



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



In the matter of:)	
)	
)	ISCR Case No. 24-00828
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Andrew Henderson, Department Counsel
For Applicant: *Pro se*

10/15/2024

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On March 22, 2023, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On June 18, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Abuse. 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 *Adjudicative Guidelines*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on June 18, 2024, and requested a hearing before an administrative judge. The case was assigned to me on August 5, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on August 16, 2024, and the hearing was convened as scheduled on September 12, 2024. At the hearing, the Government offered three exhibits, referred to as Government Exhibits 1 through 3, which were admitted without objection. Applicant offered no exhibits, but he did testify on his own behalf. The record remained open until close of business on September 26,

2024, to allow the Applicant to submit supporting documentation. Applicant submitted a collection of documents referred collectively as Applicant's Post-Hearing Exhibit A, which were admitted without objection. DOHA received the transcript of the hearing (Tr.) on September 23, 2024.

Motion to Amend the SOR

Department Counsel moved to amend the SOR to include Guideline E, for deliberate falsification of the security clearance application dated March 22, 2023. (Tr. p. 27.) In Section 23, of the application, Applicant was asked about illegal drug use in the last seven years, and he responded, "NO," when in fact he had used marijuana in January 2023, as discussed below. Applicant had no objection to the amendment. (Tr. p. 28.) The Government's motion to amend the SOR was granted, and Guideline E was added to the SOR under Section 2.

Findings of Fact

Applicant is 29 years old. He is not married and has no children. He has a Master's degree in Mechanical Engineering, unclassified. He is employed by a defense contractor as a Senior Mechanical Engineer. He is seeking to obtain a security clearance in connection with his employment.

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

Guideline E - Personal Conduct

The Government alleges that the Applicant has engaged in conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations that can raise questions about an individual's reliability, trustworthiness, and ability to protect classified or sensitive information.

Applicant graduated from college with his Bachelor's and then Master's degree in 2016. He started working for his current employer, a defense contractor in 2017. From 2017 to March 2023, Applicant did not work in a classified position, and had never applied for a security clearance.

On March 22, 2023, he applied for a security clearance for the first time. The application asked Applicant if in the last seven years he had illegally used any drugs or controlled substances? He responded, "NO." His response was not truthful. Applicant

stated that he was nervous and afraid of what would happen if he told the truth. (Tr. p.19.)

The same application also asked the Applicant had he ever illegally used or otherwise been illegally involved with a drug or controlled substance while possessing a security clearance? Applicant responded, "NO." This response was truthful, because although his application may have been in process, his security clearance had not yet been granted. When Applicant completed the application, he had in fact concealed his use of marijuana that occurred in January 2023. (Government Exhibit 1.)

During an interview with an authorized investigator for the Department of Defense, which occurred sometime between August 23, 2023, and October 30, 2023, Applicant explained that on January 21, 2023, he attended a long-time friend's house party with family and friends where they were having drinks and playing games. At some point during the party, Applicant stepped outside to see a group of people he did not know who were huddling in a circle and talking. A girl in the group brought out a marijuana cigarette and passed it around the group. Applicant tried it once and then went back inside. (Government Exhibit 3.)

Applicant testified that he did not report this marijuana use to his company security officer because he did not know that he was required to. He did mention it to a couple of his co-workers. (Tr. p. 26.)

Applicant further testified that he was raised in a loving family with good values and a stable environment. His mother is a nurse, and his father works for the city. They raised him to be responsible and to avoid illegal drugs, while maintaining strong religious beliefs. Applicant testified that the day after he used marijuana, he told his mother about it. He apologized to her. He realized his mistake. He has been asked to use drugs in the past, and he has always declined the offer. This time, he slipped. He took one puff, and he knew immediately that he should not be doing this. He feels dumb about this situation. (Tr. pp. 28-29.)

Applicant is also sorry that he made it worse by lying on the application. He was initially afraid to tell the truth. When he was contacted by the investigator as a follow up to verify his passport, he told the investigator about his use of marijuana. Applicant stated that he has no intentions of ever using marijuana or any illegal drug in the future. (Tr. p. 30-31.)

Performance evaluations of the Applicant including the mid-year and final year review for the periods from 2017 through 2023, reflect that he is consistently on target. He has performed his job well, demonstrating good work ethics, diligence, and accountability. He has the confidence of his management for future promotion. (Applicant's Post-Hearing Exhibit A.)

Letters of recommendation from a Principal Mechanical Engineer who has known the Applicant for the past six years, and from a Mission Assurance Manager he works with, both indicate that Applicant has been a valuable asset to the team. He has

successfully supported many delivery activities and has received an achievement award from one of the programs. He goes above and beyond in fulfilling his tasks and responsibilities. He is described as a person of integrity who is trustworthy, transparent, and reliable. (Applicant's Post-Hearing Exhibit A.)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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 applies for access to classified information seeks to enter 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 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 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 H - Drug Involvement and Substance Misuse

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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 at AG ¶ 25 contains three conditions that could raise a security concern and may be disqualifying:

- (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; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana one time on January 2023, while employed in a sensitive position with a defense contractor. The above disqualifying conditions apply.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns.

- (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.

Applicant used marijuana on one occasion in January 2023, while employed in a sensitive position with a defense contractor. The use of marijuana is against DoD policy, company rules and regulations, and Federal law. Applicant understands his responsibility to be drug free and in compliance with DoD policy, and company rules and regulations. Applicant's one time use of marijuana appears to be an aberration, and not a habit, and last occurred over 22 months ago. He indicates that he has no intention of ever using marijuana again. He also stated that he is not normally a party goer, he has never used illegal drugs before, he will not use it in the future, and he does not associate with drug users. The mitigating conditions above are applicable. The Drug Involvement and Substance Misuse security concern is found for the Applicant.

Guideline E- Personal Conduct

The security concern for Personal Conduct 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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

- (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 national security eligibility or trustworthiness, or award fiduciary responsibilities; and

Applicant deliberately lied on his security clearance application dated March 2023, by denying his illegal drug use that occurred in January 2023. He testified that he lied because he was nervous and afraid of the consequences. This misconduct raises the above security concerns.

There are conditions mitigating security concerns under AG ¶ 17. However, none of them are applicable here:

(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;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

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

Applicant was not candid or truthful in his response to the question in Section 23 which asked him if in the last seven years have you illegally used any drugs or controlled substances? Applicant should have said, "YES," and been truthful in responding to this question. It was only after he was contacted by the DoD investigator for a follow up interview, did he admit that he used marijuana in January 2023.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to be honest and abide by all laws, regulations and policies that apply to them. Applicant has disregarded the Federal law. Under the particular facts of this case, at this time, he does not show the requisite character or judgment of someone who has the maturity, integrity, good judgment, and reliability necessary to access classified information. Applicant does not meet the qualifications for access to classified information.

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 facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and Guideline E in my whole-person analysis. Applicant is a good employee and has performed well on the job. However, he was not honest with the Government when he completed his security clearance application. An individual who holds a security clearance is expected to be open, honest, and candid with the Government, and comply with the law at all times. Applicant concealed his drug use and he has not demonstrated the level of maturity needed for access to classified information. He is not an individual in whom the Government can be confident to know will always follow rules and regulations and do the right thing, even when no one is looking. Applicant is not eligible for access to classified information and does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Personal Conduct security concern. The Drug Involvement and Substance Misuse security concern has been mitigated.

Formal Findings

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

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a	For Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a.	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 national security eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge