



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



In the matter of:)	
)	
)	ISCR Case No. 23-01077
)	
Applicant for Security Clearance)	

Appearances

For Government: Carroll J. Connelley, Esq., Department Counsel
For Applicant: *Pro se*

01/24/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Guideline H, drug involvement and substance misuse security concern. Eligibility for access to classified information is denied.

Statement of the Case

On June 23, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse. The action was taken 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) effective on June 8, 2017.

Applicant answered the SOR on July 11, 2023, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on August 28, 2023. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's

evidence is identified as Items 1 through 3. Applicant did not provide a response to the FORM. There were no objections to any of the evidence and Items 1 through 3 are admitted into evidence. The case was assigned to me on November 30, 2023.

Findings of Fact

Applicant admitted all the SOR allegations. His admissions are incorporated into the findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following findings of fact.

Applicant is 29 years old. He earned a bachelor's degree in 2016. He is not married and has no children. He has worked for a government contractor since October 2022. (Item 1)

Applicant completed a security clearance application (SCA) in November 2022. In it he disclosed his past illegal drug use, purchases, and sales. Based on his admissions, the SOR alleged the following:

From about July 2014 to September 2022, Applicant used marijuana with varying frequency and purchased and sold it on various occasions. (SOR ¶¶ 1.a and 1.b)

From about June 2015 to December 2016, Applicant used ecstasy with varying frequency and purchased ecstasy on various occasions. (SOR ¶¶ 1.c and 1.d)

From about July 2015 to January 2016, Applicant used DMT (Dimethyltryptamine) with varying frequency and purchased DMT on various occasions. (SOR ¶¶ 1.e and 1.f)

From about August 2015 to October 2022, Applicant used LSD (lysergic acid diethylamide) with varying frequency and purchased LSD on various occasions. (SOR ¶¶ 1.g and 1.h)

From about October 2015 to September 2022, Applicant used mushrooms with varying frequency and purchased mushrooms on various occasions. (SOR ¶¶ 1.i and 1.j)

From about March 2016 to December 2016, Applicant used benzodiazepines with varying frequency and purchased benzodiazepines on various occasions. (SOR ¶¶ 1.k and 1.l)

In December 2016, Applicant purchased and used the prescription medication Adderall that was not prescribed to him. (SOR ¶¶ 1.m and 1.n)

From about November 2021 to February 2022, Applicant used cocaine with various frequency and purchased it on various occasions. (SOR ¶¶ 1.o and 1.p)

From about December 2021 to July 2022, Applicant used nitrous oxide (N₂O) with varying frequency and purchased it on various occasions. (SOR ¶¶ 1.q and 1.r)

Regarding his future intention to use marijuana, ecstasy, mushrooms, LSD, Adderall and nitrous oxide gas, Applicant stated in his SCA that he would discontinue their uses in the future as per requirements of his employer's policies and to maintain a security clearance. Having a good job and workplace were more important. (Item 2)

Regarding his future use of DMT, Applicant said he did not intend to use it in the future because "I got the experiences I sought from this substance; I have no desire to use it again." Regarding future use of benzodiazepine, he said, "I did not particularly enjoy or get anything out of using this substance and do not plan on using it ever again." Regarding future use of cocaine, he said he did not intend on using it in the future because "the last time I used it, I suffered a very painful reaction to it that resembled anaphylaxis, it was the most horrible experience I have ever had, it lasted several hours." He further stated, "I am very grateful to be alive and strive more than ever to be healthy after the mistake I made of using this substance." (Item 2)

Applicant made additional comments regarding his drug activity on his SCA. He requested that his drug activity remain confidential and requested that anyone that wished to speak to him about his drug use do so in a private setting because where he works the walls are very easy to hear through. He stated, "I do not want any of my co-workers to know any of this information that don't absolutely have to." (Item 2)

Applicant completed government interrogatories in June 2023. He affirmed that his statement made to the investigator was essentially accurate, except for some spelling of names, biographical information, and work history. In addition, he noted that some information from his SCA was incorrectly copied and included as part of his interview. Specifically, the quantity of cocaine he used each time and the number of times he purchased mushrooms. I have noted the discrepancies and will only consider the information regarding these facts taken from the SCA. Including in the interrogatories, Applicant reported the times he purchased different drugs, from whom, and the price. (Item 3)

