



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



In the matter of:)
)
) ISCR Case No. 23-02816
)
Applicant for Security Clearance)

Appearances

For Government: A.H. Henderson Esq., Department Counsel
For Applicant: *Pro se*

12/13/2024

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the drug involvement and substance misuse security concerns. His application for a security clearance is denied.

Statement of the Case

On August 24, 2023, the Department of Defense Counterintelligence and Security Agency Consolidated Adjudications Services (DCSA CAS) issued a one-allegation Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, drug involvement and substance misuse, explaining why it was unable to find it clearly consistent with the interests of national security to grant security clearance eligibility. The DCSA CAS took the action 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 National Adjudicative Guidelines (AG) effective for any adjudication made on or after June 8, 2017. On September 25, 2023, Applicant answered the SOR, admitting the allegation and requested a decision based on the evidence on file rather than a hearing. On May 20, 2024, Department Counsel prepared a File of Relevant Material (FORM), setting forth the Government’s arguments against Applicant’s security

clearance worthiness. The FORM contains eight attachments, identified as Item 1 through Item 8.

Applicant received a copy of the FORM on June 7, 2024. He was given 30 days to file a response. Applicant did not file a response, whereupon the case was assigned to me on July 9, 2024.

Findings of Fact

Applicant is a 34-year-old married man. He is currently separated from his wife. He earned an associate degree in 2018. He has been working for his employer since June 2023.

Applicant used marijuana from February 2006 to August 2023. When he first began using marijuana at age 16, he smoked it two to three times per week. (Item 3 at 11) By 2015, his marijuana use decreased to once per year through 2018, when he stopped. (Item 3 at 11) In May 2022, while experiencing stress related to the breakup of his marriage, he resumed using marijuana, consuming it twice per month in vape and edible form. (Item 3 at 8)

Applicant stopped using marijuana again in August 2023. (Item 2 at 31) In his answer, he stated he does not “intend to use [marijuana] again; [his] job is much more important to [him].” (Item 1 at 3)

Policies

The U.S. Supreme Court has recognized the substantial discretion the executive branch has in regulating access to information pertaining to national security, emphasizing that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). 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 required to be considered 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 overall 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 ¶ 1(d) 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. 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 applicant or proven by Department Counsel. . .” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

Under the whole-person concept, the administrative judge must consider the totality of an applicant’s conduct and all relevant circumstances in light of the nine adjudicative process factors in AG ¶ 2(d). They are as follows:

- (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.

Analysis

Guideline H: Drug Involvement and Substance Misuse

Under this concern, “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 ¶ 24) Applicant’s long-time possession and use of marijuana triggers the application of AG ¶¶ 25(a), “any substance misuse;” and 25(c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.”

Applicant’s marijuana use gradually decreased after he finished high school. However, after quitting in 2018, he resumed using marijuana in May 2022 to cope with stress triggered by the impending breakup of his marriage, and he did not stop until August 2023. Given the recency of Applicant’s marijuana use and the fact that his use recurred after having quit earlier, it is too soon to conclude he has mitigated the security concern.

Whole-Person Concept

I considered the whole-person concept factors in my analysis of the disqualifying and mitigating conditions, discussed above, and they do not warrant mitigation of the security concerns.

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
Subparagraph 1.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 interests of national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge