



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



In the matter of:)	
)	
)	ISCR Case No. 23-02656
)	
Applicant for Security Clearance)	

Appearances

For Government: Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: *Pro se*

12/06/2024

Decision

BENSON, Pamela, C., Administrative Judge:

Although Applicant successfully mitigated the security concerns under Guideline H (Drug Involvement and Substance Misuse), he failed to mitigate the security concerns under Guideline E (Personal Conduct). Eligibility for access to classified information is denied.

Statement of the Case

Applicant submitted security clearance applications (SCA) on December 29, 2017, and January 26, 2023. On December 26, 2023, the Department of Defense (DOD) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E and Guideline H. 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 (AG) effective on June 8, 2017.

Applicant answered the SOR on March 5, 2024, and requested a hearing before an administrative judge (Answer). The case was assigned to me on August 6, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 27, 2024, setting the hearing for September 10, 2024. The hearing was held as scheduled.

During the hearing, Department Counsel offered Government Exhibits (GE) 1 through 5; Applicant testified but did not offer any documents. I admitted all proffered exhibits into evidence without objection. The March 28, 2024 disclosure letter was marked as Hearing Exhibit (HE) I. At the start of the hearing, Department Counsel made an amendment to correct the typographical errors in the last sentence of SOR ¶¶ 1.a and 1.b, to ensure that the allegations accurately cross referenced the relevant information cited in the SOR. The amended SOR ¶ 1.a now reads, "... your marijuana and LSD use as set forth is subparagraphs 2.a and 2.b, below." The amended SOR ¶ 1.b now reads, "... as set forth in subparagraph 2.b, below." Applicant did not object to the amendment of the SOR allegations. DOHA received the hearing transcript (Tr.) on September 17, 2024, and the record closed.

Evidentiary Issue

Department Counsel requested during the hearing that Applicant's December 5, 2018 background interview report be admitted into evidence as Government Exhibit 6. I denied this request after Department Counsel admitted that Applicant had "not had a chance to review" the report prior to the hearing, and because Department Counsel was able to question Applicant about this particular background interview during the course of the hearing. (Tr. 28)

Findings of Fact

Applicant admitted all of the allegations in his Answer to the SOR. (¶¶ 1.a and 1.b, as amended, and 2.a through 2.c.) He clarified in his Answer, however, that his omissions on the December 2017 SCA were unintentional. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 26 years old. He is unmarried and does not have any children. During the summer of 2018, he interned for a federal contractor ("A") and was issued a DOD interim security clearance. He was issued a secret security clearance in March 2019. During the summer of 2019, he interned for a different federal contractor ("B"). In May 2020 he graduated with his bachelor's degree in neuroscience. He was employed full-time with B from June 2020 until May 2022. In May 2022, he started full-time employment with another federal contractor ("C") as an engineer. He received his master's degree in December 2022. Applicant currently possess a secret DOD security clearance. (Tr. 16; GE 1, 4)

Drug Involvement and Substance Misuse

¶ 2.a alleges that Applicant used marijuana with varying frequency from about May 2015 to about May 2017. Applicant admitted that he had used marijuana during his last year of high school and during the first two years he attended college. In his SCA he completed in January 2023, he listed that during May 2015 to about May 2017, he had used marijuana “at most once a month.” During his April 2023 background interview with an authorized DOD investigator, he reported that he used marijuana every two to three months during that time. Applicant later corrected the frequency in his December 2023 interrogatory to reflect that he had used marijuana “a handful of times in total.” During the hearing, Applicant clarified that between May 2015 and until the start of 2017, he used marijuana at most a handful of times (approximately five or six times), and then from the start of January 2017 until May 2017, his use of marijuana was monthly. (Tr. 17-19, 31-32; GE 1, 2, 3)

¶ 2.b alleges that Applicant used and purchased LSD with varying frequency from about May 2016 to January 2018. During his April 2023 background interview, he disclosed his first use of LSD occurred in May 2016, and he used LSD two additional times in January 2018. He admitted he had purchased LSD. Applicant testified that he used LSD at a high school graduation party in May 2016. In January 2018, he used LSD on two occasions while he was on a hiking trip, which was approximately five months before he started his internship with A. In May 2018, he was granted an interim DOD security clearance. Applicant stated that he had been informed that his interim security clearance would terminate after his summer 2018 internship ended. (Tr. GE 3, 5; Tr. 19-23)

¶ 2.c alleges that Applicant used cocaine on one occasion in March 2020. He testified that he had used cocaine at a party just before his last college spring break. Everyone was having a good time at the event, drugs were being passed around, and that is the only time he has ever used cocaine. (Tr. 23-24)

Applicant no longer associates with individuals who use illegal drugs. It is his intention to never use illegal drugs in the future. He is remorseful about his poor decisions to use illegal drugs. He stated,

[I]n 2020, I found out that my interim clearance was actually upgraded to a full clearance during the years of 2018 to 2020 and during that period, between the end of my summer internship in August 2018 and my start of my new job in the summer of 2020, I did use drugs. I just was not aware I had a clearance at the time. (Tr. 22-23)

Falsification – Personal Conduct

In his December 2017 SCA, Applicant did not disclose under “**Section 23 – Illegal Use of Drugs or Drug Activity**” that he had previously used marijuana from May 2015 to at least December 2017, and he had used and/or purchased LSD in May 2016, as set forth in subparagraphs 2.a and 2.b, below. (¶¶ 1.a and 1.b.) Applicant did not report his illegal drug use because when he filled out the SCA in December 2017 for

his summer 2018 internship with A, a federal contractor, he was told the SCA was a “formality” and that his summer internship did not require a DOD security clearance. In his Answer, he stated that this “false guidance” resulted in his misunderstanding of the gravity of the SCA and the security clearance. He “rushed through the form overlooking portions of the application that required additional information which included Section 23 – Illegal Use of Drugs or Drug Activity.” He checked questions with a negative response and did not intend to falsify or hide any information about his past drug use. (Answer; GE 2; Tr. 25-26, 37)

During the hearing Applicant clarified his response in the Answer. He stated that when he filled out the December 2017 SCA, he did not believe he would be getting a security clearance or that his position required a security clearance. In addition, he rushed to complete the SCA and unintentionally did not report his illegal drug use, as required. He may have learned in June 2018, when he signed a U.S. Government Nondisclosure Agreement, that he had been granted an interim security clearance in 2018, or he could have been informed of this information after he completed the 2018 internship, and he received a phone call from a DOD investigator telling him that his interim security clearance would be terminated. He could not recall exactly when he found out about being granted an interim security clearance. He also acknowledged that immediately after he filled out this December 2017 SCA, he used LSD on two occasions the following month. (Tr. 25-27, 32; GE 5)

Applicant recalled a phone conversation he had with a DOD investigator after he had finished his 2018 summer internship. The investigator made certain Applicant was who he claimed to be and asked him to provide character reference information, such as names of individuals with their contact information who would be willing to provide information about his character. The investigator also asked him about his 2018 summer internship. Applicant said the investigator “**then told me I will no longer be having a clearance.**” (emphasis added) After that phone conversation, he remembered telling some of his colleagues that they might be getting a phone call from a DOD investigator to provide a character reference for him. He admitted that his secret DOD security clearance was issued in March 2019, however, at the time that it was issued, he had not been informed.

Applicant was required to submit to a drug test before his 2019 summer internship with B. In approximately January 2020, he received a full-time job offer from B, and he was informed that he would need a DOD security clearance for this employment position. It was not until April 2020, a couple months before he started working for B, when he discovered that he had a final security clearance that had been issued in March 2019. He signed his second nondisclosure agreement in July 2020. (Tr. 20-23, 27-34, 37-41; GE 4)

Applicant admitted that he did not voluntarily report any of his illegal drug use to the government or his federal contractor employer following his submission of the December 2017 SCA, until he submitted a January 2023 SCA for his current employer. (Tr. 41)

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG 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 several 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. 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 as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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 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.

AG ¶ 25 provides two conditions that could raise a security concern and may be disqualifying in this case: “(a) any substance misuse (see above definition);” and “(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase,” The record establishes AG ¶¶ 25(a) and 25(c).

The guideline also includes conditions that could mitigate security concerns arising from drug involvement and substance misuse. The following mitigating conditions under AG ¶ 26 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 to overcome the 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 being 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 illegal drugs from May 2015 to March 2020. He used LSD on two occasions one month after he submitted the December 2017 SCA. This SCA should have put Applicant on notice that his illegal drug use was federally illegal and incompatible with holding a security clearance. He was informed in January 2020 that he would need a DOD security clearance for his full-time employment with B, and Applicant made the poor decision to use cocaine in March 2020. Continued drug use after being placed on notice on more than one occasion raises a significant security concern about Applicant's reliability, trustworthiness, and judgment as well as his willingness to comply with rules and regulations. However, the illegal drug use is dated and over four years have passed since he used an illegal substance. He disclosed his illegal drug use on his January 2023 SCA. He no longer associates with individuals who use illegal drugs; he is remorseful for making bad decisions; and he has stated he has no intent to use illegal drugs in the future. AG ¶ 26(a) applies. As such, the drug involvement and substance misuse security concerns are mitigated.

Guideline E: Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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. . . .

AG ¶ 16 describes a condition that could raise a security concern and may be disqualifying. The following disqualifying condition is 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 national.

AG ¶ 16(a) applies. The disqualifying condition will be discussed in the mitigation section, *infra*.

AG ¶ 17 provides conditions that could mitigate security concerns in this case:

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

(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

(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.

Applicant's claim that he unintentionally omitted information about his involvement with illegal drugs is not credible. He has not been direct and forthcoming about his use of illegal drugs. He did not voluntarily report any of his illegal drug use following his submission of his December 2017 SCA. He stated that he did not disclose this information because he had been told this security application was just a "formality," he did not require a security clearance, and he was rushed to complete it and did not even read all of the questions when he checked the questions with a negative response. I find this explanation to be unbelievable and his credibility suspect. He did not voluntarily report his illegal drug use after he discovered he had been issued a 2018 interim security clearance; or that he had used LSD on two occasions in January 2018. He did not report his illegal drug use when he signed a U.S. Government Nondisclosure Agreement in June 2018.

Applicant learned in January 2020 that he would need a security clearance for his full-time employment, but he then used cocaine in March 2020. He discovered in April 2020 that he actually held a secret security clearance since March 2019, but at no time did he attempt to correct his intentional omission of his illegal drug use. He did not report his illegal drug use after he signed his second nondisclosure agreement in July 2020.

Applicant worked full-time with a federal contractor while possessing a secret security clearance from June 2020 to May 2022. At no time did he voluntarily report to his security manager his history of illegal drugs. There is no evidence to show that he made a prompt, good-faith effort to correct his previous falsification and omissions. It was not until January 2023, when he completed another SCA for his current federal contractor, that he finally disclosed his illegal drug use. Deliberately providing false information on an SCA is not a minor offense. His failure to candidly report his illegal drug use over this prolonged period of time is concerning, and it obstructs a true security clearance investigation. These actions raise questions about Applicant's reliability, trustworthiness, and judgment as well as his willingness to comply with rules and regulations. AG ¶¶ 17(a), 17(c), and 17(d) 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 the 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 Guidelines E and H in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is not a credible witness. Although some of this adverse information is dated, he continued to provide false information during the hearing about unintentionally omitting his drug involvement on his SCA. A failure to be truthful and candid in a security clearance hearing shows a lack of rehabilitation. It is well settled that once a concern arises regarding an applicant's security clearance eligibility, there is a strong presumption against granting a security clearance. See Dorfmont, 913 F. 2d at 1401. "[A] favorable clearance decision means that the record discloses no basis for doubt about an applicant's eligibility for access to classified information." ISCR Case No. 18-02085 at 7 (App. Bd. Jan. 3, 2020) (citing ISCR Case No. 12-00270 at 3 (App. Bd. Jan. 17, 2014)).

After considering the record as a whole, I conclude that although Applicant successfully mitigated the security concerns under Guideline H, he has not met his heavy burden of proof and persuasion under Guideline E. His assertions and past conduct continue to cast doubt on his reliability, trustworthiness, and good judgment.

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 E:

AGAINST APPLICANT

Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a through 2.c:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national security to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge