



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



In the matter of:)	
)	
[Redacted])	ISCR Case No. 23-01673
)	
Applicant for Security Clearance)	

Appearances

For Government: William H. Miller, Esq., Department Counsel
For Applicant: Geoffrey S. Burke, Esq.

09/13/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guideline H (Drug Involvement and Substance Misuse). Eligibility for access to classified information is granted.

Statement of the Case

Applicant submitted a security clearance application (SCA) on September 28, 2022. On September 14, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent him a Statement of Reasons (SOR) alleging security concerns under Guideline H. The DCSA CAS acted under Executive Order (Exec. Or.) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) promulgated in Security Executive Agent Directive 4, *National Security Adjudicative Guidelines* (December 10, 2016), which became effective on June 8, 2017.

Applicant answered the SOR on October 30, 2023, and requested a hearing before an administrative judge. Department Counsel amended the SOR on December 6, 2023,

by replacing the allegation in SOR ¶ 1.b that Applicant's use of Adderall occurred "while granted access to classified information" with an allegation that the conduct occurred "while holding a sensitive position, i.e., one in which you held a security clearance." Department Counsel was ready to proceed on December 7, 2023. Applicant answered the amendment to the SOR on December 29, 2023. The case was assigned to me on July 9, 2024. On August 6, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted on August 20, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 through 6 were admitted in evidence without objection. Applicant testified and submitted Applicant's Exhibits (AX) A through M, which were admitted without objection. DOHA received the transcript (Tr.) on August 30, 2024.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegations in SOR ¶¶ 1.a and 1.b as amended, with explanations. His admissions are incorporated in my findings of fact.

Applicant is a 31-year-old senior consultant employed by a federal contractor since February 2016. He was previously employed as a system engineer by another federal contractor from August 2015 to July 2016. He has held a security clearance since November 2016. (GX 6) He received a bachelor's degree in May 2015. He married in June 2022 and has an eight-month-old daughter.

Applicant's parents both served in the Air Force, where they met. He has two brothers, one working for a federal contractor and one on active duty in the Army.

In Applicant's SCA, he admitted that he consumed one Adderall pill on August 6, 2022, and another on August 7, 2022, to relieve the discomfort of a hangover due to alcohol consumption. (GX 1 at 33) He admitted these unauthorized uses of Adderall during an interview by a security investigator on January 6, 2023, and in response to DCSA CAS interrogatories dated May 10, 2023. He also admitted that he held a security clearance at the times he illegally used Adderall. (GX 3 at 2) His illegal use of Adderall is alleged in SOR ¶ 1.b.

In an earlier SCA in April 2016, Applicant admitted consuming one Adderall pill to sober up after drinking in April 2015 and one time in April 2016. (GX 2 at 37). During an interview by a security investigator on August 17, 2016, and at the hearing, he corrected his SCA to state that he used Adderall on only one occasion in April 2015. (GX 4 at 3; Tr. 40) In the April 2016 SCA, he also admitted that he used marijuana from June 2009 to November 2015, that he used it approximately twice a year during this time, and that he has not used it since November 2015, because his job requires that he hold a security clearance. (GX 2 at 36; Tr. 38-39) His use of marijuana is alleged in SOR ¶ 1.a.

Applicant testified that in August 2022, he attended a four-day bachelor party with four of his college roommates. (Tr. 45) On the morning after the party, he complained to

one of his friends that he had a hangover. His friend offered an Adderall pill, and he accepted and used it. On the following morning, his friend offered him another Adderall pill, and he accepted it and used it. He testified that he felt no effects from the pills. (Tr. 29-30) He knew that Adderall was a prescription drug, and that it was known as “the study drug” used by students to enable them to study for eight or ten hours a day. (Tr. 52)

Applicant testified that the friend who supplied him with the Adderall was a childhood friend of his college roommate. He described him as “kind of a friend of a friend,” and he no longer associates with him. (Tr. 44-45) The record does not reflect whether he continues to associate with the three other classmates who were with him during the four-day bachelor party.

When Applicant submitted his SCAs, he knew that disclosing his use of Adderall would probably result in “something unfortunate.” He testified that he feels like an idiot for his two uses of Adderall. He is now married and the father of a child. He realizes that he is at a different point in his life and cannot afford to jeopardize his family. (Tr. 32-34) He testified that he intends to stop drinking alcohol entirely, and he has not consumed any alcohol for two months. (Tr. 33, 51)

At the hearing, Applicant submitted a written statement admitting his misuse of Adderall, promising to not misuse any drug or controlled substance at any time in the future, and acknowledging and agreeing that future illegal use of a controlled substance or illegal drug will result in the automatic revocation of his security clearance. (AX E)

Applicant’s supervisor since May 2023 testified at the hearing and submitted a sworn statement attesting to his strong moral character, integrity, and suitability for a security clearance. (AX A) At the hearing, the supervisor testified she has worked with Applicant for two years and supervised him for over a year, and she has no reservations about his qualifications for a security clearance. She regards him as trustworthy and very reliable. He is a mentor for younger employees and is highly respected (Tr. 58-62)

