



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



In the matter of:)
)
 [Redacted]) ISCR Case No. 24-00202
)
 Applicant for Security Clearance)

Appearances

For Government: Troy Nussbaum, Esq., Department Counsel
For Applicant: *Pro se*

12/05/2024

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 December 20, 2022, seeking to continue a security clearance she received in July 2018. On May 24, 2024, 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 July 28, 2024, and requested a decision on the written record without a hearing. Department Counsel submitted the Government's written case on August 13, 2024. On August 14, 2024, a complete copy of the file of relevant material (FORM) was sent to Applicant, who was given an opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's evidence. She responded to the FORM on August 19, 2024, and the case was assigned to me on November 6, 2024.

The FORM consists of six items. Items 1 and 2 are the pleadings in the case. Items 3 through 6 are the evidence in support of the SOR. Applicant did not object to any of the items. FORM Items 3 through 6 are admitted in evidence.

Applicant submitted Applicant's Exhibits 1 through 13 in her response to the FORM. Department Counsel did not object to any of her exhibits. Applicant's Exhibits 1 through 13 are admitted in evidence.

Findings of Fact

The SOR alleges that Applicant used marijuana and other tetrahydrocannabinol (THC) products with varying frequency from about May 2014 to at least July 2022 (SOR ¶¶ 1.a and 1.d); that she used cocaine in about May 2021 while holding a sensitive position (SOR ¶¶ 1.b and 1.f); That she used psilocybin mushrooms in about September 2021 while holding a sensitive position (SOR ¶¶ 1.c and 1.g); and that she purchased marijuana and other THC products with varying frequency from about 2017 to at least July 2022 (SOR ¶ 1.d). Under Guideline E, the SOR ¶ 2.a cross-alleges the Guideline H conduct as personal conduct. In Applicant's answer to the SOR, she admitted all the allegations in the SOR. Her admissions are incorporated in my findings of fact.

Applicant is a 29-year-old project manager employed by a defense contractor since November 2022. She received a bachelor's degree in May 2017. She was employed by another defense contractor from June 2017 to November 2022. She received a security clearance in July 2018 and signed a nondisclosure agreement on October 18, 2017. She met her husband in January 2023, married shortly thereafter, and has a son who is about one year old.

When Applicant submitted her SCA in December 2022, she disclosed that she smoked marijuana recreationally and infrequently from May 2014 to August 2022, used cocaine once in May 2021, and consumed mushrooms once in September 2021. She also disclosed that she purchased small amounts of marijuana from a friend two or three times between October 2020 and July 2021. (FORM Item 3 at 36-38)

In Applicant's answer to the SOR, she stated that her drug involvement occurred while she was in college from 2014 to 2017 and then was living alone and "single girl partying" from 2017 to 2022. She stated that her drug use took place while she was drinking alcohol, and her judgment was clouded.

Applicant's husband, who is employed by a defense contractor, believes that since the birth of their child in December 2023, she has embraced motherhood with "incredible dedication and responsibility." Applicant's program manager, who has known her since November 2022 and is familiar with her troubled past, submitted a statement vouching for her honesty, integrity, discretion, reliability, and trustworthiness. (Attachment to SOR response; Applicant's Exhibit 7)

Applicant submitted a previous SCA in July 2017 in which she disclosed her occasional marijuana use from May 2014 to April 2016, and she declared her intention to not use it again. (Item 4 at 37-38) She was questioned by a security investigator about her marijuana use in March 2018 and repeated her intention to refrain from further marijuana use. (Item 5 at 16)

After Applicant submitted her SCA in December 2022, she was interviewed by a security investigator in June 2023 about her use of marijuana, cocaine, and mushrooms. She told the investigator that it was probably unlikely that she will use marijuana again because she was pregnant, and her boyfriend (now her husband) does not approve of it. She stated that she will not use cocaine or mushrooms again. (Item 5 at 6-7)

In Applicant's response to the FORM, she states that her drug involvement was with one friend that she met in 2017. She states that she and her friend still exchange infrequent texts and are "social media friends," but she has socialized with this friend only twice this year, once at the friend's baby shower, and once when the friend visited Applicant to see her baby. She states that she and her friend have grown apart due to differences in lifestyle and social lives. She states that since November 2022, she has chosen to remove herself from social situations involving heavy drinking and illegal substances. She states that her previous drug involvement occurred when she was under the influence of alcohol, but that she has resolved her issues with alcohol through therapy and the support of her husband. Applicant's Exhibits 8, 9, and 10 are statements from coworkers and long-term friends attesting to Applicant's life changes and her maturity as a wife and mother, her community involvement, and her honesty, dependability, integrity, trustworthiness, and good judgment.

Applicant's Exhibit 5 is a laboratory report dated September 18, 2024, showing that a drug test on September 3, 2014, was negative for amphetamines, benzodiazepines, cocaine, marijuana, opiates, and oxycodone. Applicant's Exhibit 6 is a statement of intent to abstain from all drug involvement and substance misuse, and an acknowledgement that any future drug involvement or misuse is grounds for revocation of national security eligibility.

Applicant's Exhibit 11 is Applicant's calendar for August 2023 through September 2024 reflecting her involvement in family, community events, social events, and attendance at church. Applicant's Exhibit 12 is a collection of screenshots reflecting her interaction with friends.

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

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.

Several allegations in the SOR are duplicative, *i.e.*, SOR ¶¶ 1.a and 1.e; SOR ¶¶ 1.b and 1.f; and SOR ¶¶ 1.c and 1.g. When the same conduct is alleged twice in the SOR under the same guideline, one of the duplicative allegations should be resolved in Applicant's favor. ISCR Case No. 03-04704 at 3 (App. Bd. Sep. 21, 2005). Accordingly, I have resolved SOR ¶¶ 1.a, 1.b, and 1.c in Applicant's favor.

Applicant's admissions and the evidence in the FORM establish the following disqualifying conditions under this guideline:

AG ¶ 25(a): any substance misuse (see above definition);

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

AG ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position.

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; and

AG ¶ 26(b): the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used; and
- (3) providing a signed 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.

AG ¶ 26(a) is not established. Applicant's involvement was frequent and did not occur under circumstances making recurrence unlikely. The key issue is whether it is 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. 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 last drug involvement was in July 2022, more than two years ago, which is a significant period of time. During that time, she met her husband, married, and had a child. She also has been under pressure to retain her security clearance for most of that time. Although she has lessened her contacts with the friend with whom she used drugs, she has not terminated that relationship. She promised to terminate her drug use in her July 2017 SCA, and during her security interview in March 2018. She has broken those promises by continuing to use illegal drugs while holding a sensitive position. "A person who broke a promise to abide by drug laws after being placed on notice that drug use is not compatible with access to classified information has not demonstrated the quantum of reliability expected of those with access to classified information." ISCR Case No. 16-03460 at 4 (App. Bd. May 24, 2018)

Because Applicant requested a determination on the record without a hearing, I had no opportunity to evaluate her credibility and sincerity based on demeanor. See ISCR

Case No. 01-12350 at 3-4 (App. Bd. Jul. 23, 2003). Based on her record of broken promises, I am not convinced that she is rehabilitated. Accordingly, I conclude that her drug involvement is not mitigated by the passage of time.

AG ¶ 26(b) is not fully established. Applicant continues to associate, albeit less frequently, with her close friend with whom she used drugs. Her environment has changed somewhat, because she has obtained counseling for her excessive alcohol consumption, has married, and spends time caring for her son. She has submitted a statement of intent in accordance with AG ¶ 26(b)(3), but her record of broken promises lessens the credibility and sincerity of her statement.

Guideline E, Personal Conduct

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 the evidence.”

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(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.

AG ¶ 17(c) is not established for the reasons set out above in the discussion of Guideline H.

AG ¶ 17(d) is not fully established. Applicant has acknowledged her behavior. She has obtained counseling regarding her alcohol consumption, but she presented no evidence of drug counseling. She has reduced but not terminated contacts with her drug-using friend. I am not convinced that her behavior will not recur when the pressure of retaining her security clearance is removed.

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 and applied the adjudicative factors in AG ¶ 2(d). As noted above, I had no opportunity to evaluate her credibility and sincerity based on demeanor.

"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.c:	For Applicant
Subparagraphs 1.d-1.g:	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