



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



In the matter of:)	
)	
)	ISCR Case No. 22-01744
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Tara R. Karoian, Esq., Department Counsel
For Applicant: *Pro se*

08/23/2024

Decision

WHITE, David M., Administrative Judge:

Applicant experimentally used marijuana several times between 1998 and 2020. He fully disclosed these four or five incidents during the submission and processing of security clearance applications in 2017 and 2021. He has no current association with persons involved in drug abuse or state-licensed distribution, and has no intent to misuse controlled substances in the future. Resulting security concerns were fully mitigated. Based upon a review of the full record, national security eligibility for access to classified information is granted.

History of Case

On October 26, 2022, 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 (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 Security Executive Agent Directive (SEAD) 4 National Security Adjudicative Guidelines (AG), effective June 8, 2017.

Applicant submitted an undated written Answer to the SOR, in which he admitted the allegations in SOR ¶¶ 1.a and 1.b, and requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on February 17, 2023, and I received the case file on February 28, 2023. DOHA issued a Notice of Hearing on March 21, 2023, setting the hearing for April 18, 2023.

Department Counsel offered two hearing exhibits (HE) comprising the Government's Documentary Exhibit List and Department Counsel's February 16, 2023 letter to Applicant. These hearing exhibits were marked HE I and HE II, for identification, and appended to the record for reference purposes. Department Counsel also offered Government Exhibits (GE) 1 through 3 into evidence. GE 1 and GE 2 were admitted without objection. In the absence of an authenticating witness, I sustained Applicant's objection to GE 3 and it was not admitted into evidence. See EO 10865 § 5, and Directive ¶ E3.1.20.

Applicant testified but offered no documentary evidence. I granted the parties' request to leave the record open until May 12, 2023, for submission of additional documentary evidence in mitigation or rebuttal. On May 11, 2023, Applicant submitted a written statement concerning his intention to abstain from future substance misuse, and two character-reference letters from senior supervisory managers at his company. These were marked as Applicant's exhibits (AE) A and B, respectively, and were admitted without objection. The record closed as scheduled. DOHA received the hearing transcript (Tr.) on April 28, 2023.

Procedural Matter

On May 16, 2023, Applicant sent an email stating that he had transferred work positions and been debriefed from his security clearance. He stated that he did so out of an abundance of caution for his livelihood and employment, which he felt was unreasonably in jeopardy. He did not request termination of these national security eligibility determination proceedings, but instead asked to be informed of the result of the adjudication. This email communication was appended to the record as HE III. Pursuant to Directive ¶ 4.41, DOHA retains jurisdiction to adjudicate Applicant's national security eligibility under these circumstances. ISCR Case No. 05-04831 (App. Bd. Nov. 29, 2006).

Findings of Fact

Applicant is 42 years old. He has been married since August 2010 and has two children who are 11 and 7 years old. He earned a high school diploma in June 2000, a bachelor's degree in mechanical engineering in May 2004, and completed additional post-

graduate education from July 2019 to September 2020. He began his current employment as a production support engineer with a major defense contractor in May 2010. He has not served in the military or worked as a Federal civilian employee. He has held a security clearance since November 2017 in connection with his sensitive position performing work on DoD contracts . (GE 1; GE 2; Tr. 6-8, 27-30.)

Applicant has been completely forthright about his past experimentation with marijuana and derived THC (tetrahydrocannabinol) edible products during the submission and processing of his 2017 and 2021 security clearance applications (SCA). He submitted them in connection with his employment, to further his employer's ability to use his professional expertise in support of DoD contracted work. He was granted a Secret-level security clearance in May 2017, and submitted his October 2021 SCA when transferring to a different project. All the evidence in this case concerning Applicant's drug involvement is based on his voluntary admissions. (GE 1; GE 2; Tr. 8, 34-36.)

Applicant used marijuana or THC edibles on four occasions, and possibly on a fifth occasion that he disclosed because he was unsure whether active THC was involved. The first three times involved experimental smoking of marijuana in 1998 and 2002 while he was in, respectively, high school and college, and sharing a friend's THC vaporizer one time in 2012. During 2018, Applicant ate a THC-laced edible candy product that was offered to him by a state-licensed marijuana retailer who was a casual friend that he last saw more than four years ago. The fourth incident occurred in 2020 when he accepted a hemp-laced edible product from the wife a friend in a social setting, which he reported because he suspected that it might have contained active THC. (GE 1; GE 2; Tr. 30-37, 48-49.)

Applicant testified, and has consistently reported, that he did not enjoy any of these experiences and has no intention to use marijuana-related products again. His wife does not use drugs and, as he testified, "was aware of the last one. It was an issue at the time." (Answer; GE 1; AE A; Tr. 44-46, 49.)

Applicant credibly testified that he understood his employer's drug-free workplace policies to cover only use of, or impairment from, substance misuse while at work. He was not in a safety-related position subject to random drug testing. He was aware that marijuana remains a controlled substance under Federal law, despite its legalization for sale and use in his state of residence. He did not consider his minor social experimentation with the edible products, after he was granted a security clearance, to constitute any risk to his national security responsibilities. He now understands that it cast potential doubt on his willingness to comply with Federal laws and regulations and will not repeat that conduct. He submitted an electronically signed written statement declaring his intent to refrain from substance misuse and his disassociation from all local state-licensed cannabis retailers, and acknowledging that further use is grounds for revocation of any national security eligibility. (AE A; Tr. 29, 37-42.)

Applicant submitted letters from a Senior Engineering Manager, and the Director and Chief Engineer of Production Engineering for a major commercial product line at Applicant's company. Each senior manager has known and worked with Applicant for more than a decade, and wrote glowing letters praising his character, integrity, and professional performance. (AE B.)

Policies

When evaluating an applicant's national security eligibility, the administrative judge must consider the SEAD 4 adjudicative guidelines (AG). In addition to brief introductory explanations, each guideline lists potentially disqualifying and mitigating conditions. 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. According to AG ¶¶ 2(b) and 2(c), the entire process is a conscientious scrutiny of several variables known as the whole-person concept. The administrative judge must consider all available, pertinent, and reliable information about the person, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that any doubt concerning personnel being considered for national security eligibility 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 avoided drawing inferences grounded on mere speculation or conjecture.

According to Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states, "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 applies for national security eligibility seeks to enter 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 eligibility for access to classified information or assignment in sensitive duties. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to protect or safeguard classified or sensitive information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of protected information.

Section 7 of EO 10865 provides, “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* 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 concerns under the guideline for drug involvement and substance misuse are 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.

AG ¶ 25 describes two conditions that could raise security concerns and may be disqualifying based on the SOR allegations in this case:

(a) any substance misuse (see above definition); and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant admittedly used marijuana or a THC-laced edible or vaporizer on four occasions in 1998, 2002, 2012, and 2018. He also accepted a hemp-laced edible from a friend's wife during 2020 which may have contained Federally regulated levels of THC. He was granted a security clearance and was granted access to classified information in 2017. He knew that his marijuana experimentation was illegal under Federal law but did not believe that it violated his company's employee substance abuse policies or compromised his national security responsibilities. This establishes security concerns under AG ¶¶ 25(a) and 25(f). Accordingly, the burden to mitigate the established concerns shifts to Applicant.

AG ¶ 26 provides two conditions that could mitigate the drug-related security concerns raised in 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 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.

In my analysis, I have taken administrative notice of the Security Executive Agent (SecEA) *Clarifying Guidance Concerning Marijuana for Individuals Eligible to Access Classified Information or Eligible to Hold a Sensitive Position*, dated December 21, 2021. In her *Guidance*, the SecEA noted the increased number of states that have legalized or decriminalized the use of marijuana. She reaffirmed the 2014 SecEA memorandum regarding the importance of compliance with Federal law on the illegality of the use of marijuana by holders of security clearances. She provided further clarification of Federal marijuana policy, writing that this policy remains relevant to security clearance adjudications, “but [is] not determinative.” She noted that the adjudicative guidelines provided various opportunities for a clearance applicant to mitigate security concerns raised by his or her past use of marijuana.

Applicant fully mitigated the security concerns raised by his infrequent marijuana experimentation on four or five occasions from about 1998 through 2020. He neither enjoyed THC use nor engaged in any repeated patterns of such conduct. He knew that his drug involvement was illegal under Federal law but reasonably did not believe that it was contrary to his employer’s safety and security policies. He credibly testified and submitted written declarations of intent not to misuse drugs in the future, and acknowledged that such misuse would be grounds for revocation of his national security eligibility. He no longer associates with people involved in substance misuse.

This evidence establishes that drug abuse is unlikely to recur, and his freely admitted isolated incidents many years ago cast no doubt on Applicant’s current reliability, trustworthiness, and judgment. Accordingly, the Guideline H security concerns are completely mitigated under AG ¶¶ 26(a) and 26 (b). There is no indication of a substance

abuse disorder in this case, and Applicant has not sought, been recommended for, or participated in any drug treatment, rehabilitation, or aftercare program.

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's 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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant's four or five isolated incidents of experimenting with THC over the past 26 years leave me without significant doubts as to his eligibility for a security clearance. He established both his integrity and his intention to remain abstinent to the maximum extent possible; thereby minimizing the potential for exploitation or duress, and the likelihood of recurrence. He is a mature and highly regarded professional with an excellent record of responsible performance in the defense industry. He demonstrated his trustworthiness, responsibility, and willingness to comply with rules and regulations. The potential for pressure, exploitation, or duress is insignificant. Applicant fully met his burden to mitigate the security concerns arising under the Drug Involvement and Substance Misuse guideline.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Conclusion

In light of all the circumstances presented by the record in this case, it is clearly consistent with the interests of national security to grant or continue Applicant's security clearance. National security eligibility for access to classified information is granted.

DAVID M. WHITE
Administrative Judge