



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



In the matter of:)
)
) ISCR Case No. 23-00356
)
Applicant for Security Clearance)

Appearances

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

02/05/2024

Decision

DORSEY, Benjamin R., 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 April 20, 2023, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement and substance misuse. Applicant responded to the SOR on April 27, 2023 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on October 24, 2023.

The hearing was convened as scheduled on January 11, 2024. I admitted Government Exhibits (GE) 1 and 2 in evidence without objection. Applicant testified but did not present documentary evidence. At Applicant's request, I left the record open until January 25, 2024, to allow the parties an opportunity to provide post-hearing documents. Applicant timely provided Applicant Exhibits (AE) A through F, which I admitted in evidence without objection. I received a transcript (Tr.) of the hearing on January 19, 2024.

Findings of Fact

Applicant is a 23-year-old prospective employee of a government contractor. The relevant government contractor offered him a job in June 2022 that was conditioned upon him graduating from college and obtaining a security clearance. He earned an undergraduate degree in December 2022 with a 3.69 grade point average (GPA), including a 4.0 GPA during his last two semesters. He has never married and has no children. (Tr. 18-19, 25-26; GE 1, 2; AE D, E)

From about June 2021 until about March 2023, Applicant used marijuana with varying frequency. He purchased it once from a dispensary in State A in June 2021. He estimated that he used it socially with friends about 20 times during this period. At all times relevant to this security clearance investigation, marijuana purchase and possession (and therefore its use) has been illegal under federal law. However, pursuant to state laws in State A, where he resided while he used marijuana, its use has been legal. In July 2022, while he was still in college, Applicant completed and certified an Electronic Questionnaire for Investigations Processing (SF 86). He continued to use marijuana for several months after completing the SF 86 and after his September 2022 security interview with a DOD investigator. (Tr. 17, 19-26, 32-35; Answer; GE 1, 2)

Applicant stopped using marijuana after he received the Government's interrogatories in March 2023, as he realized that marijuana use was incompatible with holding a security clearance. Prior to then, he thought using marijuana was acceptable because it was legal pursuant to the laws in State A, because he had not started working for a government contractor, and he did not have access to any classified information. While he used marijuana after being granted an interim security clearance, he was not notified that he had earned one. (Tr. 17, 19-26, 32-35; Answer; GE 1, 2)

Applicant now understands that marijuana is not compatible with holding a security clearance and will hinder his career development. Now that he is out of college, he has shifted his focus to obtaining his first post-college job and being a responsible adult. He also now understands that being involved with marijuana is illegal, regardless of what state laws seem to indicate. He acknowledged that he was immature and did not understand the seriousness of illegal drug use. He has no future intent to purchase, possess, or use marijuana or other illegal drugs and provided a signed statement of intent to that effect. He also no longer associates with anyone who is involved with illegal drugs. I observed him testify and found him to be credible. (Tr. 17, 24-30, 32-33; Answer; GE 1, 2; AE A-C)

Applicant provided a copy of a January 2024 urinalysis test result that was negative for several illegal drugs, including marijuana. He received a leadership and community engagement award from his university in the fall of 2022. He also provided character-reference letters from a former work colleague and friends who wrote that he is trustworthy, loyal, hardworking, and a leader. One of these friends is a veteran who holds a security clearance. All those who submitted character-reference letters believe

he should be entrusted with a security clearance. (Tr. 17, 24-30, 32-33; Answer; GE 1, 2; AE A-C)

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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."

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 the applicant or proven by Department Counsel." The applicant 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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. 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 notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

- (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.

Applicant used marijuana, an illegal drug, with varying frequency between June 2021 and March 2023. The above listed disqualifying conditions are established.

AG ¶ 26 provides conditions that could mitigate security concerns. The following 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;
- (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.

It has been about one year since Applicant last used an illegal drug. He used it while he was in college in his early 20s and before he joined the workforce. While he did not understand the distinction between federal and state law and which controls, he now knows that marijuana purchase, possession, and use is illegal. He credibly testified that he will not use illegal drugs in the future and provided a negative drug test to corroborate his discontinued use. He provided a signed statement of intent to abstain from all drug involvement and substance misuse.

Applicant acknowledged that he made mistakes by being involved with marijuana, but those mistakes were partially mitigated by the contradiction between state and federal law. He understands that he is no longer in college, and he must concentrate on his career, where he cannot be involved with illegal drugs. He credibly testified that he no longer associates with anyone involved with illegal drugs. For these reasons, I find that his drug involvement and substance misuse is unlikely to recur, and he has provided a sufficient pattern of abstinence. AG ¶ 26(a) and AG ¶ 26(b) fully apply.

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 relevant 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 have incorporated my comments under Guideline H in my whole-person analysis. I have considered

Applicant's relatively youthful age, his stage in life, his education with an excellent GPA, and his positive character references.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the drug involvement and substance misuse 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
Subparagraph 1.a:	For Applicant

Conclusion

It is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Benjamin R. Dorsey
Administrative Judge