



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



In the matter of:)	
)	
)	ISCR Case No. 23-02069
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Esquire, Department Counsel
For Applicant: *Pro se*

03/29/2024

Decision

CEFOLA, Richard A., Administrative Judge:

On May 5, 2023, Applicant submitted her Electronic Questionnaire for Investigations Processing (e-QIP). On September 21, 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 (Drug Involvement and Substance Misuse). 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 soon thereafter, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) received the request on November 21, 2023. I also received the case assignment that date. DOHA issued a Notice of Hearing on November 28, 2023, and I convened the hearing as scheduled on January 10, 2024. The Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified on her own behalf. She

also asked that the record be kept open until February 9, 2024, for the receipt of additional documentation. On February 9, 2024, Applicant offered Exhibits (AppXs) A and B, which were received without objection. DOHA received the transcript of the hearing (TR) on January 22, 2024. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

Findings of Fact

In her Answer to the SOR Applicant admitted the factual allegations in Paragraph 1 of the SOR, with explanations.

Applicant is 27 years old, unmarried, and has no children. She has an associate degree, and has worked for a defense contractor since March of 2023 as a Business Cost Control Analyst. (TR at page 12 line 21 to page 14 line 16.)

Guideline H – Drug Involvement and Substance Misuse

1.a. Applicant admits using marijuana beginning in 2010 until July 2022. As to her specific usage, she avers, “marijuana daily from 2014 to 2017, 3 to 5 times a week from 2017 to 2020 and once every 6 months from 2020 to 2022.” (GX 2 at page 3, and TR at page 15 line 11 to page 16 line 24.) Her usage was at parties, the last usage being in July of 2022, while still in college. (*Id.*)

1.b. Applicant admits using cocaine, a total of about 30 times, from about August 2014 to about July of 2022, a period of about eight years. The last three years of her usage was 2~3 times a year. (TR at page 17 lines 1~23, at page 29 line 11 to page 30 line 11, and Answer.)

1.c., 1.d. and 1.e. Applicant admits purchasing and using Vyvanse from 2014~2019, Adderall from 2017 until July of 2022, and Ritalin from 2014 until July of 2022, each drug without a prescription, “3-4 times a year,” as a study aid. (TR at page 17 line 24 to page 19 line 3, and Answer.)

1.f. Applicant admits using MDMA (ecstasy) with varying frequency as “a party drug,” from about 2014 to about 2017. (TR at page 19 lines 4~23, and Answer.)

1.g. Applicant admits using hallucinogenic mushrooms “approximately 10 times,” as a party drug, from about August 2014 to about July of 2022. (TR at page 19 line 24 to page 21 line 24, and Answer.)

1.h. Applicant admits using Lysergic acid diethylamide (LSD) about three times from 2014~2017. (TR at page 22 line 1 to page 23 line 2.)

1.i. Applicant admits there is a high likelihood she used other drugs – including ketamine, methamphetamine, codeine, and prescription Xanax (without a prescription), with varying frequency from 2014~2020. (TR at page 22 line 3 to page 26 line 3, and Answer.)

Applicant has signed a statement of intent to abstain from all drug involvement and substance misuse in the future. (AppX A.)

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 over a period of twelve years. 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.

Although Applicant has signed a statement of intent to abstain from all drug involvement and substance misuse in the future, her twelve years of usage ended only 18 months prior to her hearing. It is too soon to say that her rather extensive history of drug use is not of present security significance. Drug Involvement and Substance Misuse is found against Applicant. However, this should not dissuade Applicant from applying for a security clearance in the future, with the passage of at least another year of continued abstinence.

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 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. Applicant's supervisor speaks most highly of Applicant. (AppX B.) However, her frequent and intentional substance misuse for more than a dozen years ended too

recently to mitigate the likelihood of recurrence. Overall, the record evidence leaves me with questions and doubts as to Applicant's present eligibility and suitability for a security clearance. For these reasons, I conclude Applicant has not mitigated the security concerns arising from her 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.~ 1i:	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