



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



In the matter of:)	
)	
)	ISCR Case No. 23-01946
)	
Applicant for Security Clearance)	

Appearances

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

06/03/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns generated by his history of using multiple illegal drugs. Clearance is denied.

Statement of the Case

On November 9, 2023, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudication Services (CAS) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement, and Guideline J, criminal conduct, explaining why it was unable to find it clearly consistent with the national security to grant him security clearance eligibility. The CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On December 12, 2023, Applicant answered the SOR. He admitted all the allegations and requested a decision based on the evidence on file rather than a hearing. On December 20, 2023, Department Counsel prepared a File of Relevant Material (FORM), setting forth the Government’s arguments against Applicant’s security clearance worthiness. The FORM, which Applicant received on

January 18, 2024, contained three attachments, identified as Item 1 through Item 3. Applicant was given 30 days to file a reply to the FORM. He did not do so, whereupon the case was assigned to me on February 28, 2024.

Findings of Fact

Applicant is a 27-year-old single man. He is an engineering freelancer who is being sponsored for a clearance by one of his clients. He received a bachelor's degree in 2018.

Applicant admits to the multiple SOR allegations of drug use spanning from 2012 to 2023 (marijuana, LSD, mushrooms, dimethyltryptamine, MDMA, MDA, Adderall, cocaine, and ketamine), as well as a 2015 criminal conviction for possession of a controlled substance. Applicant's most extensive illegal drug use involved marijuana, which he used once a week between 2012 and 2013, once a day between 2014 and 2019, and twice per year between 2019 and 2021. Using marijuana initially made Applicant feel calm and happy. (Item 3 at 5) Over the years, however, it increasingly made him feel anxious. Moreover, it held [him] back from performing at [his] best." (Item 2 at 39) Ultimately, Applicant stopped using marijuana and hallucinogens in 2021. (Item 13 at 5)

Applicant used cocaine about ten times, averaging two to three times per year, between 2016 and 2023. (Item 3 at 13) Applicant experimented with hallucinogens, as alleged in subparagraphs 1.c through 1.h, and 1.i, "with the desire to explore [his] mind . . . in a meditative or 'spiritual' manner." (Item 2 at 39)

During a traffic stop in 2015, police discovered marijuana edibles, a THC vape concentrate, and alcohol in Applicant's car. (Item 3 at 4) Consequently, he was charged with possession of a Schedule 1 controlled substance, and minor in possession of alcohol. (Item 3 at 4) Applicant was subsequently fined and ordered to complete community service.

Between 2016 and 2018, Applicant used Adderall, a legal drug typically prescribed to treat attention deficit hyperactivity disorder (ADHD), in an illegal manner by using it without a prescription. He self-medicated with this drug to help with his performance in school in the weeks immediately preceding final exam periods. (Item 3 at 13)

Applicant has neither used illegal drugs nor used legal drugs illegally since 2023. He now uses his free time more productively and is focused on cultivating his career and maintaining his security clearance. (Item 2 at 39) Applicant no longer associates with friends who use illegal drugs, and he avoids environments where people may be abusing drugs. (Item 3 at 16, 22) Maintaining his job and increasing his financial security are his top priorities. (GE 3 at 41)

In 2020, Applicant began attending therapy with a psychiatric nurse practitioner to address his ADHD. Although he did not explicitly seek treatment to address illegal drug use, the therapy helped him realize that he had been using the illegal drugs to self-

medicate his ADHD. Moreover, Applicant credits the therapy to the decrease in illegal drug usage. (Item 3 at 20) He intends to continue attending therapy once every three months. (Item 3 at 20)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) 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. 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline H: Drug Involvement

Under this concern, “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 ¶ 24) Applicant illegally used Adderall, a legal drug, without a prescription. Because he used it to help him study for his college final exams and has not used it since graduating six years ago, he is unlikely to use it again. I conclude Applicant has mitigated subparagraph 1.i. Applicant’s remaining history of illegal drug use triggers the application of AG ¶ 25(a), “any substance misuse,” and AG ¶ 25(c), “illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.”

Much of Applicant’s illegal drug use occurred between 2012, when he was 15 years old, and 2021, when he was 24 years old. He has not used any marijuana or hallucinogenic drugs since then, he no longer associates with people who use illegal drugs, and he avoids environments where people may be abusing illegal drugs. Additionally, Applicant has been working with a therapist since 2020 who has helped him realize that his marijuana use was a way to self-medicate his ADHD. Applicant credits this insight with preventing a relapse. Under these circumstances, the following mitigating conditions under AG ¶26 apply, as follows:

(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 contactss
- (2) changing or avoiding the environment where drugs were used

Conversely, Applicant did not stop using cocaine until less than two years ago. Given the recency of his last use of cocaine, it is too soon to conclude that he has mitigated the security concerns.

Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” (AG ¶ 30) In addition, “by its very nature, it calls into

question a person's ability or willingness to comply with laws, rules, and regulations." (*Id.*) Given the recency that Applicant stopped using cocaine, it is too soon to conclude that the criminal behavior will not recur. Under these circumstances, none of the mitigating conditions apply. Applicant has failed to mitigate the criminal conduct security concerns.

Whole-Person Concept

In reaching my conclusion, I considered the positive factor of the presence of rehabilitation, related to Applicant's decision to seek therapy, However, the presence of rehabilitation is outweighed by the nature and seriousness of the drug he used most recently, the same year Applicant completed the security clearance application. Ultimately, I conclude that Applicant has failed to carry the burden.

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.h.:	Against Applicant
Subparagraph 1.i:	For Applicant
Subparagraphs 1.j – 1.l:	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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge