



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



In the matter of:)	
)	
)	ISCR Case No. 23-02850
)	
)	
Applicant for Security Clearance)	

Appearances

For Government:
Jeff Nagel, Esquire, Department Counsel

For Applicant:
Pro se

07/10/2024

Decision

GLENDON, John Bayard, Administrative Judge:

Applicant has mitigated security concerns raised by his past drug involvement and substance misuse. National security eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a Questionnaire for National Security Positions (SF86) on March 17, 2023 (the Questionnaire). On February 5, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) 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 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as

amended (Directive); and the adjudicative guidelines (AG) effective within DoD after June 8, 2017.

On April 11, 2024, Applicant, through counsel, responded to the SOR (Answer) and attached 15 documents. Applicant also requested a hearing before an administrative judge of the Defense Office of Hearings and Appeals (DOHA). Department Counsel was prepared to proceed on May 10, 2024. Applicant's counsel advised on May 15, 2024, that he no longer represented Applicant. The case was assigned to me on May 20, 2024. DOHA issued a Notice of Hearing on May 31, 2024, scheduling the case to be heard via Microsoft Teams video teleconference on June 17, 2024.

I convened the hearing as scheduled. Department Counsel offered two documents marked as Government Exhibits (GE) 1 and 2. Applicant proceeded *pro se* and testified on his own behalf. He also submitted a list of 12 exhibits, marked as Applicant Exhibits (AE) A through L. He declined to offer the exhibit list and corresponding exhibits prepared by his former attorney. The exhibits of both parties were admitted without objection. I left the record open until June 24, 2024, to give Applicant the opportunity to supplement the record. He timely submitted one document, which I marked as AE M and admitted without objection. DOHA received the transcript of the hearing (Tr.) on June 25, 2024. (Tr. at 13-14, 20, 23.)

Findings of Fact

Applicant is 23 years old. In May 2019 he received a high school diploma in Amsterdam, The Netherlands, where he lived with his parents during his high school years. He returned to the United States, where he was born, and earned a bachelor's degree in May 2023 at a prestigious U.S. university. He has never married and has no children. Applicant has worked for a U.S. defense contractor since August 2023 as a data scientist. [All defense contractors are "important" to national security] He is seeking to be granted national security eligibility in connection with his employment. (Tr. at 23, 45-46; GE 1 at 5, 12-14, 24-25; GE 2 at 5; AE I.)

The Government alleged in the SOR that Applicant is ineligible for a security clearance because he has used several types of illegal drugs at various times over the period 2018 through 2023. The specific allegations and the related facts developed at the hearing are as follows:

SOR ¶ 1.a. Cocaine (November 2021-February 2023). Applicant disclosed in the Questionnaire that he used cocaine less than ten times over a period of about 15 months. He was in college when he used this drug. His last use was in February 2023. In his security clearance background interview, he noted the same information and added that he purchased the drug illegally. Applicant provided the same information in his response to the Government's interrogatories (GE 2) and at the hearing. He submitted the Questionnaire (GE 1) about a month later. At the hearing, Applicant acknowledged that cocaine is not a legal drug in his home state. (Tr. at 34-35; GE 2 at 8, 23.)

SOR ¶ 1.b. MDMA (April 2020-April 2023). Applicant disclosed in the Questionnaire that he used MDMA about three to five times over a period of three years while attending music concerts. He was in college during this period. His last use was in February 2023. In his background interview, he noted the same information and added that he purchased the drug illegally. Applicant provided the same information in his response to the Government's interrogatories (GE 2) and at the hearing, except that he noted that his last use was actually April 2023, the month after he submitted the Questionnaire, GE 1, and just prior to his college graduation. (GE 1 at 59-60; GE 2 at 7-8, 23.)

