



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 23-02055

Appearances

For Government:

Aubrey De Angelis, Esquire, Department Counsel

For Applicant:

Pro se

10/07/2024

Decision

ROSS, Wilford H., Administrative Judge:

Statement of the Case

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on October 19, 2022. (Government Exhibit 1.) On December 19, 2023, the Defense Counterintelligence and Security Agency Central Adjudication Services issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under 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; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines effective within the Department of Defense after June 8, 2017.

Applicant answered the SOR in writing (Answer) with attachments on January 18, 2024, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 12, 2024. The case was assigned to me on February 20, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on February 28, 2024. I convened the hearing as scheduled on April 10, 2024. The Government offered Government Exhibits 1 through 5, which were admitted without objection. Applicant testified on his own behalf and submitted Applicant Exhibits A through O, which were also admitted without objection. DOHA received the transcript of the hearing (Tr.) on April 19, 2024.

Findings of Fact

Applicant is a 35-year-old senior principal cost and schedule analyst with a defense contractor. He has worked for them since December 2015. He has a long-term partner (Partner). He has a bachelor's degree. He is seeking to obtain a security clearance in connection with his work with the DoD. (Government Exhibit 1 at Sections 12, 13A, and 17.)

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used illegal drugs. Applicant admitted all the allegations under this paragraph with explanations.

1.a. Applicant started using marijuana in approximately October 2007. He explained his marijuana usage over the following years in his testimony; responses to DOHA interrogatories; as described in the Report of Investigation (ROI) by a Department of Defense (DOD) investigator of an interview dated April 25, 2023; and in a written statement. (Government Exhibit 2; Applicant Exhibit A; Tr. 21-23, 27-28, 33-37, 41-47.)

Applicant's marijuana usage is as follows:

Applicant began using marijuana when he was in college in approximately October 2007. From then until May 2011, he used it about 2 to 3 times per year. (Government Exhibit 2; Applicant Exhibit A; Tr. 21-22.)

After graduating from college Applicant lived in a large East Coast city from about September 2011 to March 2015. During that period his marijuana usage was weekly to daily. (Government Exhibit 2; Applicant Exhibit A; Tr. 22-23.)

Applicant moved to the State he lives in now in about March 2015 and lived with his family for a time. He made the decision to cut down on his marijuana use at this point. His marijuana use decreased to about once every three months until March 2017. (Government Exhibit 2; Applicant Exhibit A; Tr. 27-28.)

As noted, Applicant began work with his current employer in December 2015. He testified that he passed a pre-employment drug screening. He also testified about his knowledge of his company's drug policy, "That they [the company] are a Federal company and do not condone illegal drug use." He specifically stated regarding marijuana, "That they [the company] do not condone use of Marijuana." (Government Exhibit 3; Tr. 29-30.)

Applicant stopped using marijuana in approximately March 2017 because he was being considered for a position that required special access. He testified that he filled out a questionnaire and purposely did not admit any drug use on the form. He further stated that the process did not continue because he moved to a position that did not require a security clearance. Department Counsel was unable to find a copy of the questionnaire Applicant stated he filled out. (Tr. 28-33.)

Applicant refrained from using drugs until January 2020. At that point he began purchasing and using marijuana in smoking and edible form with his Partner because that person was interested in using drugs and, "I [Applicant] was no longer in an Application process or being looked at for a Security Clearance in my position." His use began as weekly and increased to daily during the COVID pandemic. This period of daily use extended until approximately September 2022. (Government Exhibit 2; Applicant Exhibit A; Tr. 33-35.)

Applicant made the decision to stop using marijuana in September 2022 because he took a job with his employer that would require a security clearance. He received an interim secret security clearance on November 3, 2023. (Government Exhibits 4 and 5; Tr. 39-41.)

Applicant used marijuana twice after receiving his interim clearance. He last used a marijuana edible in April 2023. (Government Exhibit 2; Applicant Exhibit A; Tr. 41-43.)

Applicant testified that his Partner continues to use edible marijuana and had it in their shared residence as of the time of the hearing. (Answer; Tr. 44-47.)

