



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



In the matter of:)
)
) ISCR Case No. 24-00567
)
Applicant for Security Clearance)

Appearances

For Government: Aubrey De Angeles Esq., Department Counsel
For Applicant: *Pro se*

04/10/2025

Decision

COACHER, Robert E., Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns. Eligibility for access to classified information is granted.

History of the Case

On April 11, 2024, the Defense Counterintelligence and Security Agency (DCSA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse. DCSA acted under Executive Order (EO) 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), implemented by the DOD on June 8, 2017.

Applicant answered the SOR on April 12, 2024, and requested a hearing before an administrative judge. The case was assigned to me on October 3, 2024. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on January 27, 2025,

and the hearing was convened as scheduled on February 25, 2025. The Government offered exhibits (GE) 1-2, which I admitted into evidence without objection. The Government's exhibit list and the discovery document sent to Applicant were marked as hearing exhibits (HE) I and II. Applicant testified, but did not offer any documentary evidence. DOHA received the hearing transcript (Tr.) on March 7, 2025.

Findings of Fact

In Applicant's answer to the SOR, he admitted the allegation, with explanations. I have incorporated his admission into my findings of fact. After a thorough and careful review of the pleadings, testimony, and exhibits submitted, I make the following additional findings of fact.

Applicant is 37 years old. He has a high school diploma and has completed some college courses. He is single, and he has no children. He has been in a relationship for approximately six months. He enlisted in the Army in 2010 but was injured during basic training and was separated shortly thereafter. Since February 2023, he has worked for a defense contractor performing logistical duties. (Tr. 6, 14-15; GE 1)

The SOR alleged Applicant used marijuana, with varying frequency, from January 2005 through at least November 2009, and again from about February 2010 to about October 2022. (SOR ¶ 1.a)

Applicant credibly testified that he started using marijuana in approximately 2005, when he was 18 years old. He started using it because he was young, and his friends were using it. He used it a few times a week. He stopped using marijuana in 2009, so he could pass a drug test and join the Army. He passed the drug test and enlisted in approximately November 2009. He did not use any illegal drugs while in the Army. As stated above, he was injured during basic training, which led to his separation from the Army in February 2010. (Tr. 16-17, GE 1)

After leaving the Army in 2010, he resumed using marijuana. He would obtain the marijuana from friends. In 2012, when his state of residence legalized the recreational use of marijuana under state law, he began using it on a daily basis and buying from marijuana dispensaries. His daily use continued until early 2022, when he began to use marijuana less often. He said the reasons for his decreased use were that it was expensive and he lost interest in using it. He continued to taper his use until he stopped using marijuana completely in October 2022. This was the last time he used marijuana or any other illegal drug. He stopped "cold-turkey," without attending a drug-treatment program. He began his employment with his current employer in February 2023. He was given a drug test, which he passed, as part of the preemployment process. He fully disclosed his drug use on his security clearance application (SCA) in March 2023, and during his background interview (BI) in August 2023. (Tr. 16, 18-21; GE 1-2)

Applicant continues to associate with friends who still use marijuana, which is legal for them in the state where they live. He explained that these are friends whom he has known for over twenty years and with whom he grew up. He told them he has chosen to abstain from using marijuana, and they respect his decision to stop. If he is around when they use marijuana, he is not tempted to use it. This may occur a few times a year. His current significant other does not use marijuana. He has no intention of using marijuana in the future. (Tr. 19, 21-23)

He admitted using hallucinogenic mushrooms three times between 2016 and 2020. These uses were not alleged in the SOR and, therefore, I will not use that evidence for disqualifying purposes, but I may use it in assessing credibility, mitigation, and the whole-person factors. I note that Applicant admitted these three uses on both his SCA and during his BI. He has not used them since 2020. (Tr. 20; GE 1-2)

Analysis

Guideline H, Drug Involvement and Substance Misuse

AG ¶ 24 expresses the security concern pertaining to drug involvement and substance misuse:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. One condition is potentially applicable in this case, to wit:

(a) any substance misuse.

Applicant used marijuana on several occasions from 2005 to 2009, and again from 2010 to 2022. His admissions support this allegation. I find AG ¶ 25(a) applies.

AG ¶ 26 provides conditions that could mitigate security concerns. Two potentially apply in this case:

(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.

From 2005 to 2009, Applicant used marijuana occasionally, then after he left the Army in 2010, he used it regularly. By October 2022, he had grown tired of using marijuana and quit using it “cold-turkey.” He credibly stated that he has not used marijuana since then, and there is no evidence to the contrary. On his SCA and during his BI, he disclosed both his marijuana use and his three-time-illegal-mushroom use, which ended in 2020. All his marijuana use was in a state which legalized marijuana use and his use was before he worked for a federal contractor. He passed a preemployment drug test before he was hired for his current position. While he still associates with some life-long friends who use marijuana, they respect his decision to abstain from its use, and he has no desire or intent to use any illegal drugs in the future. AG ¶ 26(a) applies. His two-plus years of abstinence, under these circumstances, are sufficient to demonstrate a pattern of abstinence to make AG ¶ 26(b) also 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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(1) the nature, extent, and circumstances 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 guideline and the whole-person concept.

On December 21, 2021, the Director of National Intelligence signed the memorandum, Security Executive Agent Clarifying Guidance Concerning Marijuana for Agencies Conducting Adjudications of Persons Proposed for Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position. It emphasizes that federal law remains unchanged with respect to the illegal use, possession, production and distribution of marijuana. Individuals who hold a clearance or occupy a sensitive position are prohibited by law from using controlled substances. Disregard of federal law pertaining to marijuana (including prior recreational marijuana use) remains relevant, but not determinative, to adjudications of eligibility. Agencies are required to use the “whole-person concept” to determine whether the applicant’s behavior raises a security concern that has not been mitigated.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant provided sufficient evidence to mitigate the security concerns. His honesty and truthfulness in voluntarily disclosing his drug use on his SCA and during his BI influenced my decision.

Overall, the record evidence leaves me without questions or doubts about Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising under Guideline H, drug involvement and substance misuse.

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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Robert E. Coacher
Administrative Judge