



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



In the matter of:)
)
) ISCR Case No. 17-02425
)
Applicant for Security Clearance)

Appearances

For Government: Andrea Corrales, Esq., Department Counsel
For Applicant: Tokay T. Hackett, Esq.

08/08/2016

Decision

GARCIA, Candace Le'i, Administrative Judge:

Applicant mitigated the security concerns under drug involvement and substance misuse, and personal conduct. Continued eligibility for access to classified information is granted.

Statement of the Case

On August 4, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under H (drug involvement and substance misuse), and E (personal conduct). The action was taken under Executive Order (Exec. Or.) 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) implemented by DOD on June 8, 2017.

Applicant responded to the SOR on September 27, 2017, and requested a hearing. The case was assigned to an administrative judge on October 26, 2017, then transferred to another judge on December 12, 2017. It was reassigned to me on January 17, 2018. The Defense Office of Hearings and Appeals (DOHA) issued a notice

of hearing (NOH) on February 12, 2018, scheduling the hearing for March 7, 2018. I convened the hearing as scheduled.

I marked the Government's exhibit list and discovery letter, and Applicant's exhibit and witness list, as Hearing Exhibits (HE) I, II, and III. Government Exhibits (GE) 1 through 3 were admitted in evidence without objection. Applicant testified, called one witness, and submitted Applicant's Exhibits (AE) A through N, which were admitted in evidence without objection. DOHA received the hearing transcript (Tr.) on March 16, 2018.

Findings of Fact

In response to the SOR, Applicant admitted all of the allegations. He is 26 years old. As of the date of the hearing, he had never been married and he did not have any children.¹

Applicant graduated from high school in 2010. He earned a bachelor's degree in mechanical engineering in 2014. He has worked for his current defense contractor since October 2016. He received two promotions, in January and June 2017. As of the date of the hearing, he oversaw between 20 and 30 employees, and he had input into their performance evaluations. He was granted a DOD security clearance for the first time in February 2017, and he requires a clearance for his job.²

Between 2007 and 2012, Applicant used, purchased, and sold marijuana. He first used marijuana when he was a sophomore in high school. At times, he purchased marijuana for his recreational use. He met the individuals with whom he used and purchased marijuana through his active participation in high-school sports.³

Applicant used marijuana up to the summer after his freshman year of college. He used and purchased marijuana for his personal use as frequently as two to three times weekly. He belonged to a social fraternity in college, and a roommate of a fraternity brother had access to a marijuana supplier. His marijuana use and purchase often occurred in connection with his fraternity. On at most 10 occasions, he also participated in purchasing marijuana in bulk for his fraternity's social events. He and a group of five to ten people would pool their money and buy 10 to 15 grams of marijuana for their recreational use. On one occasion, a number of people pooled their money so that he could purchase 32 grams for a big fraternity event. At times, he would sell any remaining marijuana to his friends. He did not consider himself, and he was not considered by others, to be a drug dealer.⁴

¹ Response to the SOR; Tr. at 65; GE 1; AE C.

² Tr. at 6, 31-33, 46, 58, 66-68; GE 1; AE B, C, F, I.

³ Tr. at 33-37, 43-58, 68-72, 83-84; GE 2; AE D, E.

⁴ Tr. at 33-37, 43-58, 68-72, 83-84; GE 2; AE D, E.

After his roommate's father died, Applicant stopped using marijuana. He began experiencing anxiety after he would use marijuana. He described this experience as "[t]he first time anyone close to me had really suffered a major setback in life, such as a death" He continued, "It kind of brought me back to Earth. I was trying to deal with that. I reconnected with my father a lot at that time."⁵

Throughout college, from 2010 to 2014, Applicant also used and purchased cocaine. He also misused two types of prescription drugs, Ritalin and Adderall. Though he had stopped using marijuana, he still closely associated with the same drug-using associates. He also did not experience any adverse reaction to cocaine or these prescription drugs, as he did with marijuana.⁶

Applicant used cocaine in the same social settings where he used marijuana. He also purchased it from the same supplier. He misused Adderall when he wanted to be more energetic and focused while studying. He misused Adderall and Ritalin in social situations when he consumed alcohol. He purchased them from his college roommates who had prescriptions for them, or he obtained them in exchange for alcohol, which he purchased for a few years using a fake identification when he was underage. Having previously been diagnosed with attention-deficit disorder and prescribed Ritalin up through high school, he knew the effects it had on him and he was not very concerned when he used it. He justified his Ritalin misuse as not ". . . really a big deal." He indicated that he ". . . made the false assumption that it was all right to take it. Obviously, I know now that I was misusing it."⁷

After he graduated from college in August 2014, Applicant decided to stop using illegal drugs and misusing prescription drugs because he was going to begin working. He also no longer had access to prescription drugs. However, he still socialized with the same individuals with whom he had used illegal drugs. In December 2014, he made a poor decision and he used cocaine for the last time. He acknowledged that he did not disclose his last cocaine use to his then-employer. He disclosed it to his security officer, as further discussed below. He believed that he disclosed it during his June 2017 background interview, but discovered when he reviewed the SOR that he had not done so. He wanted to be forthcoming about it during the hearing.⁸

Applicant knew that marijuana and cocaine were illegal drugs. He also knew that he was not supposed to use any prescription drugs that were not prescribed to him. He attributed his use of illegal drugs and his misuse of prescription drugs to his poor choices in high school and college, to include the individuals with whom he socialized, as well as to his college environment. He indicated that he ". . . didn't really think very hard about the decisions I was making at the time in regards to my future." He has not

⁵ Tr. at 33-37, 43-58; GE 2; AE D, E.

⁶ Tr. at 33-37, 43-58, 69-70; GE 2; AE D, E.

⁷ Tr. at 33-37, 43-58, 69-70, 73-74; GE 2, 3; AE D, E.

⁸ Tr. at 33-37, 43-58, 63-65, 73, 82; GE 2, 3; AE D, E.

used illegal drugs since December 2014. He made fundamental life changes since then. His girlfriend has been a good influence on him. He disassociated himself from his drug-using associates, to include members of his fraternity and the individual from whom he purchased marijuana and cocaine. He stopped drinking in excess. He quit smoking cigarettes. He began running half-marathons and participating in sprint triathlons. He practiced meditation. He is a vigorous reader. He signed a statement of intent not to abuse or illegally use drugs in the future, and that any violation may constitute grounds for revocation of his security clearance.⁹

If he were to find himself in a situation where illegal drugs were being used, Applicant credibly testified that he would leave; he would have no qualms about doing so. His girlfriend and parents were aware of his past drug involvement. He passed pre-selection urine tests required by his previous employer at the power plant as well as by his current defense contractor. While he was unsure whether his employer had a random drug testing policy, he intended to abide by its policy against illegal drug use.¹⁰

Applicant admitted that he intentionally falsified his response to Section 23 of his October 2016 security clearance application (SCA), which inquired about illegal drug use and drug activity in the seven years before the date of the SCA. He admitted that he failed to disclose his use of marijuana and cocaine, his misuse of Ritalin and Adderall, his purchase and sale of marijuana, and his purchase of cocaine. He knowingly chose not to disclose his past drug involvement because he was concerned about the implications it would have on his job and his security clearance eligibility. He justified his incorrect responses because he felt he was a fundamentally different person than who he was in high school and college.¹¹

Applicant also testified that he did not give the SCA great attention to detail. He was in the process of trying to find another job, as he believed that the power plant for whom he was working at the time was closing. He was also in the process of moving. He testified that if he understood the seriousness of the SCA, or the legal implications of his responses, he would have answered differently. At hearing, he acknowledged the importance of responding honestly.¹²

One week after he completed the SCA, Applicant began working for his current defense contractor. He underwent security training and immediately realized that he made a "huge error" on his SCA. He notified his facility security officer (FSO) on his second day on the job that he completed the SCA incorrectly. He did not provide the FSO with specific details about the nature of his incorrect responses, and the FSO did not inquire about such details. His FSO advised him to wait to correct his responses

⁹ Tr. at 33-37, 43-58, 63-66, 69-73, 81-82; GE 2; AE B, D, K, L, M.

¹⁰ Tr. at 33-37, 43-58, 63-66, 69-73, 81-82; GE 1, 2; AE C, D.

¹¹ Tr. at 37-43, 46-47, 58-62, 74-77; GE 1; AE C.

¹² Tr. at 37-43, 46-47, 58-62, 74-77; GE 1; AE C, G.

during his background interview. He believed he was so advised because the FSO assumed he was being processed for a top secret clearance.¹³

A few months later, in mid-December 2016, Applicant was granted an interim clearance without a background interview. He again contacted his FSO regarding his incorrect SCA responses. He did not provide the FSO with specific details about the nature of his incorrect responses, and the FSO did not inquire about such details. He received the same advice.¹⁴

After he was granted a final clearance in February 2017, Applicant contacted his FSO a third time. At this point, he disclosed information about his past marijuana and cocaine use, to include estimations about the frequency and timeframe in which he used both drugs. He also disclosed his December 2014 use of cocaine. He could not recall whether he informed the FSO about his past purchase and sale of marijuana. He did not disclose his past misuse of prescription drugs. He was focused on disclosing his illegal drug use, and he did not understand the misuse of prescription drugs to be pertinent information. Applicant's efforts to correct his SCA through his FSO are in the record. The FSO subsequently submitted an incident history report on the Joint Personnel Adjudication System (JPAS) database.¹⁵

Applicant disclosed his past drug involvement during his background interview. He initially indicated that he untruthfully responded to the drug questions on his SCA because he was in a rush, but he then disclosed that he did so because of the potential negative effects on his clearance and his job. He also disclosed his past drug involvement and related incorrect SCA responses to his direct and previous supervisors. He also testified that he fully disclosed his use, purchase, and sale of illicit drugs during the screening process for his previous job with the power plant. He was granted clearance to work there, which he did for two years. He acknowledged his past mistakes, he expressed a desire to live honestly and positively, and to continue to contribute to the defense industry.¹⁶

Applicant's witness was a former co-worker at the power plant from 2014 to 2016. The witness also considered Applicant a friend. The witness testified that he held a security clearance with another government agency when he worked for the power plant; he did not hold a security clearance as of the hearing date. He saw Applicant daily during this period. Despite the SOR concerns, he would work with Applicant again. He described Applicant as an above-and-beyond employee and a trustworthy individual. Three character references, to include his supervisor, attested to Applicant's strong

¹³ Tr. at 37-43, 58-62; GE 1; AE B, C, G.

¹⁴ Tr. at 37-43, 58-62; GE 1; AE B, C, G.

¹⁵ Tr. at 37-43, 58-62, 73, 83; GE 1, 3; AE B, C, G.

¹⁶ Tr. at 33, 37-47, 58-62, 74-81; GE 1, 2; AE B, C.

work ethic, trustworthiness, and integrity. He was rewarded for his work performance in May 2017.¹⁷

Policies

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(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."

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 Exec. Or. 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* Exec. Or. 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

¹⁷ Tr. at 16-30, 46; AE H, J, N.

Analysis

Guideline H, Drug Involvement and Substance Misuse

The security concern for drug involvement and substance misuse is set out 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. *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 notes several conditions that could raise security concerns under AG ¶ 25. 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 used and purchased marijuana and cocaine, sold marijuana, and misused prescription medication. AG ¶¶ 25(a) and 25(c) are established.

Conditions that could mitigate the drug involvement and substance misuse security concerns are provided under AG ¶ 26. 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;
- (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 drug involvement primarily occurred when he was in high school and college. He was forthcoming about it at the hearing. Though he used cocaine in December 2014, he has not used any illegal drugs or misused any prescription drugs since. He disassociated from his past drug-using associates. He made fundamental changes to his life, for which illegal drug use and misuse of prescription drugs are not a part. He signed a statement of intent to abstain from all drug involvement and substance misuse. I find that his behavior happened so long ago and under such circumstances that it is unlikely to recur. It does not continue to cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶¶ 26(a) and 26(b) apply.

Guideline E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I considered the following relevant:

(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 admitted that he intentionally falsified his responses to section 23 of his 2016 SCA. Though he cited to various factors that contributed to his false responses, he acknowledged that he deliberately marked them incorrectly. He did so because he was concerned about the implications on his security clearance eligibility and his job. AG ¶ 16(a) is established.

I have considered all of the mitigating conditions under AG ¶ 17 and considered the following relevant:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant made prompt and good-faith efforts to correct the information concerning his past drug involvement on his 2016 SCA. He did so by contacting his FSO three times: first, during his second day on the job; second, after he received an interim clearance; and third, when he was granted a final clearance. Proof of his efforts are in the record. Though he did not disclose to his FSO details about the nature of his incorrect responses during his first two attempts, his FSO also never asked him for such details. Nonetheless, he voluntarily provided such details during his third attempt. He also disclosed the information about his past drug involvement and his related SCA omissions during his background interview. He was forthcoming and credible at the hearing. His current supervisor and at least one of the character references were aware about his past drug involvement and related SCA omissions. His family and girlfriend were aware about his past drug involvement. AG ¶¶ 17(a), 17(c), 17(d), and 17(e) apply.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis.

Applicant credibly testified at the hearing. He has taken responsibility for his past drug involvement and his false responses on his 2016 SCA. He was candid, sincere, and remorseful.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant mitigated the security concerns under drug involvement and substance misuse, and personal conduct.

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.f:	For Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraphs 2.a - 2.b:	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 continue Applicant's eligibility for a security clearance. Continued eligibility for access to classified information is granted.

Candace Le'i Garcia
Administrative Judge