1.b. When living on the East Coast in 2014, Applicant used cocaine five to ten times between May and July of that year. He had a bad experience with cocaine and has not used it since then. (Government Exhibit 2; Applicant Exhibit A; Tr. 23-26.)

1.c. Applicant first used ecstasy in March 2015. Friends had told him that using ecstasy was fun, "And, so, as I was leaving [the East Coast], I wanted to go out and have a good time and use this as an experience to do something I hadn't done before." (Government Exhibit 2; Applicant Exhibit A; Tr. 26-27.)

1.c and 1.d. Applicant used ecstasy and LSD in May 2020. He had friends who would use ecstasy and LSD on a fairly regular basis. His Partner wanted to experience them, "And I took the opportunity to experience it together." He did not enjoy the

experience and has not used either drug again. (Government Exhibit 2; Applicant Exhibit A; Tr. 35.)

1.e. In May 2016, Applicant was with friends. These people, “had a plethora of drugs at their place. We were going out that night, and we had been drinking. He had offered drugs to everyone. I’m not sure what the drug was, but I decided to join the group and take it.” (Government Exhibit 2; Tr. 36.)

Applicant testified that he had not used any illegal drugs in the year before the hearing and had no intent to use them in the future. He stated that the primary reasons were health and because he wanted to obtain a security clearance and knew drug use was not allowed. (Tr. 43-44.)

Other evidence of note

Applicant intentionally did not admit any of his drug use on his October 2022 e-QIP. He stated that he did this because he wanted to talk about his use with a Government investigator. (Government Exhibit 1 at Section 23; Exhibit 2; Tr. 37-38.)

Mitigation

Applicant submitted letters of recommendation from managers and colleagues. These letters state that he is loyal, reliable, trustworthy, and ethical. The writers recommend him for a position of trust. (Applicant Exhibits B through F.)

Applicant testified that he told two of his managers who wrote letters on his behalf about his past marijuana use. Their letters reflect an awareness of this proceeding, but do not indicate any knowledge of the specific allegations in the SOR. (Applicant Exhibits B and C; Tr. 48-49.)

Applicant’s evaluations from his current employer state that he has been a successful or excellent performer throughout his career. He has also received “Spot” awards for his work. (Applicant Exhibits G through O.)

Policies

When evaluating an applicant’s national security eligibility for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines (AG) list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant’s national security eligibility.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. The entire process is a conscientious scrutiny of applicable guidelines in the context 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, "Any 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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14, requires the Government to 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 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 national security eligibility. 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 or sensitive information. Finally, as emphasized in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information.)

Analysis

Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth 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.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (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;
- (f) any illegal drug use while granted access to classified information or holding a sensitive position; and
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant used marijuana from 2007 through at least April 2023. He has also used cocaine, ecstasy, LSD, and a "mystery" drug. He used marijuana twice after being granted an interim security clearance. He has stopped marijuana use in the past only because he was being considered for a security clearance. When he was no longer under consideration, he resumed use. Though he has stated he will no longer use marijuana or other illegal drugs in the future, his past conduct does not show a clear and convincing commitment to do so. All of the stated disqualifying conditions apply.

The following mitigating conditions under AG ¶ 26 have also been considered:

- (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;
- (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.

None of the stated Mitigating Conditions fully apply to the facts of this case. Applicant has an extensive history of using illegal drugs, specifically marijuana. He only stopped using marijuana about a year before the record closed. I have considered his testimony about not using marijuana or other illegal drugs in the future. It is insufficient to support full mitigation given his long history of use. Paragraph 1 is found against Applicant.

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 national security 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 pertinent facts and circumstances surrounding this case. I have also considered Applicant's conduct in falsifying his answers on Government questionnaires concerning his drug use in determining mitigation and his credibility. He has not mitigated the security concerns raised by his long-term drug use, which continued after he gained employment in the defense industry. He is a mature person, who made a conscious decision to continue use after being employed by a defense contractor and applying for a security clearance. The potential for pressure, coercion, exploitation, or duress continues to exist. Continuation or recurrence of similar conduct is likely. Overall, the record evidence creates substantial doubt as to Applicant's present suitability for national security eligibility and a security clearance.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a through 1.e:	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 or continue Applicant's national security eligibility for a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS
Administrative Judge