



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



In the matter of:)	
)	
)	ISCR Case No. 23-01963
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew H. Henderson, Esq., Department Counsel
For Applicant: *Pro se*

04/17/2024

Decision

RICCIARDELLO, Carol G., Administrative Judge:

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

Statement of the Case

On October 13, 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 and Guideline J, criminal conduct. 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 October 19, 2023, and elected to have her 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 December

20, 2023. She 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 provided a response to the FORM. It is marked as Applicant Exhibit (AE) A. There were no objections to any of the documents offered and all are admitted in evidence. The case was assigned to me on March 27, 2024.

Findings of Fact

Applicant admitted all the SOR allegations. Her 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 31 years old. She is not married and has no children. She earned a bachelor's degree in 2018. She began working for a federal contractor in March 2023. She completed a security clearance application (SCA) in late March 2023. (Item 2)

Section 24 of the SCA asked if in the last seven years Applicant had illegally used drugs or controlled substances. She responded "yes" and stated, "I have smoked weed very seldomly through my adulthood." She further stated, "I have only smoked weed a few times over the years. Never on a regular basis. All in a social setting around other people." She estimated she used marijuana from January 2012 to April 2020. She further stated, "I do not care to smoke weed again or participate with it so I do not affect my job or security clearance. It isn't something I rely on or look for so it is not a problem to not do it again." (Item 2)

Applicant also disclosed that from May 2019 to February 2023, she used cocaine. She stated, "Every time I have done cocaine, it's been in a socially recreational setting. Never regular use. It would occasionally be on weekends. Not on weekdays. Only when out with friends." She stated she did not intend to use it in the future so it would not affect her job or security clearance. She said she did not have an issue with abstaining from using cocaine. (Item 2)

In her SCA, Applicant admitted she purchased cocaine from November 2021 to November 2022. She stated the frequency of her use as follows: "In a group setting/party with friends. I have purchased cocaine before at the party. This is infrequent activity." She provided the following comments:

In the environment/setting of my last job, it was very [commonplace] to see people buy and use cocaine. I did feel pressure at some points to purchase in a party environment and did so. I do not engage in that lifestyle or groups of people anymore so this is no longer an occurrence. (Item 2)

Applicant stated in her SCA that her interactions with cocaine have all occurred in social settings. She did not intend to purchase or use cocaine in the future. (Item 2)

Applicant was interviewed by a government investigator in May 2023. She was asked about her marijuana and cocaine use. She told the investigator that she first used marijuana in about August 2012 when she was 19 years old. She used it because of peer pressure. She would use it in her dormitory or in a fraternity house at parties. She obtained the marijuana from friends. She used it about one to two times total until December 2013. From December 2013 to January 2015, she used marijuana about three times with coworkers at her place of employment. They would smoke it in the parking lot after work. She got the marijuana from her coworkers. From January 2015 to September 2018, she did not use marijuana because she was living with her parents, working, and going to school. From September 2018 to April 2022, she used marijuana five times at home with her roommate who provided the drug. She continues to have contact with this friend, but they live in different states. Applicant disclosed that she no longer has contact with others who used marijuana. She stopped using marijuana because she does not enjoy it. She told the investigator that she does not intend to use marijuana in the future. She said she was willing to sign a statement of intent to abstain from illegal drug use. She did not provide that statement.

Applicant told the investigator that she began to use cocaine in May 2019. She was 26 years old. She first used it with a coworker at his home where there was a party. She had consumed alcohol and snorted two lines. She believed her intoxication and peer pressure were the reasons she first used it. Three to six months later, she used cocaine again in a similar setting, at a party with the same people from work. She snorted two to three lines of cocaine. She continued to use cocaine every one to three months. In August 2020, she began using cocaine monthly at home or at a coworker's residence. She began using half of a gram at a time. She used it with other friends at the same locations. She enjoyed using it because it helped her focus.

Applicant told the investigator that she was diagnosed with attention deficit hyperactivity disorder (ADHD) in June 2022 and was placed on medication. She said that her use of cocaine decreased to quarterly usage five times at her home until she stopped using it in February 2023 when she was offered a new job. She continues to have contact with three of her friends with whom she used cocaine but has told them she no longer uses it, and they have not asked her to do so. She said she no longer attends parties. She has not participated in substance abuse treatment. She believed her use of cocaine related to her former employment and pressure from coworkers. She now finds ways to avoid situations where illegal drugs are being used.

