



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



In the matter of:)	
)	
)	ISCR Case No. 23-02831
)	
Applicant for Security Clearance)	

Appearances

For Government: John Lynch, Esq., Department Counsel
For Applicant: *Pro se*

08/30/2024

Decision

HYAMS, Ross D., Administrative Judge:

Applicant did not mitigate the drug involvement security concerns. Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on July 28, 2023. On December 26, 2023, 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). Applicant answered the SOR on January 16, 2024, and requested a decision by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the administrative (written) record in lieu of a hearing.

On April 8, 2024, Department Counsel submitted the Government’s file of relevant material (FORM), including Items 1-7. A complete copy of the FORM was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. He received the FORM on April 19, 2024, and provided a narrative response on May 1, 2024. The case was assigned to me on July

5, 2024. Items 1 and 2 are the SOR and Applicant's Answer, which are the pleadings in the case. Items 3-7 are admitted without objection.

Findings of Fact

In his answer, Applicant admitted all the SOR allegations. These admissions are incorporated into the findings of fact. Based on my review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 24 years old. He earned a bachelor's degree in May 2023, and has worked as an engineer for a defense contractor for about a year. He worked as an intern for another government contractor between June 2022 and July 2023. He reported that his worksite for this internship was onsite with his current defense contractor employer. (Item 1, 2)

Applicant graduated high school in 2018. He started college that year and attended until his graduation in May 2023. On his July 28, 2023 SCA, he reported that he used THC substances, such as marijuana, from August 2018 to July 2023. He reported that he quit THC substances in early 2023 because he expected to get a job offer that required a security clearance. He received an offer from a defense contractor, his current employer, in February 2023. The offer had no security clearance requirement, so he thought he was in the clear to resume using THC substances. He was told in July 2023 that the job would require a clearance, so he ceased his marijuana use then. (Item 3)

On the SCA, he reported using THC substances daily and weekly with gaps, claiming sometimes several months between uses. He estimated that he used THC substances hundreds or thousands of times over the course of four to five years. He would use it as a reward or to relax, and to destress after a long day of school or homework. (Item 3).

Applicant also reported on his SCA using cocaine in May 2023. He stated that he "believe[s] in trying everything once." He stated that he was drinking when he was offered the cocaine and may have rejected it if he was sober. He reported his use of cocaine was not the experience he was looking for in recreational drugs. (Item 3).

In his background interview with a government investigator in September 2023, he stated that he mostly vaped THC substances, and sometime used edibles. He reported using THC substances mostly alone in his residence, but sometime with friends. He used an internet application to order and deliver THC oil, and sometimes he visited local dispensaries. He claimed he only spent about \$10 monthly on THC. He told the investigator that he used it for recreation and out of boredom because he was busy with education and work. He also used it to relax and help him sleep. He asserted that he stopped using it when he decided to obtain employment in the defense industry. In the interview, he also reported using cocaine one time with college friends in May 2023, and using the prescription drug Adderall once in 2021 at a college party. (Item 7)

Applicant lives in a state that has legalized recreational use of marijuana. Applicant's employer is a well-known defense contractor. His SCA and background interview statements indicate that he knew that illegal drug use was not compatible with work in this industry or while applying for or possessing a security clearance.

In his January 2024 SOR Answer, Applicant stated that his previous use of marijuana was under circumstances that he perceived as no risk to his future career, as he was not aware of any forthcoming security clearance. Once he was told he needed a clearance in July 2023, he stopped his drug use. He reported that after transitioning away from the high stress college environment, he does not need to use drugs, and does not have the same opportunities to use them as when he was a student. He stated that his cocaine and Adderall use were one-time decisions that he would not repeat and done out of curiosity. With his Answer, he included a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement is grounds for revocation of national security eligibility. (Answer)

In his May 2024 FORM Response, Applicant stated that he experimented with marijuana as one might with alcohol, and he stopped using it when he learned he would be applying for a security clearance. He claimed that he only used less than one gram per year of THC substances, and that his use was only casual. He stated that almost all his friends now hold degrees in aerospace or engineering, hold security clearances, work in the defense industry, and no longer use drugs. For these reasons he thinks he does not have to disassociate from them. His path has also diverged with some friends after graduation, and he does not see them anymore. (Response)

The SOR alleges under Guideline H that Applicant used and purchased marijuana with varying frequency from 2018 through at least July 2023 April 2018 (¶ 1.a), used cocaine in May 2023 (¶ 1.b), and used Adderall that was not prescribed to him in 2021 (¶ 1.c).

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

AG ¶ 24 expresses the security concern regarding drug involvement:

The illegal use of controlled substances, to include the misuse of prescription drugs, and the use of other substances that can cause physical or mental impairment or are used in a manner inconsistent with their intended use 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The Controlled Substances Act makes it illegal under federal law to manufacture, possess, or distribute certain drugs (Controlled Substances Act, 21 U.S.C. § 801, et seq. See § 844). All controlled substances are classified into five schedules, based on their accepted medical uses, their potential for abuse, and their psychological and physical effects on the body. §§811, 812. Marijuana is classified as a Schedule I controlled substance, §812(c), based on its high potential for abuse, no accepted medical use, and no accepted safety for use in medically supervised treatment. Cocaine and Adderall are classified as a Schedule II controlled substance based on their high potential for abuse, with use potentially leading to severe psychological or physical dependence. §812(b)(2).

AG ¶¶ 25(a) and 25(c) apply.

I have considered the mitigating conditions under AG ¶ 26. 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 is grounds for revocation of national security eligibility.

AG ¶ 26(a) applies to SOR ¶ 1.c because it was a one-time use in 2021. It does not apply to SOR ¶¶ 1.a or 1.b. Applicant used THC/marijuana substances only 13 months ago and used cocaine 15 months ago. He was working as an intern onsite with his current employer since June 2022. He reported in his SCA that he knew he had to stop his drug use in early 2023 because he expected his job offer to require a security clearance. When he was not required to fill out an SCA, he went back to THC/marijuana use, and tried cocaine. His admissions make clear that he knew that drug use was illegal at the federal level. He continued THC use and experimented with new recreational drugs despite interning in the defense industry, applying for a job in the defense industry, and

being hired into the defense industry. This behavior raises unmitigated questions about his reliability, trustworthiness, and good judgment. Since his use is recent, he has not established a sufficient track record of abstinence to find that this behavior will not recur.

AG ¶ 26(b) partially applies to SOR ¶ 1.b because Applicant has disassociated from some drug using associates and contacts, and asserts that he is no longer in the college party environment. AG ¶ 26(a) does not apply to SOR ¶ 1.a. Applicant's THC/marijuana use was not experimental. He used it to relax, sleep, destress, and reward himself. The small amount he claimed he purchased and used yearly does not seem credible given his reported usage. He often used THC/marijuana alone at home and bought it over the internet. Knowing that this drug use was incompatible with applying for and holding a security clearance, he stopped using it in early 2023, until he determined that his continued THC/marijuana use would not hinder his employment opportunity. He stopped using it again in July 2023 after being told he needed to submit an SCA for his employment. Applicant's behavior demonstrated that he may follow rules and regulations when it benefits him.

I considered Applicant's signed statement of intent to abstain from all drug involvement and substance misuse. It is hard to find it credible considering his frequent THC/marijuana use over five years and continued use despite knowing it was impermissible by his employer and defense industry. Furthermore, his assertion on his SCA that he "believe[s] in trying everything once" and his attitude towards recreational drug use does not give me confidence that he possesses the maturity at this time to abide by it or the true inclination to give up recreational drug use. Since Applicant chose to have his case decided on the written record and did not provide in-person testimony, I did not have the chance to assess his credibility.

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 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 for a security clearance. He did not provide sufficient evidence to mitigate the security concerns under Guideline H.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of reform necessary for award of a security clearance in the future. With more maturity and a longer track record of continued abstinence from illegal drug use, he may be able to demonstrate persuasive evidence of his security clearance worthiness.

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.b:	Against Applicant
Subparagraph 1.c:	For Applicant

Conclusion

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

Ross D. Hyams
Administrative Judge