Applicant’s wife testified that she has known Applicant since high school, that they started dating when she was 21 years old, and that they have been married for two years. They have lived together since October 2019. She testified that Applicant drank socially, one or two drinks a week, until recently. He now does not consume any alcohol. She testified that their family life revolves around their eight-month-old daughter. She testified that Applicant is a hard worker, a “very straight edge person,” and he deeply regrets his illegal use of Adderall. (Tr. 63-71)

A friend of Applicant, who is prominent in community and business affairs but has never held a security clearance, testified at the hearing. He has known Applicant for about 13 years, and he believes that Applicant has good judgment and is honest and reliable. He testified that he would be shocked if Applicant illegally used a prescription drug, because “it’s just not the person that he is.” (Tr. 74-84) In addition to his testimony, he submitted a sworn statement attesting to Applicant’s devotion to his family, trustworthiness, integrity, and loyalty to the United States. (AX D)

Applicant's former supervisor from 2017 to 2021, who holds a public trust position, is aware of the security concerns raised by Applicant's illegal use of Adderall. He submitted a sworn statement attesting to Applicant's good judgment, reliability, trustworthiness, and integrity. He strongly recommends that Applicant be granted a security clearance. (AX B)

A former supervisor from August 2021 to April 2023, who holds a security clearance, is aware of the security concerns raised by Applicant's illegal use of a prescription drug. He submitted a sworn statement attesting to Applicant's loyalty, good judgment, intelligence, and ethical integrity. (AX C)

Applicant's performance review for the periods ending in November 2016 and November 2017 rated him as "exceeds expectations. (AX F and G) For the period ending in November 2018, it rated him as "significantly exceeds expectations." (AX H) For the periods ending in December 2019 and December 2020, his rating was "exceeds expectations." (AX I and J) For the period ending in December 2021, it was "significantly exceeds expectations." (AX K) For the periods ending in December 2022 and December 2023, it was "exceeds expectations." (AX L and M)

Policies

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865 § 2.

Eligibility for a security clearance is predicated upon the applicant meeting the criteria contained in the adjudicative guidelines. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies these guidelines in conjunction with an evaluation of the whole person. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. An administrative judge must consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government reposes a high degree of trust and confidence in persons with access to classified information. This relationship transcends normal duty hours and endures throughout off-duty hours. Decisions include, by necessity, consideration of the possible risk that the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” Exec. Or. 10865 § 7. Thus, a decision to deny a security clearance is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Initially, the Government must establish, by substantial evidence, conditions in the personal or professional history of the applicant that may disqualify the applicant from being eligible for access to classified information. The Government has the burden of establishing controverted facts alleged in the SOR. See *Egan* at 531. Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the same record.” See ISCR Case No. 17-04166 at 3 (App. Bd. Mar. 21, 2019) It is “less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” See *v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4th Cir. 1994). The guidelines presume a nexus or rational connection between proven conduct under any of the criteria listed therein and an applicant’s security suitability. ISCR Case No. 15-01253 at 3 (App. Bd. Apr. 20, 2016).

Once the Government establishes a disqualifying condition by substantial evidence, the burden shifts to the applicant to rebut, explain, extenuate, or mitigate the facts. Directive ¶ E3.1.15. An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. See ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.” ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002). “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan* at 531.

Analysis

Guideline H (Drug Involvement and Substance Misuse)

The concern under this guideline 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.

Adderall and marijuana are controlled substances. Applicant's admissions and the evidence submitted at the hearing establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition);

AG ¶ 25(c): illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position.

The following mitigating conditions are potentially applicable:

AG ¶ 26(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;

AG ¶ 26(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.

AG ¶ 26(a) is established. Applicant's use of marijuana was relatively frequent, but his last use was in November 2015, almost nine years ago. Applicant's illegal use of Adderall was recent, occurring in August 2022, shortly before he submitted his SCA in September 2022. However, it was infrequent and happened under circumstances making it unlikely to recur.

Applicant's use of marijuana and Adderall occurred while he was in college and shortly thereafter, when he was young and inexperienced. However, when he illegally

used Adderall April 2022, he was well beyond his college years, had worked for federal contractors since August 2015, held a security clearance, was married, and his wife was pregnant. His lapse into a college-student mentality apparently was an aberration. He has stopped consuming alcohol and using illegal substances, and his off-duty focus has changed from binge drinking with old college friends to spending time with his wife and infant daughter.

AG 26(b) is established. Applicant no longer associates with the old friend who supplied him with Adderall. He has not used marijuana for nearly nine years. He has not used Adderall for more than two years. He has changed his environment, no longer consumes alcohol, no longer needs a cure for hangovers, and is focused on his family and his job. He has provided the signed statement in accordance with AG 26(b)(3).

Whole-Person Concept

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. In applying the whole-person concept, an 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. An 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.

I have incorporated my comments under Guideline H in my whole-person analysis and applied the adjudicative factors in AG ¶ 2(d). Applicant was sincere, remorseful, and credible at the hearing. After weighing the disqualifying and mitigating conditions under Guideline H and evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated the security concerns raised by his drug involvement.

Formal Findings

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

Paragraph 1, Guideline G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant

Conclusion

I conclude that it is clearly consistent with the national security interests of the United States to continue Applicant's eligibility for access to classified information. Clearance is granted.

LeRoy F. Foreman
Administrative Judge