Applicant disclosed to the government investigator that she purchased cocaine from November 2021 to November 2022. She became aware that it was easy to purchase cocaine at two clubs from patrons or employees of the clubs. She first purchased one gram of cocaine and paid \$80. She then would purchase cocaine quarterly, always purchasing the same amount and paying the same amount. She and her friends would take turns purchasing the cocaine from a contact on Instagram. She said that she still has the seller's contact information from Instagram but has not messaged him. She last purchased cocaine in November 2022. She said she stopped purchasing cocaine after she was prescribed medication for her ADHD. She did not know if her friends still

purchase cocaine from the same source. She said she does not have contact with anyone involved in criminal conduct. She told the investigator that she has no intention of purchasing illegal drugs in the future.

In Applicant's response to the FORM, she reiterated her use of marijuana and explained that changing attitudes towards marijuana in society, changing laws, and "near-universal acceptance" among her friends made it difficult for her to understand the seriousness of her violation of the law. She said that prior to starting her new job with a federal contractor and after much consideration and reflection of the impact future use might have on various aspects of her life, she made a "firm decision" to not use marijuana again and is committed to abstaining from future use. (AE A)

Applicant reiterated her cocaine use in her response to the FORM. She stated that her infrequent use was a result of immaturity, peer pressure, and lack of impulse control. She said her life was not structured in a positive, sustainable way and she sometimes chose poor outlets for "entertainment and diversion." She partied too hard in ill-advised ways and regretted her conduct. She stated that after her "experimentation with cocaine," she was diagnosed with ADHD and was prescribed medication to increase her ability to focus, control impulses, and plan and follow through on tasks. She stated this has replaced some of the "benefits" she had previously derived from illicit drugs, thereby making them unnecessary. She has found positive factors that have increased structure and stability in her life. Her new job is rewarding. She has adopted two dogs that demand care, and she is purchasing a home. She said these are her guardrails that keep her on track. (AE A)

Applicant further stated in her FORM response regarding her purchasing cocaine that it is a chapter of her life she regrets. She acknowledged it was a choice and understands the significant consequences of her actions. She took responsibility and understood she is accountable for her actions. She indicated she was navigating challenges in her life but does not use them as excuses. She said she has undergone many personal changes in her life. She is committed to self-reflection, growth, and a new career path, which has brought clarity and purpose to her life. She has not purchased cocaine since starting her new career. She stated she will never purchase illegal drugs in the future. (AE A)

Applicant stated in her FORM response that she appreciates the importance of integrity, responsibility, and trust both personally and professionally. She is a dedicated team member and is making amends where possible. She is committed to moving forward with honesty, humility, and a determination to live a life without drugs or illegal substances. She acknowledges she made huge mistakes in the past and requests not to be judged on those but the person she strives to become. Drugs are in her past. She has made a conscious decision to lead a drug-free life. (AE A)

In her FORM response, Applicant stated that she has severed ties with the person she purchased drugs from on Instagram. She has had discussions with her friends with whom she used drugs, and they respect and support her decision. (AE A)

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 used marijuana from January 2012 to at least April 2022, with varying frequency. She used cocaine from May 2019 to February 2023, with varying frequency. From November 2021 to November 2022, she purchased cocaine on various occasions. The above disqualifying conditions apply.

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.

On October 25, 2014, the Director of National Intelligence (the Security Executive Agent (SecEA)) issued DNI Memorandum ES 2014-00674, "*Adherence to Federal Laws Prohibiting Marijuana Use*," which states:

[C]hanges to state laws and the laws of the District of Columbia pertaining to marijuana use do not alter the existing National Security Adjudicative Guidelines An individual's disregard of federal law pertaining to the use, sale, or manufacture of marijuana remains adjudicatively relevant in national security determinations. As always, adjudicative authorities are expected to evaluate claimed or developed use of, or involvement with, marijuana using the current adjudicative criteria. The adjudicative authority must determine if the use of, or involvement with, marijuana raises questions about the individual's judgment, reliability, trustworthiness, and willingness to comply with law, rules, and regulations, including federal laws, when making eligibility decisions of persons proposed for, or occupying, sensitive national security positions.

