



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



In the matter of:)
)
) ISCR Case No. 23-00154
)
Applicant for Security Clearance)

Appearances

For Government: Sakeena Farhath, Esq., Department Counsel
For Applicant: *Pro se*

11/25/2024

Decision

HALE, Charles C., Administrative Judge:

Applicant did not mitigate security concerns raised under Guidelines E (personal conduct) and H (drug involvement and substance misuse). Eligibility for access to classified information is denied.

Statement of the Case

On April 4, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and H. Applicant responded to the SOR on June 7, 2023, and requested a hearing before an administrative judge. The case was assigned to me on April 4, 2024.

The hearing was convened as scheduled on June 13, 2024, and recessed due to technical difficulties until August 14, 2024. Government Exhibits (GE) 1 through 6 were admitted in evidence without objection. Applicant testified and offered no documentary evidence. I held the record open until September 4, 2024, and no evidence was received. The Defense Office of Hearings and Appeals (DOHA) received the transcript (Tr.) on August 23, 2024.

Findings of Fact

Applicant is a 38-year-old traffic management employee of a defense contractor

working overseas. He has worked for his current employer since December 2020. He has been taking college classes and has an associate degree that he earned in 2015. He previously held a security clearance while serving in the Air Force from 2005 until 2013 and was discharged honorably. He married in 2011 and divorced in 2019 and has one child, age 14. (GE 1; Tr. at 19-20.)

In Applicant's Answer to the SOR, he denied all the Guideline E allegations with the exception of SOR ¶ 1.b and denied SOR ¶ 2.a under Guideline H, which cross-alleged SOR ¶ 1.a. (Tr. 44.)

The allegations arose from a February 2021 incident while Applicant was employed overseas by Company 1A. SOR 1.a, states:

In February 2021, while you were employed by [Company 1A] at [an] Air Base in [Country Y], a package containing marijuana was mailed to you and intercepted by customs officials. You subsequently told the Air Force Office of Special Investigations and the Security Forces Investigator that you knew the package contained marijuana and that you use marijuana for medicinal purposes in the United States. In April 2021, you were [debarred] from U.S. military installations by the Air Force and terminated from your employment by [Company 1A].

A package containing marijuana addressed to Applicant was intercepted by customs officials. He states he never saw the package. (Tr. at 27.) He acknowledged speaking with the Air Force Office of Special Investigations (AFOSI) and the Security Forces Investigator who interviewed him regarding the marijuana. The Air Force memorandum reflects that Applicant knew the package contained marijuana:

Without being informed on what the substance was, you indicated to AFOSI and the Security Forces Investigator that you knew the package contained marijuana. You also stated that even though you use these substances for medical purposes in the United States, you were fully aware that marijuana, CBD Vapes, and THC were illegal in [Country Y] and not authorized on United States military installations. (GE 3.)

In his testimony he explained he told the investigators he had used hemp cream for joint pain. He adamantly denied ever using marijuana. He overheard one the investigators slip up and say marijuana and given the questions by the investigators presumed it was marijuana in the package. (GE 1; GE 3; Tr. at 21-24, 29-30.)

As a result of the incident, on April 15, 2021, Applicant was debarred from Country Y and from all U.S. military installations by the Air Force. The debarment order was to remain in effect indefinitely. (GE 4.) He maintains he thought he had resigned. He submitted a memorandum for the record (MFR) on April 21, 2021. In the MFR he states he was informed he needed to go by security forces squadron the next day to be questioned by AFOSI and was advised he should probably seek a lawyer. (GE 5 at 8.) In

the MFR he states he was not expecting a package and had no knowledge of its arrival. He had no knowledge of who the person was who mailed the package and that he did not know what was in the box. (GE 5 at 8.) He states in the MFR:

I was informed that I was being terminated for an incident of which my only involvement was my name being associated with a package I have never seen or touched. ... I believe this to be a wrongful termination and would like for this to be further investigated.

Applicant completed a security clearance application (SCA) on May 6, 2022. He testified he completed the SCA and conducted the security clearance interview consistent with the belief he had resigned. (Tr. at 21-24.) He testified he denied the drug allegations and being terminated for marijuana because he had never used marijuana and had quit. He described that "when the whole thing went down" there was already some frustration because he was not doing his actual job he went overseas to do. He was working long hours in the library and gym with no other work. He felt the allegations about the drugs were tied to his belief he was not supposed to be there. He reached out to his old supervisor, who advised him to quit. (Tr. at 22-24.)

SOR ¶ 1.b, Applicant denied with an explanation that he "deliberately falsified material facts on an Electronic Questionnaires for Investigations Processing (e-QIP), executed on May 6, 2022, in response to the following question, "section 134 - Employment Activities...[Company 1A]...Received Discipline or Warning. For this employment, in the last seven (7) years have you received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?" You answered "No" and deliberately failed to disclose that you were terminated by [Company 1A] as set forth in subparagraph 1.a., above. The Government did not offer evidence that the package intercepted by the post office was part of Applicant's workplace. Applicant addressed why in his Answer he wrote "I Admit" and stated this was it was not an accurate allegation, and he was fighting it. (Tr. at 50-51.)

SOR ¶ 1.c, Applicant denied ever using marijuana and thus did not fail to disclose that he used marijuana. The Government alleged in "Section 23 - Illegal Use of Drugs or Drug Activity - Illegal Use of Drugs or Controlled Substances - In the last seven (7) years, have you illegally used any drugs or controlled substances?" You answered "No" and deliberately failed to disclose that you used marijuana as set forth in subparagraph 1.a., above." He noted all the drug tests he has ever taken have come back negative but acknowledges using hemp products for joint pain. (Tr. at 25, 29, 33.)

SOR ¶ 1.d, Applicant denied shipping marijuana to himself overseas and therefore did not fail to disclose his actions. The Government alleged in "Section 23 - Illegal Use of Drugs or Drug Activity - Illegal Use of Drugs or Controlled Substances - In the last seven (7) years, been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance?" You answered "No" and deliberately failed to disclose that you were mailed

a package containing marijuana as set forth in subparagraph 1.a., above.” The investigative report reflects Applicant was aware of the package’s contents when he was called in for questioning. (GE 3; Tr. at 48-51.)

SOR ¶ 1.e, Applicant denied using marijuana and therefore answered the question of the DoD investigator truthfully. He acknowledges using hemp products for medical purposes to relieve joint pain. The Government alleged he “deliberately falsified material facts during your interview with a DoD authorized investigator on August 25, 2022, by denying that you used marijuana or other illegal drugs; whereas, in truth, you used marijuana as set forth in subparagraph 1.a., above.” He noted all the drug tests he has ever taken have come back negative. (Tr. at 25, 29, 33.)

SOR ¶ 1.f, Applicant denied ever knowing anything about the package and therefore did not fail to disclose material facts to an authorized DoD investigator. The Government alleged he “deliberately falsified material facts during [his] interview with a DoD authorized investigator on August 25, 2022, by stating that [he] had not previously known the contents of the package that was mailed to [him] in February 2021; whereas, in truth, [he] told the Air Force Office of Special Investigations and the Security Forces Investigator that [he] knew the package contained marijuana as set forth in subparagraph 1.a., above.” The investigative report reflects Applicant was aware of the contents when he was called in for questioning about the package. (GE 3.)

SOR ¶ 1.g, Applicant stated he resigned. The Government alleged he “deliberately falsified material facts during [his] interview with a DoD authorized investigator on August 25, 2022, by stating that [he] resigned from [his] employment with [Company 1A]; whereas, in truth, [he was] terminated by [Company 1A] as set forth in subparagraph 1.a., above.” Applicant’s MFR states he was informed he was being terminated over the incident. (GE 5.)

SOR ¶ 1.h, Applicant denied using marijuana and therefore answered the government interrogatories truthfully. The Government alleged he “deliberately falsified material facts in [his] responses to DoD interrogatories executed by [him] on February 7, 2023, by denying that [he] had ever used marijuana; whereas, in truth, [he] used marijuana as set forth in subparagraph 1.a., above.” He acknowledges using hemp products for medical purposes to relieve joint pain and that all the drug tests he has ever taken have come back negative. (Tr. at 25, 29, 33.)

Policies

This case is adjudicated 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 adjudicative guidelines (AG), which became effective on June 8, 2017.

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

Analysis

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows: 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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(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:

(1) engaging in activities which, if known, could affect the person's personal, professional, or community standing; and

(2) while in another country, engaging in any activity that is illegal in that country.

Applicant received contraband while working overseas on a foreign country's air base. GE 3 states Applicant knew the content of the contraband package without being informed of its content. AG ¶ 16(e) is applicable to SOR ¶ 1.a except for the language that you use marijuana for medicinal purposes in the United States.

Applicant denies any marijuana use but acknowledges use of hemp for medical purposes. There is no evidence of past drug use or that hemp products were illegal. He did not believe his hemp use fell into the use of marijuana or other illegal drugs. AG ¶¶ 16(a) and 16(b) are not applicable to SOR ¶¶ 1.c, 1.e, and 1.h.

GE 3 states Applicant knew the content of the contraband package without being informed of its content. AG ¶¶ 16(a) and 16(b), are applicable to SOR ¶¶ 1.d, and 1.f.

Applicant failed to disclose on his SCA and to a DoD investigator that he had been terminated by Company 1A and ordered out of the country and debarred from U.S. military installations. He wrote clearly on his MFR that he believed his termination was unlawful.

The MFR preceded both his SCA, his interviews with the DoD investigator, and the Government interrogatories. He received the debarment letter based on his misconduct. AG ¶¶ 16(a) and 16(b) are applicable to SOR ¶ 1.g. The Government did not establish that the post office was in Applicant's workplace. AG ¶¶ 16(a) and 16(b) are not applicable to SOR ¶ 1.b.

The following mitigating conditions under AG ¶ 17 are potentially applicable:

(a): the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and

(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.

Applicant received contraband while working overseas on a foreign country's air base. GE 3 states Applicant knew the content of the contraband package without being informed of its content. The offense is not minor, and casts doubt on Applicant's reliability, trustworthiness, and good judgment. AG ¶ 17(c) is not applicable to SOR ¶ 1.a.

The mitigating condition AG ¶ 17(a) is not established for SOR ¶¶ 1.d, 1.f, and 1.g. GE 3 states Applicant knew the content of the contraband package without being informed of its content. He wrote clearly on his MFR that he believed his termination for the package received overseas was unlawful. The MFR preceded both his SCA, his interviews with the DoD investigator, and the Government interrogatories. Applicant knew he had been terminated by Company 1A over the package received overseas.

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse 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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. The following are potentially applicable in this case:

(a) any substance misuse (see above definition); and

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

Applicant denies he used marijuana and any involvement in the package received overseas. The investigative memorandum reflects he knew the content of the contraband package. He acknowledges using hemp products for medical purposes. There is no evidence the hemp products he admits he used contained marijuana or were otherwise illegal. AG ¶ 25(a) is not applicable to the SOR ¶ 2.a language “that you use marijuana for medicinal purposes in the United States” and AG ¶ 25(c) is applicable to the remaining language.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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

(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.

The evidence establishes that Applicant knowingly received a package of marijuana while stationed overseas on foreign country’s air base. He maintains his innocence regarding the package. Applicant’s behavior regarding the package of marijuana raises substantial questions about his judgment, reliability, and willingness to comply with laws, rules, and regulations. See ISCR Case No. 20-02974 (App. Bd. Feb. 1, 2022). AG ¶¶ 26(a) and 26(b) are not applicable to his conduct pertaining to the package of marijuana.

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 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 E and 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 security concerns under Guidelines E and H.

Formal Findings

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

Paragraph 1: Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a, 1.d, 1.f, 1.g:	Against Applicant, except for "that you use marijuana for medicinal purposes in the United States" in Subparagraph 1.a.
Subparagraphs 1.b, 1.c, 1.e, 1.h:	For Applicant
Paragraph 2: Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a:	Against Applicant except for "that you use marijuana for medicinal purposes in the United States" in Subparagraph 1.a.

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.

Charles C. Hale
Administrative Judge