



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 23-02402
)
 Applicant for Security Clearance)

Appearances

For Government: Lauren A. Shure, Esq., Department Counsel
For Applicant: Carl Marrone, Esq.

10/22/2024

Decision

FOREMAN, LeRoy F., Administrative Judge:

This case involves security concerns raised under Guidelines H (Drug Involvement and Substance Misuse) and E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on March 30, 2023. On November 30, 2023, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) sent her a Statement of Reasons (SOR) alleging security concerns under Guidelines H and E. 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 January 12, 2024, and requested a hearing before an administrative judge. Department Counsel was ready to proceed on February 1, 2024, and the case was assigned to me on August 5, 2024. On August 22, 2024, the Defense Office of Hearings and Appeals (DOHA) notified Applicant that the hearing was scheduled to be conducted by video teleconference on September 24, 2024. I convened the hearing as scheduled. Government Exhibits (GX) 1 and 2 were admitted in evidence without objection. Applicant testified, presented the testimony of four witnesses, and submitted Applicant's Exhibits (AX) A through F, which were admitted without objection. I held the record open until October 7, 2024, to enable Applicant to submit additional documentary evidence. At her request, I extended the deadline until October 9, 2024. She timely submitted AX G, which was admitted without objection. DOHA received the transcript (Tr.) on October 3, 2024. The record closed on October 9, 2024.

Findings of Fact

In Applicant's answer to the SOR, she admitted the allegations in SOR ¶¶ 1.a-1.e, with explanations. She denied the allegation in SOR ¶ 2.a. Her admissions are incorporated in my findings of fact.

Applicant is a 31-year-old help desk technician employed by a federal contractor since April 2023. She earned an associate degree in May 2017, and she enrolled in a bachelor's degree program in August 2022. (AX B). She has never married. She has a five-year-old daughter. She has never held a security clearance.

During the summer when Applicant was between the eighth grade and ninth grade, she had sexual intercourse with a boy who was a high school senior. She thought it was a serious relationship, until the boy shared his experience with his friends on social media. As a result, she became a target of social media messages, primarily from girls. After the abusive messages continued for two years, she transferred to another school. Before she transferred schools, she became friends with a group of girls who were marijuana users. She felt comfortable with this group and started using marijuana to help her cope with the abusive social media. After Applicant changed schools, her school environment improved, but she continued to receive bullying on social media. By this time, her marijuana use became "more of a social thing." (Tr. 18-24)

Applicant began taking Adderall at age 14. She had a prescription for "daily extended release" of Adderall for use as needed. (Tr. 38) She admitted that there were times when she ran out of Adderall but obtained it from family members who also had a prescription. At the time, she did not realize that using someone else's prescription was illegal. (Tr. 39) She stopped taking Adderall when she found out that she was pregnant. (Tr. 40)

Applicant continued to use marijuana after graduating from high school. She either purchased it or received it from others. (Tr. 24) She stopped using marijuana when she was 25 years old because she learned she was pregnant. (Tr. 29) Her daughter was born in February 2019. (GX 1 at 30) She abstained from using marijuana for about two years

after the birth of her daughter, because she was breast feeding and did not want her daughter to have “anything she did not need in her system.” (Tr. 31)

In December 2019, Applicant was assaulted by the father of her daughter after she confronted him about his alcohol use, and he grabbed her by the neck and threw her against a wall. She retreated into her daughter’s room, locked the door, and called 911. The police arrested him, and she obtained a protective order. (Tr. 32-33)

At some time in 2021, an acquaintance from high school contacted Applicant on social media and offered to buy Adderall from her. The acquaintance apparently remembered that Applicant used Adderall while they both were in high school. Applicant was working full time but decided that she could use some extra income. She sold it to her high school acquaintance “a few times” during two or three months. They never met face-to-face. Instead, the buyer sent money to Applicant via social media and Applicant would hide it somewhere outside her apartment. Applicant earned a “couple hundred bucks” from the sales. (Tr. 42-45)

In January 2023, Applicant was sexually assaulted after going out to dinner with a male friend. She believed that the friend put something in her drink. She reported the incident but does not believe any action was taken. (Tr. 35) In February 2023, Applicant was in a “really dark place,” and a female friend came to her home to comfort her. The friend offered her marijuana, and she accepted it. (Tr. 36-37) Another friend also visited her and offered her cocaine, and she accepted it. (Tr. 46-48)

Applicant testified that she has used cocaine three times. The first was when she was about 18 years old, when she was working at a restaurant and her friends at the restaurant offered it and she accepted the offer. The second time was when she was cohabiting with the father of her child and a friend of the father. The friend of the father had cocaine, and the friend shared it with Applicant. The third time was in February 2023, after the sexual assault in January 2023, when a friend offered it to her.

Applicant testified that she is determined to refrain from further drug involvement, based on several factors. She has started to attend church and read the Bible regularly. She has received spiritual counseling through her church, and a church official attested to her candor, reliability, and unwavering commitment to personal growth. (AX F at 1) She is in a committed relationship with a kind and caring man, who encourages her and supports her. She has started working on physical fitness, which reduces her stress level. (Tr. 52-56)

Applicant testified that she no longer associates with drug users, except for her three younger siblings, who use marijuana. (GX 2 at 6) She was asked during the hearing how she would react if she was at a Thanksgiving dinner with her family and her siblings started using marijuana. Without hesitation, she stated, “I would leave. I would let my [facility security officer] know about it. (Tr. 74)

Applicant was evaluated by a certified alcohol and drug counselor on April 23, 2024, and was diagnosed with mild cannabis use disorder in remission and mild alcohol use disorder in remission. The counselor made no diagnosis or prognosis regarding cocaine use. (AX A) Applicant underwent hair follicle tests on March 4 and August 29, 2024, and tested negative for cocaine, opioids, phencyclidine, amphetamines, and marijuana. (AX B)

In Applicant's answer to the SOR and in response to DOHA interrogatories, she stated that she was willing to sign a statement of intent to refrain from use of illegal drugs and to acknowledge that any illegal drug use would result in revocation of any security clearance. She submitted a statement of intent, but her statement did not include a specific acknowledgment that any future illegal drug use would result of revocation of any security clearance. (GX 2 at 8; Answer to SOR at 5)

One of Applicant's coworkers, who has known her for about a year and is aware of the issues set out in the SOR, testified that Applicant is a driven, hardworking individual. She also is charismatic, sociable, and kind. The coworker believes that she is "one of the best techs on her floor" that other technicians rely on for advice and assistance. (Tr. 80)

Applicant's stepmother, who has known Applicant since she was six years old, testified that she believes Applicant "completely grown out of her troubled childhood and adolescence" and has become a "very responsible, trustworthy, and genuine member of society." (Tr. 84-85)

Applicant's coworker and current boyfriend has known her for almost two years. Based on his observations and close relationship with Applicant, he testified that "it's completely just mind-blowing how many steps she's taken to be just this mother, this girlfriend, and this person at work, who, in my opinion, just exemplified somebody of character." (Tr. 94-95)

Another coworker, who has known Applicant for about a year and a half and is familiar with her past, testified that he was surprised when she told him about her past. He testified that she has demonstrated "nothing but optimism and trustworthiness." (Tr. 98-99)

A friend who was introduced to Applicant seven years ago has seen a "marked change" in her life during the past two years. He states that he has seen "greater focus, with much more concern about her career and the best choices for her daughter." (AX F at 4)

A friend of Applicant's family has known her since she was 18 months old. She recently visited Applicant and her five-year-old daughter, who has severe genetic physical limitations, and "marveled" at Applicant's devotion to her daughter. She describes Applicant as smart, hardworking, determined, and patriotic. (AX E at 3)

Applicant's work performance evaluation for 2023 rated her as "exceptional," based on her initiative in writing and setting policy for the service desk. (AX D) She received certificates of her technical proficiency in April and August 2023. (AX E)

A fellow church member believes that Applicant has demonstrated responsibility, candor, reliability, trustworthiness, and dedication to self-improvement. (AX F at 1) Another church member describes her as honest, kind, mentally strong, capable, and stable. (AX F at 2) A life-long friend who is familiar with Applicant's troubled years in high school was impressed with her ability to overcome her early years and develop into a devoted mother and a smart, determined, and patriotic person. (AX F at 3) Another coworker describes Applicant as "professional, determined, passionate, easy to get along with, and driven to be the best version of herself that she can be." (AX G)

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)

SOR ¶ 1.a alleges that Applicant used marijuana with varying frequency from about September 2007 to about February 2023. SOR ¶ 1.b alleges that she used cocaine with varying frequency from about June 2012 to about January 2023. 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.

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); and

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

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; and

AG ¶ 26(d): satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

AG ¶ 26(a) is not established. Applicant's use of marijuana and cocaine was frequent and did not occur under circumstances making it unlikely to recur. The key question is whether it was mitigated by the passage of time. The first prong of AG ¶ 26(a) (happened so long ago) focuses on whether the drug involvement was recent. There are no bright line rules for determining when conduct is recent. The determination must be based on a careful evaluation of the evidence. If the evidence shows that a significant period of time has passed without any evidence of misconduct, then an administrative judge must determine whether that period of time demonstrates changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation. ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004).

Applicant's use of cocaine and marijuana must be evaluated in the context of a lifetime of drug use. She was victimized on social media in high school, and she joined a group of marijuana users and used it regularly for about 15 years. At age 18, while working on a restaurant, her colleagues offered her cocaine, and she accepted it. While cohabiting for about six years with the father of her daughter and a friend of her cohabitant, she was offered cocaine by the friend of the father, and she joined the friend in using it. At some time in 2021, a high-school acquaintance, whom she had not seen since high school, asked Applicant to supply her with Adderall, and she sold it for several months and earned a "couple hundred bucks" in the process. In February 2023, after she was sexually assaulted in January 2023, a female friend offered her marijuana, and she accepted it. During that same month, another friend offered her cocaine, and she accepted it. She submitted her SCA in March 2023, shortly after using cocaine, and she has been under pressure to qualify for a security clearance since March 2023. I conclude that insufficient time has passed to overcome the security concerns raised by her lifelong abuse of drugs.

AG ¶¶ 26(b)(1) is established. Applicant has found new friends and is working in a drug-free environment.

AG ¶ 26(b)(2) is not established. Applicant's last use of cocaine was with a friend, and she has promised to disassociate from that friend, but insufficient time has passed to determine if she will keep that promise, especially if she encounters another stressful situation in the future.

AG ¶ 26(b)(3) is not fully established. Applicant has provided a statement of intent to abstain from drug involvement and substance abuse, but it does not completely establish AG ¶ 26(b)(3), because it does not include the specific acknowledgement that future involvement is ground for revocation of any security clearance. In her responses to DOHA interrogatories and her response to the SOR, she declared her willingness to sign such a statement, but the statement that she submitted omits the required acknowledgment. However, based on her statements during the security investigation and her testimony at the hearing, I am satisfied that she understands that any future drug involvement may result in revocation of any security clearance that she receives.

AG ¶ 26(d) is not established. Although Applicant was evaluated by a drug and alcohol counselor in April 2024, she submitted no evidence of drug counseling from that counselor or any other medical professional. The drug and alcohol counselor made no diagnosis related to cocaine use and offered no prognosis. Applicant has received spiritual counseling from her church, but she provided no evidence that it included the type of counseling and treatment contemplated by this mitigating condition.

Guideline E, Personal Conduct

The conduct alleged under Guideline H is cross-alleged in SOR ¶ 2.a as personal conduct under this guideline. The security concern under this guideline 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. . . .”

The following disqualifying condition under this guideline is established by Applicant's admissions that she used marijuana, used cocaine, associated with drug users, and illegally sold Adderall:

AG ¶ 16(e): personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes . . . engaging in activities which, if known, could affect the person's personal, professional, or community standing.

The following mitigating conditions are potentially applicable:

AG ¶ 17(c): the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

AG ¶ 17(c) is not established. Applicant's drug involvement was not “minor” or infrequent and did not occur under unique circumstances. It is not mitigated by the passage of time for the reasons set out above in the discussion of AG ¶ 26(a).

AG ¶ 17(e) is established. Applicant has disclosed her drug involvement to her current boyfriend and her employer.

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 Guidelines H and E in my whole-person analysis. Applicant may well be able to qualify for a security clearance in the future, but she has not yet reached that point. "Once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance." ISCR Case No. 09-01652 at 3 (App. Bd. Aug. 8, 2011), *citing Dorfmont v. Brown*, 913 F.2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991). Applicant has not overcome this presumption. After weighing the disqualifying and mitigating conditions under Guidelines H and E and evaluating all the evidence in the context of the whole person, I conclude Applicant has not mitigated the security concerns raised by her drug involvement and personal conduct.

Formal Findings

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a-1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Conclusion

I conclude that it is not clearly consistent with the national security interests of the United States to grant Applicant eligibility for access to classified information. Clearance is denied.

LeRoy F. Foreman
Administrative Judge