On December 21, 2021, the SecEA promulgated clarifying guidance concerning marijuana-related issues in security clearance adjudications. It states in pertinent part:

[Federal] agencies are instructed that prior recreational marijuana use by an individual may be relevant to adjudications but not determinative. The SecEA has provided direction in [the adjudicative guidelines] to agencies that requires them to use a "whole-person concept." This requires adjudicators to carefully weigh a number of variables in an individual's life to determine whether that individual's behavior raises a security concern, if at all, and whether that concern has been mitigated such that the individual may now receive a favorable adjudicative determination. Relevant mitigations include, but are not limited to, frequency of use and whether the individual can demonstrate that future use is unlikely to recur, including by signing an attestation or other such appropriate mitigation. Additionally, in light of the long-standing federal law and policy prohibiting illegal drug use while occupying a sensitive position or holding a security clearance, agencies are encouraged to advise prospective national security workforce employees that they should refrain from any future marijuana use upon initiation of the national security vetting process, which commences once the individual signs the certification contained in the Standard Form 86 (SF-86), Questionnaire for National Security Positions.

Applicant's use of marijuana began in 2012 and lasted until 2022. She used it with varying frequency and while at college. She refrained from using it while living at home, but then resumed her use with her friends. She smoked marijuana in the parking lot of her employer's business. She said she did not like it, but apparently that was not a deterrent because she repeatedly succumbed to peer pressure and continued using it, albeit infrequently, until she was 29 years old, beyond the age of youthful indiscretion. Of greater concern is that she graduated to using cocaine. She refers to experimenting with

it, but clearly, she was a regular user with her colleagues and friends. In addition, she was purchasing it at clubs and from a drug dealer on Instagram. She again said she succumbed to peer pressure. Although she said she no longer has contact with the Instagram dealer, she still has contact with friends with whom she used illegal drugs. She notes that now that she is on medication for her ADHD she is more able to focus and make better choices. Applicant did not stop using cocaine until she was offered a job that required her to have a security clearance. Her last use was in February 2023, a month before she began her employment.

Applicant's drug use was frequent and did not happen under unusual circumstances. She stated she is now committed to being drug-free and has made major changes in her life. This did not occur until after she received a job offer. It has only been a little over a year since she made that commitment. She repeatedly succumbed to peer pressure, and she maintains contact with some of the people with whom she used drugs. She stated they understand and respect her commitment to abstention. I cannot conclude that her conduct happened so long ago that it is unlikely to recur. Her drug involvement was beyond just using it. She was purchasing cocaine, a criminal offense. I have considered her statement that this is in her past and she takes responsibility for her conduct. Because Applicant requested a determination on the record without a hearing, I had no opportunity to question her about her illegal drug use or evaluate her credibility and sincerity based on demeanor. See ISCR Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). Insufficient evidence was provided to mitigate the security concerns raised by Applicant's drug involvement. None of the above mitigating conditions apply.

Guideline J: Criminal Conduct

The security concern for criminal conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 31, and the following are potentially applicable:

(b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant purchased and possessed cocaine on numerous occasions.¹ The above disqualifying condition applies.

¹ Applicant's use of marijuana alleged in SOR ¶ 1.a under Guideline H, drug involvement and substance misuse, was not cross-alleged under Guideline J, criminal conduct.

The guideline also includes conditions that could mitigate security concerns arising from criminal conduct. The following mitigating conditions under AG ¶ 32 are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher education, good employment record, or constructive community involvement.

Applicant's possession and purchase of cocaine was cross-alleged under the criminal conduct guideline. The same analysis under Guideline H is applicable under this guideline. Applicant repeatedly used and purchased cocaine. Her disregard for the fact that each time she used cocaine and purchased it she was committing a crime continues to raise concerns. She did not acknowledge that she discontinued her use because it was illegal, but rather because she had been offered a job. Her last use was a little more than a year ago. Not enough time has passed to conclude that her conduct is in the past. Based on the same analysis under Guideline H, I am not convinced that future issues are unlikely to recur. There is insufficient evidence to mitigate the criminal conduct security concerns.

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 Guidelines H and J in my whole-person analysis.

Applicant failed to meet her burden of persuasion. After weighing the disqualifying and mitigating conditions and evaluating all the evidence in the context of the whole person, I conclude Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse, and Guideline J, criminal conduct.

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
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge