



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



In the matter of:)
)
) ISCR Case No. 23-00898
)
Applicant for Security Clearance)

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: Ronald Sykstus, Esq.

08/26/2024

Decision

OLMOS, Bryan J., Administrative Judge:

Applicant mitigated the security concerns under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct). Eligibility for access to classified information is granted.

Statement of the Case

On May 16, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H and Guideline E. The DOD issued the SOR under Executive Order (Exec. Or.) 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 4 (SEAD 4), *National Security Adjudicative Guidelines* (AG), effective June 8, 2017. Applicant responded to the SOR on July 19, 2023, and requested a hearing before an administrative judge. The case was assigned to me on April 15, 2024. On June 27, 2024, Department Counsel amended the SOR and Applicant submitted a response on July 1, 2024.

The hearing convened as scheduled on July 8, 2024. Government Exhibits (GX) 1 through 5 and Applicant Exhibits (AX) A through E were admitted in evidence without objection. Applicant and two witnesses testified and the record closed at the conclusion of the hearing. DOHA received the hearing transcript (Tr.) on July 15, 2024.

Findings of Fact

In his Answers to the SOR and amended SOR, Applicant admitted all of the allegations and provided detailed explanations. His admissions are incorporated into my findings of fact. After a thorough and careful review of the pleadings and evidence submitted, I make the following additional findings of fact.

Applicant is 39 years old. He is married and has three young children. He experienced a challenging childhood where his parents were abusive and drug use was “pervasive” in his home. (Tr. 81) He described that his parents were often “on the move or on the run” and that, beginning in middle school, he was primarily self-educated. (Tr. 25) However, he graduated high school as a national merit scholar. He completed a bachelor’s degree in 2006 and a master’s degree in 2009. (GX 1-3; AX C-D; Tr. 20-29)

After completing his master’s degree, Applicant continued with his university as a research assistant and started his doctoral studies. In 2011, he started a company with a focus on small unmanned aircraft systems design and manufacturing. In 2012, he terminated his academic work to focus on the growing business. (GX 1-3; AX C-D; Tr. 28-35)

As part of obtaining a Government contract, Applicant signed a non-disclosure agreement and submitted a security clearance application (SCA) in February 2013. In the SCA, he disclosed that he had sporadically used marijuana and cocaine from about 2003 through 2012. Specifically, he used marijuana on about five to ten occasions in college and with his uncle on a hunting trip. He described his uncle as a very close, father-like figure. Applicant also described obtaining and using cocaine once with his wife and once during a new year’s party. (GX 1-3; 5; AX E; Tr. 50-62)

In April 2014, Applicant was granted a security clearance and his company continued to grow in the years that followed. At its height, he estimated that the company had about 50 employees. As the CEO, he was responsible for developing the business and obtaining new capital. During this time, he traveled extensively and worked long hours, primarily serving commercial clients. With regard to the company’s classified contract, he was the only one in his company that held a security clearance, and he did not directly work with classified information. Instead, most of the work for the Government involved manufacturing unclassified parts that went into classified systems. However, he testified that his holding of a security clearance was necessary to maintain the Government contract and that he occasionally received classified threat-assessment briefings. (GX 2-3; 5; AX E; Tr. 42-45, 65-67, 80-85)

In November 2020, Applicant sold his business. In March 2021, he was hired by another company to provide systems engineering and technical assistance to a Government client. His contract switched to his current employer in October 2022, and he became a chief systems engineer. In February 2024, he transitioned to a position as a subject matter expert and now primarily works alongside a civilian workforce for the United States military. (GX 1, 3, 5; AX D; Tr. 23-39; 108-110)

As part of his new employment obligations, he submitted another SCA in May 2022. In this application, he disclosed additional cocaine and marijuana use. Specifically, he used cocaine on three occasions from 2015 through 2018. His first use occurred with friends during a new year's party in 2015. He used cocaine again one time in 2016 during a golf outing with potential investors. He described this use occurring in an attempt to fit in with the investment banking culture. In 2017, he last used cocaine with fraternity brothers during a college reunion event. He also used marijuana on two additional occasions. The first use occurred during a hunting trip in 2017 and the second use occurred around Thanksgiving in 2019. In both instances, he used marijuana with his uncle. (GX 1, 3-4; AX E; Tr. 43-54, 64-72)

Following his May 2022 SCA disclosure, Applicant submitted a detailed summary of his drug use to his facility security officer and provided candid details of his use during his July 2022 background interview with a DOD investigator. He acknowledged that he did not report his drug use at the time it occurred, but claimed he was not aware of the reporting requirement at the time. (GX 1, 3-4; AX E; Tr. 47-54)

During his testimony, Applicant stated that he clearly made poor choices regarding his past drug use but had experienced changed circumstances since his last use in 2019. He described his own maturation as a father and in his career. He no longer associates with any friends or fraternity brothers who use drugs. He described maintaining "no propensity or desire" to use drugs and signed a statement to abstain from all drug involvement while acknowledging that any future involvement may result in the revocation of his clearance. (Tr. 51) He still maintains contact with his uncle. However, after being interviewed by DOD investigators, his uncle is aware to not use marijuana with Applicant in the future. (GX 1, 3; AX E; Tr. 50-52, 77-85)

Mr. S and Mr. T testified on Applicant's behalf. Mr. S is a former Army Ranger who is currently a federal civilian employee and holds a security clearance. He has known Applicant for the last three years, has daily interactions with him and described him as "the best systems engineer [he] has ever come across." (Tr. 97) He was aware of Applicant's past drug use. Since he has known Applicant, he found Applicant exercised good judgment, was trustworthy, and "honest to a fault." (Tr. 98) Mr. S stated his belief that Applicant's history of drug use was behind him, and that Applicant could be trusted with matters of national security. (Tr. 93-101)

Mr. T also holds a security clearance, has known Applicant for over three years, and is his direct supervisor. He has weekly interactions with Applicant and stated that Applicant is trusted throughout the organization. He was aware of Applicant's past drug

use and was not surprised that Applicant candidly disclosed that history during his background investigation. Mr. T described Applicant as a leader in the program and considered him to be reliable and trustworthy. (Tr. 108-114)

Policies

It is well established that no one has a right to a security clearance. As the Supreme Court held in *Department of the Navy v. Egan*, “the clearly consistent standard indicates that security determinations should err, if they must, on the side of denials.” 484 U.S. 518, 531 (1988)

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 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, these guidelines are applied 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(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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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.

Analysis

Guideline H: Drug Involvement and Substance Misuse:

The security concern relating to the guideline 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.

Conditions that could raise drug involvement and substance misuse concerns are provided under AG ¶ 25. The following are potentially applicable:

- (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 admissions and the evidence reflect that he sporadically used cocaine from 2003 through 2017 and marijuana from 2003 through 2019. His use of cocaine and marijuana continued after he was granted access to classified information in 2014 and maintained a sensitive position. All of the above disqualifying conditions are established.

Conditions that could mitigate the drug involvement and substance misuse concerns are provided 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 or misuse is grounds for revocation of national security eligibility.

Applicant used marijuana and cocaine sporadically over an extended period of time. Additionally, his ongoing use of drugs while holding a security clearance was a serious transgression. However, Applicant voluntarily disclosed all of his past illegal drug use in his SCAs and background interview and established changed circumstances over an extended period of time. His testimony was candid and forthcoming. He recognized his errors in judgment and described his maturation as a father and in his career. He is committed to leading a drug-free life and no longer associates with friends who use drugs. Although he still maintains contact with his uncle, his uncle is aware to not involve him in any future marijuana use.

Applicant also signed a statement to abstain from all drug involvement acknowledging that any future drug involvement may result in the revocation of his clearance. The evidence supports that Applicant has been leading an exemplary life and maintains a strong commitment to his work as well as an understanding of the importance of protecting national security. I do not believe he will use illegal drugs in the future. I have considered all of the evidence and find that AG ¶¶ 26(a) and 26(b) apply.

Guideline E: Personal Conduct

The security concern relating to the guideline for personal conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.

Conditions that could raise personal conduct concerns are provided under AG ¶ 16. The following are potentially applicable:

- (c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline,

but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the individual may not properly safeguard classified or sensitive information; and

(g) association with persons involved in criminal activity.

SOR ¶ 2.b is a cross-allegation of all of the drug involvement and substance misuse allegations. Applicant's history of cocaine and marijuana use is discussed under Guideline H above. SOR ¶ 2.a alleges that Applicant continues to associate with friends and relatives involved in drug use. Applicant previously associated with friends who used drugs and he maintains a strong familial bond with his uncle who continues to use marijuana. This raises sufficient whole-person concerns for AG ¶¶ 16(c) and 16(g) to be applicable.

Conditions that could mitigate the personal conduct concerns are provided under AG ¶ 17. The following are potentially applicable:

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant credibly testified that he no longer associates with fraternity brothers or friends who use drugs. Additionally, his uncle is aware that Applicant must abstain from any future drug use and their ongoing relationship does not cast doubt on Applicant's reliability, trustworthiness, or judgment. Applicant's circumstances have significantly changed since he last used drugs and he detailed the steps he has taken to no longer participate in any drug use. Applicant's candor about his past drug use and commitment to remaining drug free reduce his vulnerability to exploitation, manipulation, or duress. In consideration of all of the evidence presented, I find AG ¶¶ 17(e) and 17(g) are applicable.

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 and Guideline E in my whole-person analysis.

Applicant is a dedicated professional who is a devoted family man and father. He recognizes his past use of illegal drugs was inconsistent with being a role model and was inconsistent with his employment while holding a security clearance. His use of drugs while holding a security clearance was a serious transgression. However, he has abstained from using illegal drugs for more than five years and has demonstrated significant changed circumstances. Based on his candid disclosures in his SCAs, background interview, and testimony, I believe illegal drug use is entirely in his past. The record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline H, and Guideline E.

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:	FOR APPLICANT
Subparagraphs 1.a-1.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

Conclusion

In light of all of the circumstances, it is clearly consistent with the national interest to grant Applicant a security clearance. Eligibility for access to classified information is granted.

Bryan J. Olmos
Administrative Judge