



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



In the matter of:

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ISCR Case No. 17-02117

Applicant for Security Clearance

Appearances

For Government: Tovah Minster, Esq., Department Counsel

For Applicant: Yeargin Grayson, Esq.

10/15/2018

Decision

Curry, Marc E., Administrative Judge:

Applicant's last episode of illegal drug use was more than three years ago. He no longer associates with his friends who abuse illegal drugs, and he has no intention of using illegal drugs in the future. Under these circumstances, I conclude Applicant has mitigated the security concerns. Clearance is granted.

Statement of the Case

On August 10, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guidelines H, drug involvement, and E, personal conduct, explaining why it was unable to find it clearly consistent with the national interest to grant security clearance eligibility. The DOD CAF 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 Security Executive Agent Directive 4, effective June 8, 2017.

On September 1, 2017, Applicant answered the SOR, admitting the allegations and requesting a hearing, whereupon the case was assigned to me on March 15, 2018. On June 19, 2018, the Defense Office of Hearings and Appeals issued a notice of hearing, scheduling Applicant's case for July 25, 2018. The hearing was held as scheduled. I received five Government exhibits (GE 1 through GE 5), and three Applicant's exhibits (AE A through AE C). The transcript (Tr.) was received on August 3, 2018.

Findings of Fact

Applicant is a 55-year-old single man. After finishing high school, he enlisted in the U.S. Air Force, serving for three years from 1982 to 1985. He was honorably discharged. (Tr. 13) A few years later, he enrolled in college, ultimately earning a degree in telecommunications in 1992. For the past nine years, Applicant has worked for a telecommunications engineering company. He is a senior program manager. (Tr. 14) He has held a security clearance since 2012.

On one occasion in June 2014, Applicant used ketamine, a hallucinogenic drug. Approximately a year later, in June 2015, Applicant used ketamine and MDMA, another hallucinogenic drug. During each episode of drug use, Applicant was at an annual music festival. (Tr. 17) He "wanted to understand what [his] friends were experiencing." (Tr. 15)

In May 2016, Applicant relocated to another state. He no longer associates with the friends with whom he attended the music festivals, and now socializes with more like-minded individuals. (Tr. 17, 24)

Applicant reported his drug use to his employer. Shortly afterwards in 2016, he began undergoing random drug screening, that his employer arranged. That year, he passed four random drug screens over a three to six month period. (Tr. 27)

With the exception of a one-time episode of marijuana use in the early 1980s, Applicant's use of drugs in 2014 and 2015 were the only times he ever abused illegal drugs. In July 2018, he executed an affidavit expressing his intention never to use illegal drugs again. (AE A)

Applicant is well-respected on the job. According to his supervisor, he "always expresses facts and ideas clearly in a credible manner and tone," and "always maintains accountability and ownership of assigned projects and tasks." (AE C at 25, 27)

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(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." 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).¹

Analysis

Guideline H: Drug Involvement and Substance Misuse

The security concerns under this guideline are set forth in 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.

¹ The factors under AG ¶ 2(a) 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.

Applicant's abuse of ketamine and MDMA while holding a security clearance triggers the application of AG ¶ 25(a), "any substance misuse" and AG ¶ 25(f), any illegal drug use while granted access to classified information or holding a sensitive position. The following mitigating conditions 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;

(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 abuse of illegal drugs poses a serious security concern because he possessed a clearance when he used the drugs. His use of illegal drugs cannot be attributed to immaturity, as he was in his early fifties when it occurred.

Conversely, Applicant's drug use was infrequent, occurring once in 2014 and once in 2015. He self-reported it, disassociated himself from his drug-using friends, and provided a signed statement of intent to abstain from future drug involvement. In the three years since he last used illegal drugs, he has passed multiple random drug screenings. I conclude that all of the mitigating conditions apply.

Upon considering the disqualifying and mitigating conditions, Applicant's good work evaluations, and his contrite and introspective testimony, I conclude that he has mitigated the drug involvement and substance misuse security concerns.

Guideline E: Personal Conduct

Under this guideline, "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." Applicant's drug involvement is mitigated under the personal conduct guideline for the same reasons it is mitigated under the drug involvement guideline.

Whole-Person Concept

I considered the factors under the whole-person concept when I analyzed the disqualifying and mitigating conditions under the drug involvement and substance misuse guideline.

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
Subparagraphs 1.a – 1.d:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

Conclusion

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

Marc E. Curry
Administrative Judge