Applicant further stated that he no longer associates with anyone he previously used illegal drugs with. He said he moved to a new location, which has been a great change for him. He enjoys his work environment, and his life is more peaceful and calm. (Item 3)

In Applicant's answer to the SOR, regarding future marijuana, ecstasy, DMT, LSD, mushrooms, benzodiazepines, Adderall, and cocaine use, he stated: "I don't mind not

using the substance and I don't intend to as long as I have a reason not; my employment.”
(Item 1)

Applicant did not provide a response to the FORM or any information about participation in drug counseling or treatment. He did not provide an update on whether he has continued to refrain from illegal drug use.

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the AG. 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(c), 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. Directive ¶ E3.1.15 states 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 as to obtaining 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 as to 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

The security concern relating to the guideline for drug involvement and substance misuse is set out in 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

(a) any substance misuse; and

(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

Applicant illegally used marijuana, ecstasy, DMT, LSD, mushrooms, benzodiazepines, Adderall, and cocaine with varying frequencies and over different periods of time beginning in July 2014 through October 2022. He illegally purchased these drugs on various occasions. The above disqualifying conditions apply.

The SOR alleged “mushrooms” and not hallucinogenic mushrooms. In Applicant’s SCA, he reported under Section 23 the type of drug or controlled substance as “hallucinogenic” and the specific name as “mushrooms.” I find there is sufficient evidence that the mushrooms purchased and used by Applicant were hallucinogenic.

The SOR alleged Applicant purchased and used nitrous oxide. There is no evidence that under federal or state law it is illegal to purchase nitrous oxide. I find AG ¶ 25(c) does not apply to the purchase of nitrous oxide. I find in Applicant’s favor for SOR ¶ 1.r. I find AG ¶ 25(a) applies to the use of nitrous oxide because as stated in AG ¶ 24 “the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose” raises a security concern. I believe that

“substance misuse” is meant to cover the misuse of inhalants that are not technically illegal.

The guideline also includes conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 are potentially 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 to overcome the 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 being 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 has a long history of purchasing and using a variety of illegal drugs and an inhalant. He also infrequently sold marijuana to friends. While some of his drug usage was during college, he continued his extensive use until October 2022, just prior to applying for a security clearance in November 2022. He said he last used marijuana and hallucinogenic mushrooms in September 2022. He said he last used LSD in October 2022 and he last used cocaine in February 2022. He stated in his interrogatories that he did not intend to use illegal drugs in the future. In his answer to the SOR, he qualifies his intent and states: “I don’t mind not using the substance and I don’t intend to as long as I have a reason not to; (my employment).” I have concerns about Applicant’s qualifying statement that he will follow the law as long as he retains his employment. This does not reflect a clear and convincing state of intent to refrain from the use of illegal drugs. It also does not reflect a grasp that when he purchased and used these drugs his actions were against the law.

Applicant’s willingness to illegally use and purchase an extensive array of drugs and an inhalant over many years is an important fact to consider. He said he no longer associates with anyone who uses illegal drugs. He said that as long as he retains his employment, he will refrain from illegal drug use. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question him about his illegal drug use or evaluate his credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003).

I have considered the lengthy period that Applicant used numerous types of illegal drugs and an inhalant, his recent period of abstinence just prior to his employment, and his motivation for ceasing his use. I am unable to find a sufficient period of abstinence has expired and future use is unlikely to recur. His illegal drug use was frequent, and cast

doubts on his current reliability, trustworthiness and good judgment. I find AG ¶ 26(a) does not apply.

Applicant acknowledged his past drug use and said he no longer associates with drug-using associates. He moved to a new place. He indicated his intent to abstain from drug involvement, albeit he qualified his abstinence as long as he had a reason not to use the drugs, such as remaining employed. I find AG ¶ 26(b) has some application, but it is insufficient to fully mitigate the security concerns raised.

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 have incorporated my comments under Guideline H, in my whole-person analysis.

I have a duty to exercise prudence because 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." I am obligated to follow that directive. Applicant failed to meet his burden of persuasion. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant failed to mitigate the security concerns under the drug involvement and substance misuse.

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:

