



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



In the matter of:)
)
) ISCR Case No. 24-01218
)
)
Applicant for Security Clearance)

Appearances

For Government: John Lynch, Department Counsel
For Applicant: *Pro se*

02/21/2025

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On October 3, 2023, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 3.) On August 13, 2024, the Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) issued Applicant a Statement of Reasons (SOR), detailing security concerns under Guideline H, Drug Involvement and Substance Misuse. 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*, effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer), on or about September 9, 2024. (Item 2.) He requested that his case be decided by an administrative judge on the written record. Department Counsel submitted the Government's written case on November 14, 2024. A complete copy of the File of Relevant Material (FORM), containing six items was received by Applicant on November 25, 2024. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. Applicant submitted no response to the FORM. DOHA

assigned the case to me on February 4, 2025. Items 1 through 6 will hereinafter be referred to as Government Exhibits 1 through 6.

Findings of Fact

Applicant is 33 years old. He is not married and has no children. He has a Bachelor's degree, and no prior military service. He is employed by a defense contractor as an Engineering Specialist. He is seeking to obtain a security clearance in connection with his employment.

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

Applicant has a long history of illegal drug use involving a variety of illegal drugs including cocaine, psilocybin mushrooms, marijuana, LSD, and MDMA (ecstasy), beginning in 2008 and continuing off and on until at least August 2023. The SOR only alleges his use of cocaine from 2013 until July 2023, and the use of psilocybin mushrooms in August 2023. (Government Exhibits 4 and 5.)

Applicant began his employment with a defense contractor in January 2021. He applied for a security clearance for the first time in 2023. He completed a security clearance questionnaire and concerning his use of illegal drugs, Applicant indicated not only that he has used cocaine and psilocybin mushrooms, but that he has also used marijuana, from 2008 until December 2019; LSD twice in 2018; and MDMA (ecstasy) in 2013 and 2017. (Government Exhibit 3.)

In regard to his use of cocaine, Applicant stated that he used it twice in college, and five other times with the last two times being in 2023. He stated that he last used cocaine in July 2023. He stated that he first used psilocybin mushrooms in college, and he used it again in August 2023. (Government Exhibit 3.)

Applicant also stated that his most recent use of any illegal drugs occurred while he was on vacation, holiday, or at a special event. He has often used illegal drugs with several of his close friends, friends that he still associates with. (Government Exhibit 6.) He stated that he is trying to reduce putting himself in situations where illegal drugs are present and avoiding people who might be affiliated with it. He is remorseful for his past illegal drug use, and his intention is to never again use any illegal drugs. He is now in a long-term relationship which leads him to spend more nights on the couch than nights in the bar or at a party. (Government Exhibit 2.)

Applicant elected not to respond to the Government's FORM. Thus, the record is void of any documentary evidence in mitigation.

Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching 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 ¶ 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.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or 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 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

The security concern relating to the guideline for Drug Involvement and Substance Misuse is set forth at 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.

The guideline at AG ¶ 25 contains two conditions that could raise a security concern and may be disqualifying:

- (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 has a long history of drug use involving a variety of drugs including cocaine use in July 2023, and psilocybin mushrooms as recently as August 2023. The above disqualifying conditions apply.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns. None of the conditions are 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

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(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's history of illegal drug use is extensive, and is indicative of poor judgment, unreliability, and untrustworthiness. Although his recent use of cocaine and psilocybin mushrooms in July and August 2023, are the only drugs listed in the SOR, MDMA, (ecstasy) go to show the vast extent of his pattern of illegal drug use. Applicant began using marijuana in 2008, and he continued over the years using a variety of illegal drugs until his most recent cocaine use in August 2023. Applicant has used illegal drugs off and on for about seventeen years. Illegal drug use is prohibited by DoD regulations and is against Federal law. Applicant has for many years ignored the law and instead for his convenience, he has engaged in criminal behavior, not once, but many times over an extended period of time, and with a number of illegal drugs. In addition, Applicant has close friends who use illegal drugs. Those friends he still associates with. As Applicant stated in his response to the SOR dated September 9, 2024, this investigation process just started his self-reflection and his decision-making process. He only recently decided to stop using illegal drugs. (Government Exhibit 2.)

Applicant is a thirty-three-year-old man whose conduct has for many years failed to demonstrate maturity, trustworthiness, or good judgment. Given his long history of illegal drug use, which occurred over a seventeen-year period, and his recent decision to stop using illegal drugs, which was about eighteen months ago, he does not meet the requirements for eligibility to access classified information at this time. None of the mitigating conditions are applicable.

Considered in totality, Applicant's conduct precludes a finding of good judgment, reliability, and/or the ability to abide by rules and regulations. To be entrusted with the privilege of holding a security clearance, applicants are expected to abide by all laws, regulations, and policies, that apply to them at all times. Applicant has disregarded the applicable laws for many years. Furthermore, he has failed to submit any documentary evidence in mitigation to show otherwise. Under the particular facts of this case, Applicant's conduct has not demonstrated the requisite character or judgment of someone who has the maturity, integrity, good judgment, and reliability necessary to access classified information. Applicant does not meet the qualifications for access to classified information.

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 considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant has not demonstrated the level of maturity needed for access to classified information. This is not an individual in whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking. Applicant is not qualified for access to classified information and does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with many questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the Drug Involvement and Substance Misuse security concerns.

Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of the Directive, are:

Paragraph 1, Guideline H:

AGAINST APPLICANT

Subparagraphs 1.a and 1.b.

Against Applicant

Conclusion

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

Darlene Lokey Anderson
Administrative Judge