



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



In the matter of:)	
)	
)	ISCR Case No. 23-00075
)	
Applicant for Security Clearance)	

Appearances

For Government: John C. Lynch, Esq., Department Counsel
For Applicant: Matthew J. Thomas, Esq.

Decision

HALE, Charles C., Administrative Judge:

Applicant did not mitigate the security concerns under Guideline H (drug involvement and substance misuse). Eligibility for access to classified information is denied.

Statement of the Case

On April 6, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. Applicant responded to the SOR on June 10, 2023, and requested a hearing before an administrative judge. The case was assigned to me on January 3, 2024. The SOR was amended on February 2, 2024, and Applicant responded to the amendment on March 1, 2024.

The hearing was convened on April 10, 2024. Government Exhibits (GE) 1 through 3 and Applicant’s Exhibits (AE) A-L were admitted in evidence without objection. The Government’s disclosure letter dated June 28, 2023, was marked as Hearing Exhibit (HE) I. Applicant testified and offered no additional evidence. Neither side requested to have the record held open. DOHA received the transcript (Tr.) on April 19, 2024.

Findings of Fact

Applicant admitted the amended allegation, SOR ¶ 1.a, that he used marijuana with varying frequency from about May 2017 to about March 2023, including while holding a sensitive position, i.e., one in which he held an interim security clearance, and admitted and denied in part SOR ¶ 1.b, that he expressed an intent to continue to use marijuana in the future during his September 2022 enhanced subject interview (ESI).

Applicant is a 26-year-old project engineer for a defense contractor. He has worked for his sponsor since 2022. He seeks to obtain a security clearance. He earned his bachelor's degree in December 2021. He is single but has a girlfriend whom he intends to marry. He has no children. (GE 1 at 12, 13, 30, and 37.)

Applicant has a history of marijuana use. In his July 26, 2022 Questionnaire for National Security Positions (SCA), he reported using marijuana from May 2017 to July 2022. He noted "enjoyed consuming marijuana frequently between May 2017 and July 2018" but after 2018 he estimated he consumed about 15 times. He has not had any violations while handling classified material while working for his sponsor under an interim security clearance. (GE 3; Tr. at 40-41.) After the SOR was issued his interim security clearance was withdrawn. (Tr. at 43.) He stated on his July 2022 SCA he did "not intend to consume marijuana in the future because it still impacts [his] behavior in a negative way." (GE 1 at 39.)

As part of the Government interrogatories, Applicant was asked to verify the accuracy of his September 2022 ESI. He made no changes and marked that the information he provided the investigator was accurate. (GE 2 at 6.) In his ESI, Applicant discussed with the investigator his future intent regarding marijuana use. He stated he may keep trying it with friends to see if he likes it. The investigator asked if he knew what the current policy at his current employment was regarding marijuana use, which he assumed it was not allowed but he was not aware. He told the investigator that he was living with his girlfriend, and he would continue to try marijuana. He gave the investigator an example that if he was back at his apartment, he would still smoke it if he had energy after he had been out drinking. He stated if people at work found out and he could not work there, he would stop. (GE 2 at 4-5.)

Applicant told the investigator that he stopped using marijuana in college and he had not tried marijuana in over a year. (GE 2 at 3; Tr. 55.) He then admitted he smoked marijuana with his father in July 2022. (GE 2 at 4; Tr. at 49.) He testified that he used marijuana in August 2022, March 2023, and in October 2023 to support his girlfriend. He described the reason he smoked in August 2022 was to provide love and support after they had moved into their new apartment. He used marijuana in October 2022 and March 2023 to support his girlfriend because she was in an agitated state of mind. He testified to her mental health issues. She did not ask him to smoke with her on these occasions. (Tr. at 31-33, 44, 64.) His girlfriend possesses medical marijuana cards for two states. (AE E; Tr. at 30.) He offered two negative February 2024 drug tests that he privately sought. He testified he took the tests to "put my money where my mouth is and prove that

I can stay sober from marijuana.” (AE C; Tr. at 38-39.) Both his father and girlfriend continue to smoke marijuana in his presence. (Tr. at 51, 52.)

Applicant provided statements in support of his character (AE F), his performance

Policies

This case is adjudicated 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), which became effective on June 8, 2017.

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 to be 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, administrative judges apply the guidelines 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.”

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 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. 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.

Applicant’s admissions in his SCA, Answer, and testimony are sufficient to raise the following disqualifying conditions under this guideline: AG ¶ 25:

- (a): any substance misuse (see above definition);
- (c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

AG ¶ 26 provides conditions that could mitigate security concerns. The following 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 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.

Applicant's behavior is recent and was not infrequent. He used marijuana with his girlfriend multiple times on his own initiative to support her when she was in an agitated state of mind. In doing so, Applicant knowingly disregarded security clearance eligibility standards while holding an interim security clearance. He lives with his girlfriend who continues to use marijuana and his family uses marijuana as well. Given the familial relationships, disassociation is problematic. While he offered negative drug tests taken in February 2024 there has been insufficient time to establish if he has been able to create an environment where he will not again use marijuana. Applicant's behavior raises substantial questions about his judgment, reliability, and willingness to comply with laws, rules, and regulations. See ISCR Case No. 20-02974 (App. Bd. Feb. 1, 2022). Applicant's willingness to sign a statement of intent not to use illegal drugs in the future does not mitigate the scope of these security concerns raised by his statements to the investigator concerning his intentions for future use or his recent actions. Applicant has failed to fully establish AG ¶ 26 conditions that could mitigate the 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 relevant circumstances. The administrative judge should consider the nine adjudicative process factors listed at 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 his character statements, declaration of support of his girlfriend, and his miscellaneous awards as well as his Declaration of Intent and Drug & Alcohol Education Certificate of Completion. 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 Guideline H in my whole-person analysis.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the security concerns under Guideline H (drug involvement and substance misuse).

Formal Findings

I make the following formal findings on the allegations in the SOR:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-b:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Charles C. Hale
Administrative Judge