



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



In the matter of:)
)
) ISCR Case No. 23-01562
)
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey M. De Angelis, Department Counsel
For Applicant: *Pro se*

08/28/2024

Decision

LOKEY ANDERSON, Darlene D., Administrative Judge:

Statement of the Case

On January 9, 2023, Applicant submitted a security clearance application (SF-86). On January 9, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline B, Foreign Influence; and 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; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the Department of Defense after June 8, 2017.

Applicant responded to the SOR (Answer) on March 4, 2024. (Item 3.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government’s written case on April 4, 2024. A

complete copy of the File of Relevant Material (FORM), containing six Items was received by Applicant on April 26, 2024. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted no response to the FORM. DOHA assigned the case to me on August 8, 2024. Items 1 through 6 will hereinafter be referred to as Government Exhibits 1 through 6.

Request for Administrative Notice

The Government requested I take administrative notice of certain facts relating to the Peoples Republic of China (PRC). Department Counsel provided a twelve page summary of the facts, supported by twenty-one Government documents pertaining to the PRC. The documents provide elaboration and context for the summary. I take administrative notice of the facts included in the U.S. Government reports. (HE-I) They are limited to matters of general knowledge, not subject to reasonable dispute. They are set out in the Findings of Fact.

Findings of Fact

Applicant is 23 years old. He is not married and has no children. He has a Bachelor's degree. He is employed with a defense contractor as an Associate. He is seeking to obtain a security clearance in connection with his employment.

Guideline B – Foreign Influence

Applicant is of Chinese ancestry and was born in the United States in May 2000. He graduated from college in May 2022, and started working for his current employer in September 2022. He completed a security clearance application dated January 9, 2023. Applicant admits each of the allegations set forth in the SOR under this guideline.

Applicant's mother is a naturalized U.S. citizen who resides in the United States. She works as a research assistant at a university. His father, who was born in China, resides in the U.S. as a permanent resident, and works for a hospital as an assistant professor and researcher in the United States. However, his father is still a Chinese citizen. Applicant maintains contact with his father in the United States at least several times a week either in person or by telephone. Applicant has two sisters who were born in the U.S., and they are citizens and residents of the United States. (Government Exhibits 4, 5, and 6.)

Applicant also has several extended family members who are citizens and residents of China. Applicant's maternal grandparents, his maternal aunt and uncle and his paternal grandfather are all citizens and residents of China. Applicant stated that he has limited contact with his extended family members in China. He further stated that his contact with his maternal grandparents is via face time, which ranges between a few times per year to a couple of times per month. Applicant indicated that he does not speak Chinese, nor do they speak English, and the language barrier limits their

interactions. Applicant does not know what his maternal grandparents did in China for a living, but he does not believe that they are associated with the Chinese government or military. His maternal grandparents do not know what he does for a living or that he is applying for a security clearance. (Government Exhibit 5.)

Applicant's maternal aunt and uncle are citizens and residents of China. Applicant maintains limited contact with them. His uncle has visited the United States. There is no information about the nature of his maternal aunt and uncle's work in China or whether they have any affiliations with the Chinese military or government. (Government Exhibit 6.)

Applicant paternal grandfather is a citizen and resident of China. Applicant is in contact with him via face time for special occasions and has visited him during his trip to China in 2018-2019. Applicant believes that his paternal grandfather was a farmer in China. Their conversations are limited due to the language barrier. His paternal grandfather does not know what he does for a living or that he is applying for a security clearance. (Government Exhibits 5 and 6.)

Applicant has traveled to China on one occasion to visit family and friends for 11 to 20 days between December 2018 and January 2019. Applicant has about \$50,000 in assets in the United States. He has no assets in China nor does he stand to inherit anything from anyone in China. (Government Exhibit 6.)

Guideline H – Drug Involvement

Applicant has a history of illegal drug use from about September 2018 to about February 2023. Applicant began using marijuana during his senior year in high school and used it with varying frequencies from a couple times a month to no use at all for months. Once or twice a month, he and his friends would purchase marijuana from a dispensary and share the cost. Applicant stated that in November 2022, he decided to stop using marijuana because he was working for a defense contractor. About two months later, in January 2023, he submitted his application for a security clearance. After completing the security clearance application, Applicant used marijuana again in February 2023. He explained that he was visiting a friend out of state, and they used marijuana together. Applicant stated that he reported this illegal drug use to his security officer. (Government Exhibits 3, 4, and 5.)

On his security clearance application and during his personal subject interview, Applicant indicated that he has used marijuana on a somewhat regular basis over an extended period, (as noted above), and that he has also used hallucinogenic mushrooms while in college about 3 or 4 times during the period from August 2019 to about March 2021. He stated that he stopped using mushrooms because he did not want his drug usage to have a long-term effect on his brain and overall health. He denies ever purchasing hallucinogenic mushrooms, as he would use it only when it was given to him by his friends. (Government Exhibits 3, 4, and 5.)

In response to DOHA interrogatories, Applicant indicated that he has used marijuana and LSD. The extent of his LSD use is unknown. There was no reference to hallucinogenic mushrooms. (Government Exhibit 5.)

Applicant stated that he does not intend to use any illegal drugs in the future. He does continue to associate with some high school and college friends who use marijuana and the friend with whom he has used mushrooms.

