



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



In the matter of:)
)
) ISCR Case No. 23-01790
)
Applicant for Security Clearance)

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro Se*

10/03/2024

Decision

LOUGHRAN, Edward W., Administrative Judge

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

Statement of the Case

On February 12, 2024, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and H. Applicant responded to the SOR on February 12, 2024, and requested a hearing before an administrative judge.

The case was assigned to me on July 25, 2024. The hearing convened as scheduled on September 3, 2024. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified and submitted Applicant Exhibit (AE) A, which was admitted without objection.

Findings of Fact

Applicant is a 24-year-old employee of a defense contractor. He has worked for his current employer since about August 2022. He earned a bachelor’s degree in 2022. He is

engaged to be married for the first time. He has a five-year-old child. (Transcript (Tr.) at 7, 18-20; GE 1, 2)

Applicant has a history of illegal drug use, primarily when he was in college. He used marijuana, Adderall without a prescription, lysergic acid diethylamide (LSD), hallucinogenic mushrooms, and cocaine. (Tr. at 28-40; Applicant's response to SOR; GE 1)

Applicant submitted a Questionnaire for Non-Sensitive Positions (SF 85P) in April 2021. He intentionally failed to report his illegal drug use. (Tr. at 16-17, 40; Applicant's response to SOR; GE 2)

Since he was 17 years old, Applicant has strived for a laudable goal that only a small number of people have accomplished. To that end, he plans to join the military and become a pilot. He has obtained his civilian pilot's license. The 2021 SF 85P was to enable him to work as an intern at a federal agency that would help him reach his goal. He lied on the SF 85P because he thought he would not receive the internship if he told the truth. (Tr. at 12, 20-27, 30, 41, 47-48; Applicant's response to SOR; AE A)

Applicant went back to college and continued to use illegal drugs after he submitted the SF 85P. He used marijuana; Adderall without a prescription, LSD, hallucinogenic mushrooms, and cocaine up through about May or June 2022. (Tr. at 17- 18; Applicant's response to SOR; GE 1)

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

Applicant wrote the following about reporting his drug use on the SF 86:

After I had started my job at [defense contractor] in August of 2022, my boss explained to me to be honest. He explained to me that he had done the same thing, and he was honest and was granted his top secret. I wanted to be completely honest anyways, and since I was assured I would be granted a top-secret clearance by doing so I did. Now I feel as if I'm being punished for my honesty. However, I do understand the reasoning since I had said no on my first [SF 85P] form, and I'm truly sorry. (AE A)

Applicant provided somewhat similar testimony about reporting his illegal drug use. He stated, "But now I'm kind of regretting - not really regretting it, but it kind of sucks that I have to come here today and go through it." He added that he did not regret telling the truth. (Tr. at 41-45, 52)

Applicant accepted responsibility for his illegal drug use and lying on the SF 85P. He stated that he never really liked marijuana, and he did it because his friends did it. He has not used any illegal drugs since June 2022. He stated he has matured. He is aware

that using illegal drugs will affect his ability to obtain a security clearance, become a military pilot, and obtain his ultimate goal. (Tr. at 12-14, 16-18, 47, 52; AE A)

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.

¶ 25. The guideline notes several conditions that could raise security concerns under AG. The following are potentially applicable in this case:

- (a) any substance misuse (see above definition); and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant possessed and used marijuana, Adderall without a prescription, LSD, hallucinogenic mushrooms, and cocaine. AG ¶¶ 25(a) and 25(c) 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 has not used any illegal drugs since June 2022. There is no bright-line rule for when conduct is recent. Applicant lied about his illegal drug use on an April 2021 SF 85P and then exercised poor judgment by using illegal drugs until June 2022. I believe he needs more time to establish that illegal drug involvement is unlikely to recur. His drug involvement continues to cast doubt on his current reliability, trustworthiness, and good judgment. None of the mitigating conditions are sufficiently applicable to overcome drug involvement security concerns.

Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 clearance investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

(a) refusal, or failure without reasonable cause, to undergo or cooperate with security processing, including but not limited to meeting with a security investigator for subject interview, completing security forms or releases, cooperation with medical or psychological evaluation, or polygraph examination, if authorized and required; and

(b) refusal to provide full, frank, and truthful answers to lawful questions of investigators, security officials, or other official representatives in connection with a personnel security or trustworthiness determination.

AG ¶ 16 describes conditions 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 security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant intentionally failed to report his illegal drug use on his April 2021 SF 85P. AG ¶ 16(a) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant lied about his illegal drug use, and then continued to use illegal drugs. He is credited with being truthful on the November 2022 SF 86. That credit is somewhat tempered by his statement, "I wanted to be completely honest anyways, and since I was assured I would be granted a top-secret clearance by doing so I did. Now I feel as if I'm being punished for my honesty." None of the mitigating conditions are applicable.

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 Guidelines E and H in my whole-person analysis. Applicant used illegal drugs, lied about using illegal drugs on his SF 85P, and then went back to using illegal drugs. That is at least one too many instances of poor judgment. Applicant sabotaged the dream he has held since he was 17.

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 Guidelines E and 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.e:	Against Applicant
Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	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