SOR ¶ 1.c. Ketamine (August 2022-December 2022.) Applicant disclosed in the Questionnaire that he used Ketamine less than five times during a four-month period in 2022. He was in college during this period. His last use was in December 2022. In his background interview, he noted the same information and added that he purchased the drug illegally. Applicant provided the same information in his response to the Government's interrogatories (GE 2) and at the hearing. (GE 1 at 60-61; GE 2 at 8, 23.)

SOR ¶ 1.d. Marijuana (July 2018-December 2022). Applicant disclosed in the Questionnaire that he used marijuana two to three times "monthly" over a four and one-half year period. He was in high school in Amsterdam during the first year of his use (July 2018 to July 2019). He was a student in college for the other three plus years. He commented at the hearing that marijuana and drugs were legal or generally accepted in Amsterdam. At his college in the United States, he found the same attitude and acceptance of recreational drugs and marijuana in particular because it was legal to buy and use marijuana in the state where he attended college. His last use of marijuana was in December 2022. In his background interview, Applicant noted the same information as he provided in the Questionnaire. In his responses to the Government's interrogatories, which was prepared by his former attorney and signed by Applicant, the description of the frequency of Applicant's marijuana use was "approximately 10-12 times per month." At the hearing, Applicant explained that this was an error. He agreed that he had signed the Interrogatory responses, and in doing so, had sworn under the penalty of perjury that his answers were "true and correct." He took responsibility for not catching his former attorney's error in the responses but was sincere in asserting that the answer was wrong because it switched his prior monthly estimate into a weekly estimate and multiplied it by four to represent a full month's worth of use. In either event, Applicant used marijuana frequently in high school and college over a number of years, as did his peers. The SOR does not allege that he intentionally misrepresented the extent of his marijuana use in the Questionnaire. (Tr. at 25, 32-34; GE 1 at 59; GE 2 at 7, 23.)

SOR ¶ 1.e. Psilocybin/Mushrooms (February 2018-April 2023). Applicant disclosed in the Questionnaire that he experimented with Psilocybin truffles on two occasions, once in February 2018 when he was in high school and once in April 2022 when he was in college. In his background interview, he disclosed the same information about the timing and frequency of his use of this drug. He commented further that in

Amsterdam it was legal to purchase truffles or mushrooms. In his response to the Government's interrogatories and at the hearing, Applicant candidly admitted that he last used mushrooms in April 2023, as alleged in the SOR. This occurred about one month after he submitted the SF86 and one month before he graduated from college. He also estimated his use of mushrooms at three to four times, which was one or two more times than he had initially disclosed in the Questionnaire. (Tr. at 35-38, 41, 46; GE 1 at GE 2 at 3, 23.)

SOR ¶ 1.f. LSD (February 2018-April 2022). Appellant disclosed in the Questionnaire that he used LSD in high school and college. In his response to the Government's Interrogatories, he estimated that he had experimented with LSD on three or four occasions while in high school and college. His last use was in April 2022. He acknowledged that he purchased the drug illegally in both high school and college. He provided the same information in his Interrogatory responses. (GE 2 at 8, 23.)

Mitigation

In the Answer, Applicant admitted each of the SOR allegations set forth above and provided a "clarification." In his clarification, he commented that he grew up in Amsterdam, where he said, there is "a drug crisis." He was influenced by his surroundings. He wrote that he was in college when most of his drug use occurred. As of the date of the Answer, he asserted his intent to abstain from using illegal drugs in the future, and he provided a written statement confirming that intent. (AE C.) He affirmed that intent at the hearing. He also testified that he has relocated away from the places where he used drugs in the past and no longer associates with anyone who uses illegal drugs. In support of his desire to remain drug free, he has taken courses to educate himself. He also provided two drug tests taken in March 2024 to evidence his sobriety. Applicant states that he has matured and is now focused on advancing his career with an important employer and on his long-term health. He is remorseful for the mistakes he made when he was younger. (Tr. at 12, 26-27; AE A; AE B; AE D; AE G.)

