of Applicant's full disclosure of her past drug use on her SCA, her abstinence since 2022, her signed letter of intent of nonuse in the future, and her disassociation from those persons who use drugs. The guidance also states that violation of federal drug law remains relevant, but not determinative, to adjudications of security clearance eligibility. (See ES 2021-01529)

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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline H. Those factors in AG ¶ 2(d) were addressed under that guideline.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the drug involvement and personal conduct security concerns.

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:	FOR APPLICANT
Subparagraphs: 1.a – 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge