



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



In the matter of:)
)
) ISCR Case No. 23-02893
)
Applicant for Security Clearance)

Appearances

For Government: Cassie Ford, Esq., Department Counsel
Karen Moreno-Sayles, Esq., Department Counsel
For Applicant: Alan Edmunds, Esq.

10/29/2024

Decision

LOUGHRAN, Edward W., Administrative Judge:

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

Statement of the Case

On December 27, 2023, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. Applicant responded to the SOR on February 1, 2024, and requested a hearing before an administrative judge.

The case was assigned to me on July 25, 2024. On September 19, 2024, Department Counsel amended the language in SOR ¶ 1.e. Applicant responded to the amended SOR on September 19, 2024. The hearing convened as scheduled on October 8, 2024.

Evidentiary and Procedural Rulings

Evidence

Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibits (AE) DD and EE (AE A through CC were attached to the response to the SOR), which were admitted without objection.

SOR Amendment

Without objection, I made an additional amendment to SOR ¶ 1.e to read as follows:

1.e. You used marijuana, mushrooms, and cocaine with varying frequency, from about October 2012 to about 2018, while holding a sensitive position, i.e., one in which you held a security clearance.

Findings of Fact

Applicant is a 35-year-old employee of a defense contractor. He has worked for his current employer since October 2022. He worked for a different defense contractor and held a security clearance from 2012 until August 2018, when he left to become a self-employed investor and day trader. He earned two bachelor's degrees in 2012 and a master's degree in 2016. He has never married, and he has no children. (Transcript (Tr.) at 14-19, 23, 40; GE 1, 2; AE E-H, S, U)

Applicant has a history of illegal drug use, including marijuana, hallucinogenic mushrooms, cocaine, and lysergic acid diethylamide (LSD). He used marijuana, hallucinogenic mushrooms, and cocaine while he was working for his previous employer in a sensitive position, holding a security clearance, and working on classified programs. He used LSD once in 2020 while he did not hold a security clearance. He used cocaine three times, in about 2016, 2017, and 2018. (Tr. at 16, 25, 40; Applicant's response to SOR; GE 1, 2; AE CC)

Applicant started smoking marijuana in about 2013. From 2013 to about 2018, he smoked marijuana about two to three times a week. After he left his previous employment in 2018, he smoked marijuana about two to three times a day. He last used marijuana in October 2022 during a going away party before he moved to a new state for his current job. He last used hallucinogenic mushrooms in August 2022. He purchased some of the marijuana and hallucinogenic mushrooms, and some of the drugs were provided to him. (Tr. at 25; Applicant's response to SOR; GE 1, 2; AE CC)

Applicant started work for his current employer in about October 2022. He submitted a Questionnaire for National Security Positions (SF 86) in November 2022. He reported his illegal drug use, which ended in October 2022. He wrote that he did not intend to use illegal drugs in the future. (GE 1)

Applicant provided similar information during his background interview in May 2023, in his February 2024 response to the SOR, and at his hearing. He did not start using drugs until after he started work in 2012. He provided negative answers to the drug questions on the SF 86 he submitted in about 2012 because he had not used drugs before he submitted it. He stated that the drug questions and the pre-employment drug test did not serve to notify him that illegal drug use was incompatible with holding a security clearance. He initially stated that he did not realize his marijuana use was illegal. He somewhat modified that to a statement that he realized it was illegal, but more states were decriminalizing it or making it legal under state law. He stated during his time working for a defense contractor that he never received training about illegal drug use, and nobody told him that he should not use illegal drugs while holding a security clearance. (Tr. at 17, 26-31, 36, 40-41; Applicant's response to SOR; GE 2)

Applicant expressed remorse for his illegal drug use. He moved to a different state and does not associate with drug users. He passed drug tests administered in January, March, April, and September 2024. He completed online courses about the dangers of drug abuse. He was evaluated by a board-certified psychologist in February 2024, who determined that he did not meet the criteria for a substance abuse disorder. He signed a 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. (Tr. at 17, 20-22, 37-40; Applicant's response to SOR; AE A-C, CC, DD)

Applicant volunteers in his community. He submitted documents and letters attesting to his excellent job performance and strong moral character. The authors praised his professionalism, trustworthiness, honesty, work ethic, reliability, dedication, discipline, selflessness, and integrity. The authors recommend him for a security clearance. (AE L-O, V-AA, EE)

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 H, Drug Involvement and Substance Misuse

¶ 24: The security concern for drug involvement and substance misuse is set out in AG

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);
- (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 possessed and used marijuana, hallucinogenic mushrooms, cocaine, and LSD. He purchased marijuana and hallucinogenic mushrooms. He used marijuana, hallucinogenic mushrooms, and cocaine while he was working for his previous employer in a sensitive position, holding a security clearance, and granted access to classified information. AG ¶¶ 25(a), 25(c), and 25(f) are applicable.

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.

Applicant expressed remorse for his illegal drug use. He moved to a different state and does not associate with drug users. He passed drug tests administered in January, March, April, and September 2024. He completed online courses about the dangers of drug abuse. He was evaluated by a board-certified psychologist in February 2024, who determined that he did not meet the criteria for a substance abuse disorder. He signed a 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.

Those are all positive steps, and there is no evidence of any illegal drug use after October 2022. However, he used illegal drugs while holding a security clearance and working on classified projects. His statement that nobody told him that he should not use illegal drugs while holding a security clearance is difficult to accept at face value. Even if true, it would implicate a level of naivete and lack of awareness that is concerning for someone with access to classified information. One should not have to be told that illegal drug use is incompatible with holding a security clearance. More importantly, I do not believe him.

Applicant's drug involvement continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are sufficiently applicable to overcome concerns about Applicant's drug use, reliability, trustworthiness, and judgment.

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 have incorporated my comments under Guideline H in my whole-person analysis. I also considered Applicant's favorable character evidence.

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 Guideline H.

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 H:	Against Applicant
Subparagraphs 1.a-1.g:	Against Applicant

Conclusion

It is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Edward W. Loughran
Administrative Judge