



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



In the matter of:)	
)	
)	ISCR Case No. 23-02942
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Jeff A. Nagel, Department Counsel
For Applicant: *Pro Se*

08/29/2024

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On June 5, 2023, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On January 30, 2024, 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 Abuse. 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 *Adjudicative Guidelines*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on February 14, 2024, and requested a hearing before an administrative judge. The case was assigned to me on March 18, 2024. The Defense Office of Hearings and Appeals originally scheduled the hearing for May 1, 2024. Applicant failed to appear and was defaulted for security clearance application processing. Our office was subsequently contacted and told that Applicant was involved in a vehicle accident, was in critical condition, and needed a continuance. The default was voided, a continuance was granted, and the matter was rescheduled. The

Defense Office of Hearings and Appeals issued a second notice of hearing on June 27, 2024, and the hearing was convened as scheduled on July 9, 2024. At the hearing, the Government offered two exhibits, referred to as Government Exhibits 1 and 2, which were admitted without objection. The Applicant offered no exhibits. He did testify on his own behalf. DOHA received the transcript of the hearing (Tr.) on July 19, 2024.

Findings of Fact

Applicant is 27 years old. He is not married and has no children. He has a high school diploma, a year and a half of college, and two Trade Certifications. He is applying for a position with a defense contractor as an Aircraft Structures Mechanic, Level 1. He is seeking to obtain a security clearance in connection with his employment.

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

Applicant has a history of illegal drug use involving marijuana, cocaine, and ecstasy. From about June 2016 through July 2022, he used marijuana with varying frequency. Applicant also purchased marijuana in July 2022. From about June 2019 through October 2022, he used cocaine with varying frequency. In November 2021, he also used ecstasy. Applicant acknowledged that he used marijuana and cocaine on a regular basis spanning over a five-or-six year period. During this time, he knew the use of these drugs was illegal.

After graduating from high school, at the age of eighteen or nineteen, Applicant began using marijuana. He stated that he would normally smoke it once or twice a week. However, he has admitted to using it more than 500 times over a period of five or six years. (Tr. p. 25.) He explained that he would smoke it alone at home, or with his friends at social events or parties. When he used it with other people, it would be with people he knew from school or in the neighborhood. The marijuana was always provided to him by his friends. On one occasion, in about July 2022, Applicant purchased the marijuana to share with his friends. He purchased an eighth of a gram of marijuana from the neighborhood drug dealer who lived around the corner. He paid about \$30 for that purchase. He shared the marijuana he purchased with his friends, and it made three blunts, and it lasted "probably the whole day". (Tr. p. 29.) Applicant stated that he last used and purchased marijuana in July 2022. (Tr. p. 27.)

Applicant began using cocaine in about June 2019. The same group of people he used the marijuana with gave him cocaine to use. They would all use it together at social settings or parties. They told the Applicant that they had tested the cocaine, he trusted them, and so Applicant was not worried about it. He stated that he never

purchased cocaine, as it was always given to him. He admitted to using cocaine on at least 10 to 15 different occasions. He last used it in October 2022.
(Tr. pp. 31-35.)

Applicant used ecstasy in about February 2020. He explained that he was in Las Vegas with a girl he was talking to at a night club. He was given the ecstasy by the girl and he did it with her because she did not want to be alone doing it. She told him that it would help him enjoy his night. (Tr. pp. 35-37.)

Applicant explained that about three months prior to July 2022, when he purchased marijuana for the first time, he had decided to quit using marijuana. He had taken a break from it, but then decided to smoke again with his friends in July 2022. (Tr. pp. 26-27.)

Applicant testified that he was involved in a serious automobile accident in May 2024. He was in a coma for two weeks. As a result of the accident, he suffered extensive injuries to his head, neck, and back. His memory has also been adversely affected from the impact. He is currently undergoing speech therapy and physical therapy for his injuries. (Tr. pp. 39-45.)

Since July 2022, and following his accident in May 2024, Applicant has grown to realize that illegal drug use and that lifestyle is not for him. He wants to improve himself and wants more for himself. (Tr. p. 31) He has now separated himself from the group of individuals he used to use illegal drugs with. He has gone to college and earned certifications that can only help him in the future. He has applied for a job with a defense contractor.

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 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 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 two conditions that could raise a security concern and may be disqualifying:

- (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.

Applicant has a recent history of illegal drug use involving marijuana, cocaine, and ecstasy. He has also purchased marijuana illegally. The above disqualifying conditions apply.

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.

The mitigating conditions set forth above do not establish full mitigation. Applicant has a five-or-six-year history of illegal drug use involving marijuana, cocaine, and ecstasy. Applicant used marijuana the most frequently, in excess of 500 times. He has also purchased marijuana illegally in July 2022. He has used cocaine and ecstasy, not as frequently as marijuana, but with an interest in finding out about its effects. Applicant realized after July 2022, that illegal drug use is not for him. He stated that he wants a better life for himself and he has stopped using drugs. However, in May 2024, he was involved in a very serious vehicle accident which put him in critical condition for at least a week. He is still suffering devastating consequences of the accident, as he is still recovering, and going through speech and physical therapy sessions. He stated that he was not under the influence of alcohol or any illegal drugs at the time of the

accident. He explained that he was tired, it was late at night, and he may have fallen asleep at the wheel which caused the accident. In any event, Applicant is young, immature, heavily influenced by friends, and has not been drug-free long enough to demonstrate that he will not return to his old ways of drug use. In fact, given Applicant's extensive history of illegal drug involvement, he does not meet the requirements at this time for eligibility to access classified information.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations and policies that apply to them. After five or six years of illegal drug use, Applicant recently decided to quit using illegal drugs because he wanted more for his life. He is commended for his decision to stop using illegal drugs, however, under the particular facts of this case, he must show that he can remain drug free for a sustained period of time following his serious accident to ensure the Government that he will not return to his old ways of drug use. At this time, Applicant does not meet the qualifications for access to classified information.

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 H in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant has not demonstrated the level of sustained maturity needed for access to classified information. This is not an individual in whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. Applicant is not qualified for access to classified information and does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Substance Misuse security concerns.

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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.d.	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge