



DEPARTMENT OF DEFENSE
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:

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ISCR Case No. 24-01064

Applicant for Security Clearance)

Appearances

For Government: Andrew Henderson, Department Counsel
For Applicant: *Pro se*

01/15/2025

Decision

Lokey Anderson, Darlene D., Administrative Judge:

On January 24, 2024, Applicant submitted a security clearance application (e-QIP). (Government Exhibit 1.) On August 20, 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 Abuse; and Guideline J, Criminal 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*, effective within the DoD after June 8, 2017.

Applicant answered the SOR on September 11, 2024, and September 16, 2024, and requested a hearing before an administrative judge. The case was assigned to me on October 4, 2024. The Defense Office of Hearings and Appeals issued a notice of hearing on October 10, 2024, and the hearing was convened as scheduled on October 29, 2024. At the hearing, the Government offered five exhibits, referred to as Government Exhibits 1 through 5, which were admitted without objection. The Applicant offered no exhibits. He testified on his own behalf. The record remained open until

close of business on November 20, 2024, to allow the Applicant to submit supporting documentation. Applicant submitted one Post-Hearing Exhibit, consisting of six documents collectively referred to as Applicant's Post-Hearing Exhibit A, which was admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 19, 2024.

Findings of Fact

Applicant is 39 years old. He is married a second time and has no children. He has an Associate's degree. He is employed by a defense contractor as a Production Lead Electrical Engineer. He is seeking to obtain a security clearance in connection with his employment.

Guideline H - Drug Involvement and Substance Misuse

The Government alleges that the Applicant has used controlled substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, which can raise questions about an individual's reliability and trustworthiness.

Applicant has a history of illegal drug use involving marijuana from about April 1998 through January 2023. He purchased marijuana on various occasions from August 2007 to about December 2022. He also used cocaine once in 2006. In his interrogatories dated August 8, 2024, he stated that he used marijuana three to five times a week, at night, from 1998 to January 2023. He testified that it was more like one to three times a week during those years. He began working for his current employer and completed a security clearance questionnaire for the first time in March 2023. He stopped using marijuana at that time with no intentions to ever use it again. (Tr. pp. 19-24.)

Applicant stated that he began using marijuana as a freshman in high school. After graduating from high school, in 2005, he joined the United States Army. He married his first wife in 2006. He spent about 15 months in the Army before he was separated for illegal drug use, cocaine. On April 19, 2006, he was subject to a urinalysis inspection which came back positive for cocaine. He explained that he had attended a weekend house party with his wife and friends and consumed excessive amounts of alcohol and he used cocaine. Three days after the party, Applicant took the urinalysis which came back positive for cocaine. He received an Article 15, Non-Judicial Punishment, and received 45 days extra duty; 45 days base restriction; a reduction in rank from E-2 to E-1; and a loss of two months pay. He was administratively separated from the Army, and he received a General Under Honorable Condition discharge. (Tr. pp. 25-30.)

After leaving the Army, Applicant continued to use marijuana on occasion for anxiety and stress. He stated that he and his first wife were not compatible and had a toxic relationship which contributed to his marijuana use. They divorced in 2008.

Following their divorce, Applicant worked for several companies doing technical work. His work product was never affected by his infrequent marijuana use. (Tr. pp. 30-35.)

On New Year's Eve, day, in 2014/2015, Applicant suffered a traumatic and very serious accident which changed his life forever. Six months after marrying his second wife, Applicant and his new wife were visiting out-of-state friends. They were sled riding in the snow and being towed behind a sled machine. Unbeknownst to anyone, including their friends who took them sledding, the sled machine pulling the Applicant and his sled, pulled him into a motor-cross track that took Applicant's sled up-and-off of the side of the motor-cross jump. Upon impact, from five to six feet in the air, Applicant fell and hit the hard packed snow, and shattered his T-12 vertebrae. Applicant was instantly paralyzed from the waist down. This sent a lot of bone fragmentation into his spinal column that severed most of his nerves. Applicant underwent two immediate emergency surgeries; two weeks in the ICU; and spent four weeks in the hospital before he was released for one year of extensive physical therapy on how to learn to walk and develop his motor skills again. Following the accident, Applicant's doctor prescribed marijuana for him to use instead of the opioids with their side-effects to help address his anxiety and stress, and to suppress pain from his spinal cord injury. Applicant explained that breaking his spine has been extremely difficult both mentally and physically, but he continues to maintain a positive outlook on life and is continuing to develop his physical abilities. (Tr. pp. 40-43.)

Applicant stated that when he started working for his current employer in January 2023, he decided to quit using marijuana for his pain. Instead, he now uses Tylenol and exercise to deal with his pain. He no longer uses marijuana because he recognized the career path opportunities available to him that his current company offers him, and his ability to progress with the company which means far more to him than temporary relief from marijuana usage. (Tr. 34.) He realizes that his accident has helped him in many ways to greatly mature and not to take anything for granted. He stated that he appreciates everything much more, and he has a new lease on life. Although he is unable to do many things he used to do, he accepts that, and has moved on to focus on developing other outlets such as reading and woodworking, among other hobbies. He chooses not to be depressed or upset about his situation. In fact, he stated that he chooses happiness, and he is grateful for everything he has in his life. He and his wife have a great relationship and he does not have the anxiety and stress that he once had in his first marriage. (Tr. pp. 37-43.)

A letter or recommendation from a Naval Officer and Chief Engineer for more than 20 years on nuclear submarines, who works closely with the Applicant, confidently stated that based on his time spent in the field with the Applicant, during multiple field deployments, he would have zero reservation about placing him in the most sensitive of positions safeguarding our national security and protecting our most sensitive classified programs. Applicant's integrity and character are said to be beyond reproach. (Applicant's Post-Hearing Exhibit A.)

Letters of recommendation from the Company Program Director, the Senior Manager of Production, (who is also Applicant's direct supervisor), and fellow team member Engineers, all give raving reviews of the Applicant and his outstanding and exceptional characteristics and abilities. They each describe his outstanding character and leadership qualities including his excellent work ethic, and dedication to the core mission of the company. Applicant is said to be a true professional in every sense of the word. He is a man of integrity, who will act ethically and responsibly, and is trusted to work autonomously. He is recognized for his strict adherence to the stringent security protocols and is acutely aware of the importance of safeguarding sensitive data. He is a beacon of reliability and professionalism, with outstanding moral character who consistently goes above and beyond the call of duty. He leads by example and his lifestyle choices command respect. His reliability and ethical behavior have consistently stood out earning him the respect of his peers. He has stepped up on weekends and extra hours to support his overall team to make up for time lost for late design releases by a supporting team which has inspired those around him to elevate their personal work behavior. (Applicant's Post-Hearing Exhibit A.)

Applicant's Midyear Performance Review for 2024, dated September 16, 2024, reflects that overall he is doing a good job and his supervisor is happy to have him on the team. (Applicant's Post-Hearing Exhibit A.)

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. 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.” In reaching this decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

Directive ¶ E3.1.14, requires the Government to present evidence that establishes 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision."

A person who applies for access to classified information seeks to enter 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 protect or 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 two conditions that could raise a security concern and may be disqualifying:

- (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's marijuana use from about 1989 to January 2023; his illegal marijuana purchases from 2007 to 2022; and his cocaine use in 2006 is troubling. The above disqualifying conditions apply.

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.

There is no question that Applicant's long history of illegal marijuana use and his illegal purchases of marijuana that occurred prior to his accident in 2014/2015 demonstrated poor judgment, immaturity and poor judgment. He also used cocaine in 2006, which was responsible for him being administratively separated from the U.S. Army. His misconduct at that time, showed a pattern of flawed behavior and irresponsibility. However, since his accident in 2014/2015, he has only used marijuana that has been prescribed by his physician for his broken spine and related health conditions. As discussed above, Applicant survived a very traumatic accident, the repercussions of which have drastically changed his life. He now understands that his actions have consequences, and instead of being impulsive, he gives deep thought to things he does before he takes any action. He has learned to appreciate the good that exists in his life, and to appreciate the opportunities that he does not want to lose. In January 2023, Applicant made the decision to discontinue his use of marijuana for pain management purposes and instead he now uses Tylenol and exercise. He greatly values the opportunities his employer has given him to work for the defense industry and to be able to provide assistance to our military members. In fact, because he was young and irresponsible during his earlier years in the military, he feels that he owes the military his talent and abilities now that he has matured. Applicant understands the importance of maintaining a drug free lifestyle, and why it is important to be responsible and trustworthy on order to properly safeguard the national secrets. Based upon the

fact that he has shown great maturity and responsibility since his accident, and he no longer uses marijuana, and has not used marijuana for over nine years without a prescription from his doctor, his earlier history of illegal drug use has been mitigated. Assuming Applicant continues to maintain a drug-free lifestyle and adhere to the DoD requirements for access to classified information, he will be eligible for a security clearance. In the event that he does not maintain a drug-free lifestyle, his clearance will be in immediate jeopardy. Applicant meets the requirements for eligibility to access classified information. Mitigating conditions set forth above are applicable.

Guideline J: Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations.

The guideline at AG ¶ 31 contains five disqualifying conditions that could raise a security concern and may be disqualifying. Two conditions apply, as discussed below:

- (a) a pattern of minor offenses, any one of which on its own would be unlikely to affect a national security eligibility decision, but which in combination cast doubt on the individual's judgment, reliability, or trustworthiness; and
- (b) evidence (including, but not limited to, a credible allegation, an admission, and matters of official record) of criminal conduct, regardless of whether the individual was formally charged, prosecuted, or convicted.

Applicant engaged in criminal conduct, in violation of state and Federal laws, when he used marijuana from 1989 through 2023, and when he purchased marijuana from 2007 through 2016. His use of cocaine in 2006, was also in violation of state and Federal law. This conduct demonstrated poor judgment, unreliability, and untrustworthiness. This conduct raises the above security concerns.

The guideline in AG ¶ 32 contains several conditions that could mitigate criminal conduct security concerns.

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances, that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and
- (d) there is evidence of successful rehabilitation; including, but not limited to, the passage of time without recurrence of criminal activity, restitution, compliance with the terms of parole or probation, job training or higher

education, good employment record, or constructive community involvement.

Applicant admittedly engaged in criminal conduct in the earlier years when he used and purchased marijuana, and when he used cocaine. Since his accident in 2014/2015, he has only used marijuana prescribed by a physician for his medical conditions. His use of cocaine occurred in 2006, and has not recurred. Thus, he has not engaged in any criminal behavior for about ten years. The evidence establishes mitigation under both of the above conditions. Criminal Conduct is found for the Applicant.

Considered in totality, Applicant's conduct demonstrates 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 no longer uses illegal drugs and has no intention of using them in the future. Under the particular facts of this case, he shows the requisite character or judgment of someone who has the maturity, integrity, good judgment, and reliability necessary to access classified information. Applicant meets the qualifications for access to classified information.

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 Guideline H and Guideline J in my whole-person analysis. An individual who holds a security clearance is expected to comply with the law at all times. Applicant demonstrates the level of maturity needed for access to classified information. This is an individual in whom the Government can be confident to know that he will always follow rules and regulations and do the right thing, even when no one is looking.

Applicant is qualified for access to classified information and does meet the qualifications for a security clearance.

Overall, the record evidence leaves me with without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Drug Involvement and Substance Misuse, and Criminal 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:	FOR APPLICANT
Subparagraphs 1.a through 1.c	For Applicant
Paragraph 2, Guideline J	FOR APPLICANT
Subparagraphs 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 national interest to grant Applicant national security eligibility for a security clearance. Eligibility for access to classified information is granted.

Darlene Lokey Anderson
Administrative Judge