



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



In the matter of:)
)
) ISCR Case No. 23-01882
)
Applicant for Security Clearance)

Appearances

For Government: Tovah Minster, Esq., Department Counsel,
For Applicant: *Pro se*

12/12/2024

Decision

GARCIA, Candace Le'i, Administrative Judge:

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

Statement of the Case

On August 25, 2023, the Department of Defense (DOD) 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 (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 adjudicative guidelines (AG) implemented by DOD on June 8, 2017.

Applicant submitted a response to the SOR (Answer) on August 31, 2023, and he requested a hearing before an administrative judge. The case was assigned to me on April 1, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice on April 4, 2024, scheduling the matter for a video conference hearing on April 23, 2024. I convened the hearing as scheduled.

At the hearing, I admitted in evidence without objection Government Exhibits (GE) 1 and 2. Applicant testified but did not submit documentation or call any witnesses. At

Applicant's request, I kept the record open until May 7, 2024, to enable him to submit documents. By that date, he submitted documentation that I marked collectively as Applicant Exhibit (AE) A and admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on May 2, 2024.

Findings of Fact

Applicant admitted both SOR allegations in his Answer. He is 39 years old. He married in 2009, divorced in 2011, and remarried in January 2024. He does not have any children. He obtained his general educational development (GED) certificate in 2004. He worked for various non-defense contractors from 2011 to 2022, except for a period of unemployment from approximately October 2022 to February 2023. Since then, he has worked as an electrical engineering technician for his employer, a defense contractor. He has never held a security clearance. He has owned his home since September 2020. (Tr. 5, 7-8, 22-26, 33; GE 1-2)

Applicant used and purchased marijuana with varying frequency from approximately January 2001 to January 2023. (SOR ¶¶ 1.a-1.b) He disclosed this information on his March 2023 security clearance application (SCA) and during his April 2023 background interview. (GE 1-2) He used marijuana socially with friends, and he also used it for back pain or to help him sleep. It made him relaxed or sleepy. He used it in his home or in his friend's homes. He purchased marijuana from medical dispensaries once his state legalized recreational marijuana in May 2022 and permitted a limited number of licensed medical marijuana centers to sell marijuana in December 2022. Prior to that, Applicant purchased marijuana from friends. He has never been prescribed a medical marijuana card. He stopped using marijuana once he began working for his employer and sought to obtain a security clearance. (Tr. 23, 26-33, 36-37, 42-45; GE 1-2)

Applicant stated in his SCA, "I don't necessary [*sic*] intend to use THC in the future but in efforts to be completely transparent it may happen again." (GE 1; Tr. 34-36) He also stated, "I don't necessarily plan to purchase marijuana from a local dispensary but in an effort to be completely transparent I cannot say it will never happen again in the future." (GE 1) He indicated during his background interview he does not plan to use marijuana again in the future as he has felt better since he ceased using it. (Tr. 27-28, 34-36; GE 2)

Applicant provided a statement of intent to abstain from using illegal substances in the future and that failure to do so would result in the revocation of his clearance. He stated therein that he informed his social circle he no longer uses marijuana. He acknowledged, however, that he continues to associate with people who use marijuana, to include his spouse, who uses marijuana on occasion outside their home. He stated since he stopped using marijuana, he has noticed a positive impact on his mood and energy level and he is focused on maintaining a healthy lifestyle. (Answer; Tr. 27-30, 33-34, 37-42; AE A)

Applicant is not subject to random drug testing by his employer but he understands that his employer prohibits the use of marijuana and illegal substances. He also understands that marijuana remains federally illegal. He provided the results of a

voluntary drug test he underwent in October 2023, reflecting he tested negative for marijuana and other illegal drugs. He stated his direct manager and his facility security officer are aware of his previous use of marijuana. He received an award from his employer in August 2023, in recognition of his outstanding performance, commitment, and dedication. (Answer; Tr. 30-31, 36-37, 43-44; AE A)

Two individuals, Applicant's program manager and a friend of over a decade who has also recently become Applicant's coworker, attested to Applicant's judgment, reliability, and trustworthiness. Applicant's program manager wrote that Applicant "has shown the drive and initiative of a seasoned employee," and "has been a great mentor to junior technicians and his peers alike" (AE A)

Policies

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(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."

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 Exec. Or. 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*

Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

Analysis

Guideline H: Drug Involvement and Substance Misuse

¶ 24: The security concern for drug involvement and substance misuse is set out in AG

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 notes the following applicable conditions that could raise security concerns under AG ¶ 25:

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

Applicant used and purchased marijuana with varying frequency from approximately January 2001 to January 2023. AG ¶¶ 25(a) and 25(c) apply.

AG ¶ 26 provides the following potentially relevant mitigating conditions:

- (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.

Applicant self-reported information about his marijuana use on his SCA and during his background interview. He acknowledged his use of marijuana violated federal law, despite its legality in his state. He signed a statement of intent to abstain from marijuana and illegal drug use in the future. AG ¶ 26(b)(3) applies. However, his last use and purchase of marijuana occurred just less than two years ago, in January 2023, and he continues to associate with individuals who use illegal drugs, to include his spouse. His drug involvement continues to cast doubt about his current reliability, trustworthiness, and judgment. More time is necessary to establish his future abstinence from marijuana use and possession. AG ¶¶ 26(a), 26(b)(1), and 26(b)(2) do not apply.

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 and suitability for a security clearance. I conclude Applicant did not 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:

AGAINST APPLICANT

Subparagraphs 1.a-1.b:

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's eligibility for a security clearance. Eligibility for access to classified information is denied.

Candace Le'i Garcia
Administrative Judge