Administrative Notice

I have taken administrative notice of the following information concerning the PRC. Targeting and collection of US political, military, economic, and technical information by foreign intelligence services continues unabated. China is one of the most aggressive collectors of U.S. economic information and technology. China's intelligence services, as well as private companies and other entities, frequently seek to exploit Chinese citizens or persons with family ties to China who can use their insider access to corporate networks to steal secrets using removable media devices or e-mail. Chinese actors are the world's most active and persistent perpetrators of economic espionage. Chinese attempts to collect U.S. technological and economic information will continue at a high level and will represent a growing and persistent threat to U.S. economic security. The nature of the cyber threat will evolve with continuing technological advances in the global information environment. (HE I)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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 ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of 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 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 access to classified information seeks to enter 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 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 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 B, Foreign Influence

The security concern relating to the guideline for Foreign Influence is set out in AG ¶ 6:

Foreign contacts and interests, including, but not limited to, business, financial, and property interests, are a national security concern if they result in divided allegiance. They may also be a national security concern if they create circumstances in which the individual may be manipulated or induced to help a foreign person, group, organization, or government in a way inconsistent with U.S. interests or otherwise made vulnerable to pressure or coercion by any foreign interest. Assessment of foreign contacts and interests should consider the country in which the foreign contact or interest is located, including, but not limited to, considerations such as whether it is known to target U.S. citizens to obtain classified or sensitive information or is associated with a risk of terrorism.

The guideline notes several conditions that could raise security concerns under AG ¶ 7. Two are potentially applicable in this case:

(a) contact, regardless of method, with a foreign family member, business or professional associate, friend, or other person who is a citizen of or

resident in a foreign country if that contact creates a heightened risk of foreign exploitation, inducement, manipulation, pressure, or coercion; and

(b) connections to a foreign person, group, government, or country that create a potential conflict of interest between the individual's obligation to protect classified or sensitive information or technology and the individual's desire to help a foreign person, group, or country by providing that information or technology.

Applicant's father is a citizen of China, although he resides in the U.S. Applicant also has extended family members including maternal grandparents, maternal aunt and uncle, and a paternal grandfather who are residents and citizens of China. Applicant has minimal contact with them. He does not speak their language, and they do not speak his language, so there is a significant language barrier. Applicant's ties to these foreign contacts in China may pose a heightened security risk for the United States Government. The evidence is sufficient to raise the above disqualifying conditions.

AG ¶ 8 provides conditions that could mitigate security concerns. I considered all of the mitigating conditions under AG ¶ 8 and two of them are applicable in this case.

(b) there is no conflict of interest, either because the individual's sense of loyalty or obligation to the foreign person, or allegiance to the group, government or country is so minimal, or the individual has such deep and longstanding relationships and loyalties in the United States, that the individual can be expected to resolve any conflict of interest in favor of the U.S. interest; and

(c) contact or communication with foreign citizens is so casual and infrequent that there is little likelihood that it could create a risk for foreign influence or exploitation.

Applicant's foreign family ties in China raises a prima facie security concern that required the applicant to "present evidence of rebuttal, extenuation or mitigation sufficient to meet the burden of persuasion that it is clearly consistent with the national interest to grant or continue a security clearance for him." Thus, Applicant bears the burden to establish that these individuals are not vulnerable to influence, coercion, exploitation, or duress. In this case, Applicant explains that although he periodically has some limited contact with them, there is no regular and frequent contact or conversations of any depth, as the language barrier prevents this. His extended family members in China do not know what he does for a living or that he has applied for a security clearance. They are not associated with the Chinese military or their Government. It appears that Applicant has limited contact with them. All of Applicant's assets are in the United States. He has no assets in China. Applicant has no other foreign contacts at all of any kind in China.

It is recognized that Applicant is at a higher risk of being targeted for Chinese intelligence gathering since he works for a defense contractor. However, Applicant's

ties are here in the United States. He is a native-born American citizen, who has grown up here and gone to college here and started his career here. Thus, it can be assumed that he will continue to place the interest of the U.S. paramount, and always protect the U.S. from any risk of terrorism, and/or any situation that could place the interests of the U.S. in jeopardy. Under the circumstances, Applicant has met his burden and has established the two mitigating conditions set forth above under Guideline B.

Guideline H - Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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.

The guideline at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

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

Applicant's history of marijuana use extending over a five year period, before and after applying for a security clearance, shows poor judgment, unreliability, and untrustworthiness. This conduct raises serious questions about his reliability and trustworthiness.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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 has a history of illegal drug use which includes marijuana use, the use of hallucinogenic mushrooms and/or the use of LSD that occurred over a period of at least five years, from September 2018 to about November 2022. After applying for a security clearance in January 2023, Applicant used marijuana in February 2023. Applicant knew or should have known that illegal drug use is prohibited by the Department of Defense. Furthermore, the use of marijuana is in violation of Federal law and against DoD and company policies. It noted that Applicant reported his February 2023, use of marijuana to his security officer, but it should not have occurred in the first place. There is no excuse for his misconduct.

Applicant's last use of marijuana is recent and occurred just shortly over a year ago and occurred after he said he had stopped using illegal drugs. Thus, his word cannot be relied upon. Applicant stated that he continues to associate with friends from high school and college who use marijuana and mushrooms. Applicant did not provide a signed Statement of Intent to abstain from all drug involvement and substance misuse in the future. Applicant is young and has not demonstrated the level of maturity required to show that he will not return to his old ways and past pattern of illegal drug use. At this time Applicant does not meet the eligibility requirements for access to classified information. Under the circumstances, Applicant has not met his burden and has not established the mitigating conditions set forth above under Guideline H.

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 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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline B and Guideline H in my whole-person analysis.

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Drug Involvement and Substance Misuse security concern. The Foreign Influence guideline has been mitigated.

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 B:	FOR APPLICANT
Subparagraphs 1.a. through 1.d.	For Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraphs 2.a. through 2.c.	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 interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge