



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 24-00948

Appearances

For Government: Karen Moreno-Sayles, Department Counsel
For Applicant: *Pro se*

02/21/2025

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On October 2, 2023, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 2.) On July 30, 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; and Guideline E, Personal Conduct. The action was taken under Executive Order 10865 (EO), *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 *National Security Adjudicative Guidelines for Determining Eligibility for Access to Classified Information or Eligibility to Hold a Sensitive Position* (AG), effective within the DoD after June 8, 2017.

Applicant responded to the SOR (Answer) on August 15, 2024. (Government Exhibit 1.) She requested that her case be decided by an administrative judge on the written record. Department Counsel submitted the Government's written case on September 30, 2024. A complete copy of the File of Relevant Material (FORM), containing 3 items was received by Applicant on October 17, 2024. She 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.

Findings of Fact

Applicant is 23 years old. She lives with her boyfriend and has no children. She earned two Associate's degrees in 2021 and 2022, and has taken courses toward her Bachelor's degree. She has no prior military service. She holds the position of Technician Intern 3 with a defense contractor. She is seeking to obtain a security clearance in connection with her employment.

Amendment to the Statement of Reasons

The Government, pursuant to Section E.3.1.13. of DoD Directive 5220.6, amended the Statement of Reasons (SOR) to add Guideline E (Personal Conduct), under Paragraph 2. The paragraph alleges that:

Applicant concealed and/or omitted material and relevant facts during her December 11, 2023, interview with an authorized investigator for the U.S. Department of Defense by failing to disclose that she failed a pre-employment drug test in or around June 2023.

Applicant failed to object to the proposed amendment; and failed to provide an answer to the amended new allegation, as she did not submit a response to the FORM. The Applicant's silence by not responding to the FORM in any fashion will be considered to be a denial of the amended allegation.

Guideline H - Drug Involvement and Substance Misuse Guideline E – Personal Conduct

Applicant began working for her current employer, a defense contractor, in June 2023. She completed a security clearance questionnaire dated October 2, 2023. In response to questions about illegal drug use, she stated that she used marijuana from October 2019 to August 2023, and used psilocybin mushrooms on about three occasions between February 2002 and August 2023. (Government Exhibit 3.) Applicant also tested positive for marijuana on a pre-employment urinalysis test in or around June 2023. (Government Exhibit 1.)

During her subject interview with a DoD investigator in December 2023, Applicant explained that between October 2019 and August 2023, she smoked marijuana weekly, in social situations, and also consumed edible gummies on two occasions during that period. She stated that her use of psilocybin mushrooms is attributed to her being young, immature, and wanting to experiment with drugs at the time. She contends that she quit using illegal drugs to pursue her career field, which is

a drug-free career field. Four separate times in the report summary dated December 11, 2023, the investigator noted that, "Subject has not failed any drug tests." Applicant signed and dated the summary of her subject interview, attesting to its truthfulness. (Government Exhibit 3.)

Applicant completed DOHA interrogatories dated July 10, 2024. In her response, she stated that at the time of her subject interview, she forgot that she had failed one drug test. For her current job, she stated that she took her first drug test which was deemed "diluted", her second drug test, she failed due to marijuana remaining in her system from weeks before, and her third drug test, she passed. Later in the interrogatories she stated that she tested positive for marijuana on a pre-employment drug test she took in June 2023. (Government Exhibit 3.)

Applicant also reported that her boyfriend, with whom she resides, continues to use marijuana on a daily basis.

Applicant failed to respond to the FORM, and there is no documentary evidence in mitigation in the record.

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. 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. 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 clearance 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 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 three conditions that could raise a security concern and may be disqualifying:

- (a) any substance misuse (see above definition);
- (b) testing positive for an illegal drug; and
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

The guideline at AG ¶ 26 contains conditions that could mitigate security concerns:

- (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.

None of the mitigating factors are applicable. Applicant used marijuana on a weekly basis from October 2019 to August 2023, over a five-year period, less than eighteen months ago. She used psilocybin mushrooms on three occasions between February 2022 and August 2023. She also tested positive for marijuana on a pre-employment urinalysis test conducted in about June 2023. Her drug use is recent, frequent, and happened under such circumstances that it is likely to recur. Although she claims that she quit using marijuana to pursue her career, she continued to use illegal drugs to at least August 2023. She also continues to associate with drug users, as she lives with her boyfriend who uses marijuana on a daily basis. Her actions are not mitigated under guideline H.

Guideline E- Personal Conduct

The security concern for Personal Conduct is set out in AG ¶ 15:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 16. One is potentially applicable in this case:

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative.

The guideline at AG ¶ 17 contains conditions that could mitigate security concerns. None of the conditions are applicable:

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

(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.

During her subject interview on December 11, 2023, Applicant was not truthful when she failed to disclose that she did not pass a drug urinalysis test administered by her current employer. Seven months later in her interrogatories dated July 10, 2024, Applicant disclosed that she failed a drug urinalysis test, but her correction of this omission was not made promptly. It is not reasonable to believe that she would forget undergoing three pre-employment drug urinalysis tests administered by her current employer. In June 2023, she underwent these drug urinalysis tests. She stated that her first drug test was deemed, "diluted." She tested positive for marijuana on the second drug test. Her third test she passed. After failing at least one of these drug urinalysis tests, she continued to use both marijuana and psilocybin mushrooms for at least a month. Her conduct shows immaturity, poor judgment, unreliability, and untrustworthiness. Her actions are not mitigated under Guideline E.

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. Applicant has a history of drug abuse, she failed a pre-employment drug test, and then she failed to disclose the fact that she failed this drug test when questioned during an interview with a DoD investigator. The record is void of any documentary evidence in mitigation. Under the particular facts of this case, Applicant does not show the maturity level, integrity, and reliability necessary

to access classified information. At this time, Applicant does not meet the eligibility qualifications for a security clearance.

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 Guidelines H and E 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. Applicant understands the requirements associated with holding a security clearance and knows that any illegal drug use is not tolerated. Applicant is not an individual in whom the Government can be confident to know that will always follow rules and regulations and do the right thing, even when no one is looking. Applicant does not meet the qualifications for a security clearance.

Overall, the record evidence leaves me with 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 Drug Involvement and Substance Misuse, and Personal Conduct 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. through 1.c.	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.	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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

Darlene Lokey Anderson
Administrative Judge