



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



In the matter of:)	
)	
)	ISCR Case No. 23-00910
)	
Applicant for Security Clearance)	

Appearances

For Government: Nicole Smith, Esq., Department Counsel
For Applicant: *Pro se*

12/18/2024

Decision

BENSON, Pamela C., Administrative Judge:

Applicant mitigated the Guideline H security concerns arising from his past use of marijuana. National security eligibility for access to classified information is granted.

Statement of the Case

Applicant completed and signed a security clearance application (SCA) on November 3, 2022. On January 22, 2024, 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 (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 *National Security Adjudicative Guidelines* (AG) effective within the DOD on June 8, 2017.

On March 26, 2024, Applicant provided a response to the SOR. (Answer) He admitted the single SOR allegation (¶ 1.a) and requested a hearing before an administrative judge. In April 2024, Department Counsel amended the SOR.

On May 7, 2024, Applicant admitted both SOR allegations, and the amended SOR documentation and Applicant's response was marked as Hearing Exhibit (HE) II. On August 6, 2024, the case was assigned to me, and on August 21, 2024, and the Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing, setting the hearing for September 18, 2024.

During the hearing, Department Counsel offered Government Exhibit (GE) 1, and Applicant offered Applicant Exhibits (AE) A through J. I admitted all proffered exhibits into evidence without objection. I marked the Government's April 18, 2024 disclosure letter as HE I and appended it to the record. DOHA received the hearing transcript (Tr.) on September 26, 2024. The record was held open until October 2, 2024, in the event either party wanted to submit additional documentation. No documents were received, and the record closed on October 3, 2024.

Findings of Fact

Applicant is 47 years old. He married in 2016 and he has two minor stepchildren and a biological daughter, age six. He earned his bachelor's degree in May 2000, and a master's degree in May 2003. He started employment with a defense contractor in May 2021. His job title is senior principal systems engineer. He was previously employed by a different defense contractor from June 2009 to April 2021. Applicant currently possesses a DOD security clearance. (Answer; Tr. 22-24; GE 1)

Drug Involvement and Substance Misuse

The SOR alleges Applicant used and purchased marijuana from October 2020 to September 2022 while holding a sensitive position, i.e., one in which he held a security clearance. (¶ 1.a) The SOR further alleged that he used and purchased marijuana, with varying frequency, from October 2020 to September 2022. (¶ 1.b) Applicant fully disclosed his marijuana use on his November 2022 SCA. He listed that during the COVID pandemic in 2020 while working from home, his stress was building from his work, marriage, his rental properties, and home life. He also suffered from anxiety, and he used marijuana to help with his insomnia. The first year of his marijuana use was about two to three times a week just before he went to bed. The second year he increased his use of marijuana to an almost nightly occurrence. His use of marijuana was predominantly to help him sleep. (Answer; GE 1; AE A)

Applicant admitted that he used marijuana previously in high school, between the ages of 16 to 17. He did not use it again until October 2020, when his stress levels were high, and he was unable to sleep. In August 2020, he also started seeing a clinical psychologist to obtain help with these issues that led to his use of marijuana. The psychologist submitted a February 2024 letter stating that Applicant received treatment from August 2020 to March 2021, and again from October 2022 to present. Applicant was diagnosed with adjustment reaction disorder. The psychologist stated that "[Applicant's] participation in therapy has been committed, open, honest, and hard working. He has made and continues to make good progress." Applicant does not take prescribed

medication, but he does use stress mitigation techniques whenever his stress levels rise, which he finds to be effective. (AE A, C; Tr. 24-32)

In October 2020, Applicant was offered marijuana by an associate, and even though he held a security clearance at the time, he nonetheless accepted the marijuana. Applicant admitted that he did not fully think about the significance of using marijuana, an illegal drug, while possessing a DOD security clearance. He stated, "I couldn't find an escape. I couldn't find relief from the pressure and anxiety I was feeling. And at the time, that felt way more significant than the consequences that may not come for years and/or may never come. So that is -- I kind of overlooked the fact that I held a security clearance." (Tr. 34-35)

Applicant used marijuana in vape form only before he went to bed. It helped him sleep throughout the night. In approximately September 2022, his supervisor revealed that the company was going to sponsor him for a top secret security clearance. Applicant filled out the SCA in November 2022, and he listed that his last use of marijuana occurred in September 2022. He made the decision to stop all marijuana use, not only for his DOD security clearance, but for several reasons; his wife was upset that he used marijuana, and it caused marital strife; he wanted to be a better parent for his children; and due to health concerns. Applicant came across some medical studies of the effects THC has on the brain, and he stated, "studies have shown that [THC] promotes aging, accelerated brain aging, very similar to Alzheimer's patients." Applicant has not used marijuana since September 2022, and he submitted a letter of intent to permanently abstain from all future drug involvement and substance misuse. (AE B; Tr. 36-45)

In October 2022, Applicant resumed therapy with his psychologist, and he sees him on a weekly basis. This therapy has enabled him to handle his stress more effectively. He feels more mature and now views therapy in a positive light that promotes a sense of well-being. Applicant continues to receive benefits in therapy, and he plans to remain in treatment for the foreseeable future. (Tr. 45-46; AE C)

Applicant provided his 2023 employee performance review. The comments from three different evaluators for the annual review described Applicant as a key leader, expert, and a great listener. One evaluator wrote, "I'm confident when [Applicant's] working on a job it will be done right." Applicant also submitted documentation of his 2018 award of a coveted and prestigious award in the industry. In December 2023, he was selected by his employer into a program that recognizes him as an elite technical talent staff member. Applicant submitted a character reference letter from the production manager at his place of employment. The production manager has known Applicant for over 20 years, and attests to his impeccable character. He finds Applicant to be a person of strong moral value and fully dedicated to his family, friends, company, and country. (AE D, F, G, J)

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 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(c), 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 access to classified information will be resolved in favor of 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.

Directive ¶ E3.1.14 requires the Government to 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.

Section 7 of Executive Order 10865 provides that 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

AG ¶ 24 expresses the security concern for drug involvement:

The illegal use of controlled substances . . . 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

AG ¶ 25(a) any substance misuse;

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.

Applicant used and purchased marijuana, with varying frequency, from about October 2020 to September 2022, while in possession of a DOD security clearance and holding a sensitive position. The above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following 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; and

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 a statement of intent to abstain from all drug involvement or substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibly.

In October 2020, Applicant started to use marijuana to help with his insomnia, and he increased his use to almost daily in 2022. He last used marijuana in September 2022, and he fully disclosed his marijuana usage on the November 2022 SCA. He has provided evidence of actions taken to overcome his problem. He has been involved in weekly therapy sessions to the present time, which has enabled him to effectively deal with mounting stress and pressure. He has matured, and he has made his family, career, and community a priority in his life. Over two years have passed since he last used marijuana, and Applicant credibly stated that he had no intent to use any illegal drugs in the future. He submitted a letter of intent to permanently abstain from all future drug involvement and substance misuse. Mitigating conditions AG ¶¶ 26(a) and 26(b) 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 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 the AG ¶ 2(d) factors in this whole-person analysis.

The Federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information. In deciding whether to grant or continue access to classified information, the Federal government can take into account facts and circumstances of an applicant's personal life that shed light on the person's judgment, reliability, and trustworthiness. Furthermore, security clearance decisions are not limited to consideration of an applicant's conduct during work or duty hours. Even if an applicant has a good work record, his off-duty conduct or circumstances can have security significance and may be considered in evaluating the applicant's national security eligibility.

Applicant made positive changes in his life, which are fully supported by his 2023 employee performance evaluation, to include words of support from his production manager. He is the 2018 recipient of a coveted award in the industry, and he was recently

recognized as an elite technical talent staff member by his current employer. He is committed to remaining drug-free, and I find his future use of marijuana is unlikely to recur. After evaluating all the evidence in the context of the whole person, I conclude Applicant has mitigated 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: FOR APPLICANT

Subparagraphs 1.a and 1.b: For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, I conclude that it is clearly consistent with national security to grant or continue Applicant's national security eligibility. Eligibility for access to classified information is granted.

Pamela C. Benson
Administrative Judge