Whole-Person Evidence

Applicant submitted three character-reference letters. One was written by a work colleague, who is a friend and co-worker at Applicant's place of employment. The reference praised Applicant's integrity and intelligence. A second reference letter was prepared by Applicant's product manager at his employer. The writer praised Applicant's maturity, professionalism, and work ethic, which he noted was "extremely rare for someone so junior in his career." This reference, a veteran naval officer, was particularly impressed that Applicant self-reported the details of his past drug use in his SF86. The third letter was submitted by Applicant's supervisor. This reference strongly recommends Applicant for a clearance. He wrote that Applicant is of good moral character and is deserving of a clearance. He commented further that Applicant "outperformed" the job he was hired to do coming directly out of college and "was quickly shifted into the more challenging role of data scientist." Applicant testified that each reference wrote their letters

aware of the SOR allegations. He also provided after the hearing a formal certification from his supervisor advising that at the time he prepared his character reference letter for Applicant (AE E), he was aware of the Government's SOR allegations. (Tr. at 15; AE D; AE E; AE F; AE M.)

Applicant also testified about his volunteer work in his community. He has volunteered to help coach a high school lacrosse team, and he has run educational programs for children on cyber security and robotics. Applicant is also very proud of his considerable academic achievements and his success playing college lacrosse. (Tr. at 28-29; AE D; AE E; AE F; AE H; AE I; AE J.)

Applicant also submitted his first employment performance review. The reviewer described Applicant as having "an insatiable appetite" to learn all aspects of the military operations he works to support. He further described Applicant as having "immense talent and curiosity." (AE J.)

Policies

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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, 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 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 concerns relating to the guideline for drug involvement and substance misuse are set out in AG ¶ 24, which reads as follows:

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.

AG ¶ 25 sets forth the following condition that could raise security concerns and may be disqualifying in this case:

(a) any substance misuse (see above definition).

Applicant's admissions to the SOR allegations and his testimony at the hearing established the above potentially disqualifying condition. Accordingly, the burden shifts to Applicant to mitigate the security concerns raised by his conduct and stated intentions.

AG ¶ 26 of this guideline provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 26 and conclude that the following two conditions have possible application to the facts of this case:

(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 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 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.

Both of the above mitigating conditions have been established. Applicant's drug use occurred while he was in high school and college when his peers and the educational environment in which he lived fostered a carefree attitude about drug use. This was a unique circumstance in his life and having moved on to a career as a data scientist with a defense contractor, his drug use is unlikely to recur. His past behavior does not cast doubt on his current reliability, trustworthiness, and judgment. In addition, he has acknowledged his past drug use and has provided substantial evidence of his actions taken to change his behavior. He has fully satisfied all three of the subsections under AG ¶ 26(b). Applicant has mitigated the security concerns raised under Guideline H.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's eligibility for national security eligibility 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 national security 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 above whole-person factors and the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. I credit Applicant's honesty in self-reporting his past drug use knowing that it could affect his clearance eligibility and employment. I have considered his age and the circumstances under which he used recreational drugs in the past. I have also considered two inconsistencies in the record. Applicant credibly explained a mistake in his Interrogatory responses regarding the frequency of his marijuana use. There was a miscommunication regarding his actual frequency that he failed to catch when he signed the responses prepared by his former attorney. The other discrepancy is more significant in that it reveals that Applicant used mushrooms one month after he submitted the Questionnaire. Applicant regrets this mistake in judgment. In light of his self-disclosure of this untimely extra one-time use of an illegal drug and his self-reporting of all of his past extensive drug use, this incident does not change my assessment of Applicant's mitigation of his past drug use. Overall, the record evidence leaves me without any questions or doubts as to Applicant's present suitability for national security eligibility and a security clearance.

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:	FOR APPLICANT
Subparagraphs 1.a through 1.f:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant national security eligibility. Eligibility for access to classified information is granted.

JOHN BAYARD GLENDON
Administrative Judge