



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



In the matter of:)	
)	
)	ISCR Case No. 22-02279
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel,
For Applicant: Matthew J. Thomas, Esq.

03/13/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant did not mitigate the drug involvement and substance misuse security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On December 29, 2022, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H (drug involvement and substance misuse). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on February 13, 2023 (Answer) and requested a hearing before an administrative judge. The case was assigned to me on September 26, 2023. The Defense Office of Hearings and Appeals (DOHA) issued a notice on October 13, 2023, scheduling the matter for a video teleconference hearing on November 8, 2023. I convened the hearing as scheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1-3 and Applicant Exhibits (AE) A-H. Applicant testified and did not call any witnesses. DOHA received the hearing transcript (Tr.) on November 22, 2023.

Findings of Fact

Applicant admitted the sole SOR allegation in his Answer. He is 36 years old, married, and he has a one-year-old child. He graduated from high school in 2006 and he earned a bachelor's degree in aerospace engineering in 2012 and a master's degree in 2016. He worked as a DOD contractor from 2012 to 2015, when he was hired as a DOD civilian. Since March 2022, he has worked as a senior professional staff member for his employer, another DOD contractor. He conducts artificial intelligence research and engineering for combat-related platforms, a position that requires a security clearance. He was first granted a clearance in 2015. (Tr. 6, 19-33, 50-53, 80-81, 84-85; GE 1-3; AE H)

Applicant used marijuana on three occasions from April 2021 to December 2021, while he was granted access to classified information. (SOR ¶ 1.a) On each occasion, he was at a social gathering and he had consumed alcohol. In the spring of 2021, he was at a friend's party and he ate a portion of a marijuana brownie. In the fall of 2021, he was at a party and he took one puff of a marijuana cigarette that was passed around by his spouse's friend. On the third occasion, he was out of state at a New Year's party hosted by his in-laws and he took one puff of a marijuana cigarette that was passed around by his brother-in-law. (Tr. 33-41, 53-78, 83-84; GE 1-2; AE B-C)

These were the only occasions in which Applicant used marijuana. He described his use as experimental in nature, and he regretfully did not consider the implications that his marijuana use would have on his security clearance. Although he did not access classified information as part of his day-to-day job duties, he acknowledged that he attended optional, classified seminars between April 2021 and December 2021 and his security clearance enabled him to do so. (Tr. 33-41, 53-78, 83-84; GE 1-2; AE B-C)

Applicant did not think to report his marijuana use until he voluntarily disclosed it on his March 2022 security clearance application (SCA). He did so, despite the potential consequences on his security clearance, because he wanted to be honest. He further discussed it in his December 2022 response to interrogatories. He took responsibility for his marijuana use. He also acknowledged that he violated federal law and the rules and regulations governing individuals with security clearances, having received annual security trainings since 2015. (Tr. 41-50, 52, 68, 71-80, 83; GE 1-2; AE B-C)

Applicant stated that his marijuana uses were extraordinary lapses of judgment. He stated that it permanently stained his personal integrity and he is committed to rehabilitation. He voluntarily completed a drug and alcohol education course in March 2022. He also voluntarily submitted to drug screens, testing negative for marijuana and other illegal drugs, in April 2022, November 2022, February 2023, April 2023, July 2023, and October 2023. He also chose to stop consuming alcohol in the summer of 2023, because he felt that his alcohol use contributed to his poor decision-making in 2021. He

has no intention of using marijuana in the future. (Tr. 41-50, 52, 68, 71-80, 83; GE 1-2; AE B-C)

Applicant does not socialize with anyone involved with drugs. His spouse is aware of his marijuana use. They are committed to Applicant's decision to refrain from illegal drug use. He also informed his family and friends of his intent to refrain from any illegal drug use and they are supportive of his decision. If he were to find himself in a situation where illegal drugs are being used, he would leave. In December 2022, he signed a statement of intent to never use any illegal drugs in the future and that any violation would result in him losing his security clearance. (Tr. 46-47, 61-62, 65-68, 71-73, 81-83; GE 2; AE A)

In addition to Applicant's impressive educational background, he has made valuable contributions as an aerospace engineer since he first started working as a DOD contractor in 2012. He was awarded for his exceptional work in 2012, 2018, 2019, and 2022. He is an esteemed member of his team, as evidenced by his stellar performance evaluations from 2016 to 2021. He also continues to contribute to his community. He provided numerous letters of support from close friends, colleagues, a former supervisor, and former colleagues, some of whom were aware of his past marijuana use. All of these individuals vouched for his judgment, reliability, and trustworthiness. (GE 2; AE D-G)

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 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(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."

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 Exec. Or. 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* Exec. Or. 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 the following applicable conditions that could raise security concerns under AG ¶ 25:

- (a) any substance misuse . . . ;
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information

Applicant used marijuana on three occasions from April 2021 to December 2021, while granted access to classified information. AG ¶¶ 25(a), 25(c), and 25(f) are established.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided under AG ¶ 26. 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; 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; 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 self-reported information about his illegal drug use on his SCA and during his response to interrogatories. He acknowledged that he violated federal law and the rules and regulations governing individuals with security clearances. He voluntarily completed a drug and alcohol education course in March 2022 and he voluntarily submitted to six drug screens from April 2022 to October 2023 wherein he tested negative for marijuana and other illegal drugs. He also chose to stop consuming alcohol in the summer of 2023. He no longer associates with individuals who use illegal drugs, he informed his family and friends of his decision to refrain from illegal drug use, and he signed a statement of intent to abstain from all future drug involvement and substance misuse.

However, Applicant's use of marijuana on three occasions from April 2021 to December 2021, while granted access to classified information, occurred just over two years ago. An applicant who continues to use marijuana, after applying for a security clearance and being adequately placed on notice that such conduct was inconsistent with holding a security clearance, demonstrates a disregard for security clearance eligibility standards, and such behavior raises substantial questions about the applicant's judgment, reliability, and willingness to comply with laws, rules, and regulations. See ISCR Case No. 20-01772 at 3 (App. Bd. Sep. 14, 2021); See *also* ISCR Case No. 21-02534 at 4 (App. Bd. Feb. 13, 2023) and ISCR Case No. 22-01661 at 3 (App. Bd. Sept. 21, 2023).

Applicant was candid, credible, and remorseful at the hearing. However, more time without marijuana use is necessary to establish his future abstinence from marijuana use and possession. I find that AG ¶¶ 26(a), 26(b)(1), and 26(b)(3) are not established.

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 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 considered Applicant's impressive educational background and valuable contributions to his profession. I also had the opportunity to observe Applicant's demeanor during his hearing and he was credible, candid, and remorseful. However, the evidence against grant of a security clearance is more persuasive at this time. I conclude Applicant did not mitigate 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:	AGAINST APPLICANT
Subparagraph 1.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 national interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge