



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



In the matter of:

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ISCR Case No. 24-00887

Applicant for Security Clearance)

Appearances

For Government: Rhett Petcher, Esq., Department Counsel

For Applicant: *Pro se*

04/11/2025

Decision

Curry, Marc E., Administrative Judge:

Applicant failed to mitigate the security concerns stemming from his drug involvement and substance misuse, and his personal conduct based on his falsifications during the investigative process. Clearance is denied.

Statement of the Case

On October 2, 2024, Defense Counterintelligence and Security Agency Consolidated Adjudication Services (DCSA CAS) DSCA CAS issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H, drug involvement and substance misuse, and Guideline E, personal conduct. The DSCA CAS took the action under Executive Order (EO) 10865, *Safeguarding October 2, 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 *Nat. Sec. Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG) effective within the DOD on June 8, 2017.

In his answer, dated November 6, 2024, Applicant admitted the SOR allegations and requested a decision based on the evidence on file instead of a hearing. On December 11, 2024, Department Counsel prepared a file of relevant material (FORM), a

brief with seven attachments supporting the Government's contention that Applicant should be precluded from having access to classified information. Applicant received the FORM on December 30, 2024, and he was notified he had 30 days to file a response. On January 28, 2025, Applicant filed a written response. The case was assigned to me on March 17, 2025. Items 1 through 7 of the FORM were admitted without objection.

Findings of Fact

Applicant is a 26-year-old single man. He has a high school education and has earned some college credits. Since 2017, he has been working for a defense contractor as a welder. He has held a security clearance since 2018. (Reply to FORM at 1)

Applicant purchased marijuana in edible and hash form from approximately April 2016 to September 2023. He most enjoyed hash oil, which he used between 50 to 100 times while hiking. (Item 4 at 10) During this time, he possessed a security clearance. In addition to marijuana use, Applicant used cocaine once in approximately August 2017, and he used hallucinogenic mushrooms on one or more occasions from approximately September 2017 to October 2017. (Item 1 at 2)

One day in 2017, Applicant used marijuana with two coworkers in the parking lot of his employer while on lunch break. After they returned to work from lunch break, one of the coworkers became violently ill. The next day, one of the company managers, who was not Applicant's supervisor, told him that he was going to be fired. (Item 4 at 16) Applicant then "walked out before [his employer] fired him." (Item 4 at 16)

When Applicant completed a security clearance application (SCA) in 2018, he was required, under Section 13, to disclose whether he had ever been fired or left a job under adverse circumstances. He did not disclose the adverse circumstances of his 2017 job loss. Instead, he wrote in, response to Section 13, that he quit the job because he was preparing to start school. (Item 2 at 15)

Applicant did not admit the drug-related circumstances of this job loss until after a DoD investigative agent confronted him during an interview in December 2018. (Item 4 at 11) Before the agent confronted him, Applicant also denied ever having used any illegal drugs. (Item 4 at 11) Upon being confronted, he admitted that he lied about his drug involvement on the SCA because he was worried that he would not be hired. (Item 4 at 11-13) In his answer to the SOR, he explained that he falsified the SCA because he was "very young and immature at the time . . . and was embarrassed of experimenting with those drugs . . ." Conversely, in Applicant's reply to the FORM in 2025, he stated that he did not disclose his marijuana use on his 2018 SCA because it was legal in the state where he used it, and he believed he did not need to abstain from marijuana use in order to hold a security clearance. (Reply at 1) Also, in Applicant's reply, he contends that his response to Section 13 of the 2018 SCA was not dishonest because he "was not aware at the time that [his employer] fired [him], and that he decided to quit, rather than be terminated." (Item 2 at 15) Ultimately, Applicant told the DoD investigator who interviewed him in 2018 that he had stopped using marijuana. (Item 2 at 15) As noted above, Applicant continued to use marijuana until September 2023.

During the 2023 security clearance investigation, Applicant disclosed his history of illegal drug use. (Item 3 at 25) He contends that he will never use illegal drugs again because he has a security clearance. (Item 4 at 6) He memorialized his intention in a signed statement, acknowledging that failure to abide by it will result in automatic revocation of his security clearance. (Reply to Form at 6)

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. 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.

Analysis

Guideline H: Drug Involvement and Substance Abuse

The security concerns about drug involvement and substance abuse 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.

Applicant's history of illegal drug use triggers the application of AG ¶ 25(a), "any substance abuse." Much of Applicant's marijuana use occurred while possessing a security clearance. AG 25(f), "any illegal drug use while granted access to classified information or holding a sensitive position," applies.

Applicant's purchase of marijuana over the years triggers the application of AG ¶ 25(c), "illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

Applicant one-time use of cocaine, and his use of hallucinogenic drugs occurred approximately eight years ago. This use does not generate a current security concern. I resolve subparagraphs 1.b and 1.c in his favor.

As for Applicant's history of marijuana use, 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 acknowledged 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:

(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 contends that has not used marijuana in approximately 18 months. This triggers the potential application of AG ¶ 26(a). Applicant's shifting explanations for his 2018 SCA falsifications undermines his credibility such that I cannot conclude that he has, in fact, abstained from marijuana use for the past 18 months. I conclude AG ¶ 26(a) does not apply.

Applicant memorialized his intent not to resume using marijuana in a signed, sworn statement. Although this triggers the application of the mitigating condition set forth in AG ¶ 26 (b)(3), "providing a signed statement of intent to abstain from all drug involvement and substance misuse . . .," this mitigating condition has minimal probative value, given Applicant's dishonesty about the scope and circumstances surrounding his marijuana use, and the fact that he used it while he had a security clearance. Ultimately, it is too soon to conclude that Applicant's marijuana use no longer poses a security concern.

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.” (AG ¶ 15). In addition, “of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.” (*Id.*)

Applicant failed to disclose the adverse circumstances surrounding his 2017 departure from a job on his 2018 SCA, neglecting that it related to his use of marijuana on the job. On the same SCA, he failed to disclose his marijuana use history. He followed up this dishonesty by not disclosing any of this information to a DoD investigator during his 2018 DoD investigative interview until after being confronted. Although he disclosed this information on his 2023 SCA, his explanations in response to the subsequent SOR and in reply to the FORM were contradictory. Under these circumstances, I conclude he is not credible and the mitigating conditions set forth in AG ¶ 16(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); and AG ¶ 16(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) apply without mitigation.

Whole-Person Concept

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). They 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.

Given the nature and seriousness of the conduct and its frequency, not enough time has elapsed to conclude Applicant’s marijuana use, and subsequent falsifications about his marijuana use no longer pose a security risk.

Formal Findings

Formal findings for 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**

 Subparagraph 1.a – 1.b: Against Applicant

 Subparagraph 1.c – 1.d: For Applicant

Paragraph 2, Guideline E: **AGAINST APPLICANT**

 Subparagraphs 2.a – 2.c: 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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Marc E. Curry
Administrative Judge