



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-03963

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel

For Applicant: *Pro se*

07/09/2018

Decision

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. Eligibility for access to classified information is denied.

Statement of the Case

On December 6, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. 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 (AG) effective within the DOD on June 8, 2017.

Applicant answered the SOR on January 27, 2018, and elected to have his case decided on the written record in lieu of a hearing.¹ Department Counsel submitted the Government's file of relevant material (FORM), and Applicant received it on March 16, 2018. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 3. Applicant did not respond to the FORM, provide documentary evidence, or object to the Government's evidence, and it is admitted. The case was assigned to me on June 11, 2018.

Findings of Fact

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 31 years old. He earned an associate's degree in 2007 and a bachelor's degree in 2009. He has never been married and has no children. He has worked for his employer, a federal contractor, since 2007.²

Applicant disclosed on his April 2017 security clearance application (SCA) that he began using marijuana in June 2005 and used it every day from June 2007 to January 2015. He continued to use it until March 2017, with varying frequency. He could not estimate the number of times he used it after January 2015, but stated it was sporadic.³

Applicant also disclosed on his SCA that he used "cocaine or crack cocaine (such as rock, freebase, etc.) from June 2012 until March 2017. His frequency of use was "once every few months. Sometimes use would span 2-3 days."⁴ He estimated he used cocaine during this period 20-40 times.⁵

Applicant disclosed he used Ecstasy from June 2010 to June 2011, about three to five times. He used hallucinogenic mushrooms from June 2011 to April 2012 about three times. He used Adderall, which was not prescribed to him, once in about April 2012.⁶

¹ Applicant's answer is dated January 27, 2017, which is clearly a clerical error, and should have been 2018.

² Item 2.

³ Item 2.

⁴ Item 2.

⁵ Item 2.

⁶ Item 2.

Applicant purchased marijuana about once a week from June 2007 to January 2015. He purchased cocaine, with varying frequency, from about June 2012 to March 2017.⁷

A SCA question asked if Applicant intended to use each of these drugs in the future. He indicated “no” and stated his intention as to each drug: “If using this drug will prevent me from obtaining/holding a security clearance it is no problem to refuse use going forward.”⁸

Applicant was interviewed by a government investigator in July 2017. He told the investigator that from 2007 to 2015, he purchased one ounce of marijuana biweekly from his mother who had a medical marijuana prescription. He would use it with friends in a social setting. In 2015, he stopped purchasing marijuana from his mother and used it less often. He told the investigator that he did not plan to use or purchase marijuana in the future.⁹

Applicant described his use of illegal drugs as recreational. He told the investigator that he used the illegal drugs with various friends. He remains in contact with the friends associated with his prior drug use as they have been friends for many years. He told the investigator he did not plan to use illegal drugs in the future.¹⁰

In Applicant's answer to the SOR, he stated he is ready to commit to making changes in his life as it is important for the advancement of his career. He requested a chance to demonstrate positive changes in his behavior. He stated: “I experimented with substances throughout my 20’s. However, I have never been arrested.”¹¹ He stated he is not an addict, and he has not had legal problems or treatment. He stated that he is willing and able to disavow the use of illegal substances, but is not willing to disassociate with his friends who are drug users, however, he will leave the area if they are using drugs.¹²

Policies

When evaluating an applicant's suitability for national security eligibility, 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 used in evaluating an applicant's eligibility for access to classified information.

⁷ Item 6.

⁸ Item 2.

⁹ Item 3.

¹⁰ Item 3.

¹¹ Item 1.

¹² Item 1.

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 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." In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 states an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining 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 that an applicant may deliberately or inadvertently fail to 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 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 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

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

From June 2005 to March 2017, Applicant used various illegal drugs to include: marijuana, cocaine, Ecstasy, hallucinogenic mushrooms, and the illegal use of the prescription drug Adderall on one occasion. He purchased marijuana once a week from June 2007 to January 2015. He purchased cocaine with varying frequency from June 2012 to March 2017. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from financial difficulties. The following mitigating conditions under AG ¶ 26 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 to overcome the 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 being 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;
- (d) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant has been a regular drug abuser since 2005. A month before he completed his SCA, he indicated he ceased his illegal drug use. Applicant stated his use was recreational and he “experimented” with drugs during his 20s. The facts indicate otherwise. He disclosed he used marijuana every day from June 2007 to January 2015. Applicant was purchasing marijuana weekly. He used cocaine once every few months and sometimes the use would span two to three days. He estimated he used cocaine during this period 20-40 times. He said his last drug use was March 2017, a month before completing his SCA. He is willing to stop using illegal drugs in the future in order to enhance his career opportunities. However, he is not willing to disassociate from his friends who continue to use illegal drugs. Although, he stated he has not purchased marijuana from his mother since 2015, the availability of it to him is evident. There is insufficient evidence that future illegal drug use is unlikely to recur. His illegal drug use, spanning over 12 years and occurring while working for a federal contractor, casts doubt on Applicant’s current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply.

Applicant voluntarily disclosed his past illegal drug use on his SCA and when he was interviewed by a government investigator. He acknowledged his past substance misuse. Based on his lengthy drug use, his relatively short period of abstinence is insufficient. Applicant stated that he has not had legal problems or drug treatment. The fact that Applicant has never been caught purchasing or using illegal drugs does not negate the fact that he was participating in illegal activity for years. It appears Applicant fails to appreciate that his conduct was illegal. The fact that Applicant has not participated in treatment and received a positive prognosis is a concern. Applicant stated in his answer to the SOR that he is committed to not using illegal drugs in the future. AG ¶ 26(b) only applies as it pertains to his statement of intent not to use illegal drugs in the future.

Applicant used a prescription drug that was not prescribed to him. The evidence does not support a finding that his use was due to a prolonged illness. AG ¶ 26(c) does not apply. There is no evidence Applicant successfully completed a drug treatment program or was evaluated for his excessive long-term drug use. AG ¶ 26(d) does not apply. There is minimal mitigation to overcome the security concerns raised by Applicant’s past illegal drug use and substance misuse.

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 information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

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

- (e) personal conduct, or concealment about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group. Such conduct includes: (1) engaging in activities which, if known, could affect the person's personal, professional, or community standing; and
- (g) association with persons involved in criminal activity.

Applicant used illegal drugs from 2005 to 2017 and purchased illegal drugs until 2015. His conduct creates a vulnerability to exploitation, as it is the type of conduct, which if known, could affect his professional standing. He continues to associate with his friends who use illegal drugs. The evidence supports the application of the above disqualifying conditions.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (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
- (g) association with persons involved in criminal activities was unwitting, has ceased, or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or unwilling to comply with rules and regulations.

Applicant's illegal conduct spanning over 12 years is not minor or infrequent. It did not happen under unique circumstances. The evidence is insufficient to conclude it is unlikely to recur as Applicant continues to associate with his friends who use illegal drugs. Applicant's conduct extended beyond the period of youthful indiscretion. His conduct casts doubt on his reliability, trustworthiness, or good judgment. The above mitigating conditions do not 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 the 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 Guideline H and Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 31 years old. He has worked for a federal contractor since 2007. He has used illegal drugs since 2005, and from 2007 to 2015 he used marijuana daily. He used other illegal drugs with varying frequency. He illegally purchased marijuana and cocaine for many years. Although, he stated he is committed to being drug-free in the future, he continues to associate with friends who use illegal drugs. He does not appear to have an appreciation that his use and purchase of illegal drugs is criminal. The record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H, drug involvement and substance misuse, and Guideline E, 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:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.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 security to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Carol G. Ricciardello
Administrative Judge