



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-05761

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel

For Applicant: *Pro se*

10/15/2015

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the drug involvement and personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 26, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and H (drug involvement). 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on May 28, 2015, and requested a hearing before an administrative judge. The case was assigned to me on July 27, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 28, 2015, scheduling the hearing for August 12, 2015. The hearing was held as scheduled. Government Exhibits (GE) 1 through 4 were admitted in evidence without objection.

Applicant testified, but he did not submit any documentary evidence. The record was held open for Applicant to submit additional information. He submitted a document that was marked Applicant's Exhibit (AE) A and admitted without objection. DOHA received the hearing transcript (Tr.) on August 19, 2015.

### **Findings of Fact**

Applicant is a 25-year-old employee of a defense contractor. He has worked for his current employer since July 2013. He is applying for a security clearance for the first time. He attended college for a period but did not earn a degree. He has never married, and he has no children.<sup>1</sup>

Applicant smoked marijuana periodically from 2008 through April 2013. He used cocaine on one occasion in 2008. He used the prescription drug Xanax without a prescription for several months in 2010.<sup>2</sup>

Applicant was charged in 2008 with a number of traffic-related offenses and possession of drug paraphernalia. He failed to appear and did not address the charges until 2011 when he turned himself into the jail. He served about two weeks in jail. The charges were adjudicated as time served.<sup>3</sup>

Applicant was arrested in April 2013 for the misdemeanor offense of possession of less than two ounces of marijuana. He pleaded guilty and was sentenced to pay a fine.<sup>4</sup>

Applicant listed his illegal drug use on his Questionnaire for National Security Positions (SF 86), which he submitted in August 2013, and he fully discussed it during his background interview in December 2013. He has not used any illegal drugs since his arrest in April 2013. He has a good job working overseas. He no longer associates with his friends who used drugs. He is aware that he could lose his job and his security clearance if he uses illegal drugs again. He credibly testified that he will not do so.<sup>5</sup>

Applicant submitted a letter from the project manager at his overseas location. The project manager praised Applicant's excellent job performance, work ethic, trustworthiness, and dependability. The project manager stated that Applicant's strengths include accepting responsibility.<sup>6</sup>

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<sup>1</sup> Tr. at 29-30; GE 1.

<sup>2</sup> Tr. at 17-20; Applicant's response to SOR; GE 1, 3, 4.

<sup>3</sup> Tr. at 20-24; Applicant's response to SOR; GE 4.

<sup>4</sup> Applicant's response to SOR; GE 1, 2, 4.

<sup>5</sup> Tr. at 25-29, 40-41; Applicant's response to SOR; GE 1, 4.

<sup>6</sup> AE A.

## **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(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 access to classified information will be resolved in favor of 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 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

The security concern for drug involvement is set out in AG ¶ 24:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

The guideline notes conditions that could raise security concerns under AG ¶ 25. The disqualifying conditions potentially applicable in this case include:

- (a) any drug abuse;<sup>7</sup> and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana, cocaine, and the prescription drug Xanax without a prescription. He was twice charged with drug-related offenses. AG ¶¶ 25(a) and 25(c) are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. 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) a demonstrated intent not to abuse any drugs in the future, such as:
  - (1) disassociation from drug-using associates and contacts;
  - (2) changing or avoiding the environment where drugs were used;
  - (3) an appropriate period of abstinence; and
  - (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant has not used any illegal drugs since April 2013. He fully disclosed his drug use on his SF 86 and during his background interview. He realizes that such behavior is wrong and inconsistent with holding a security clearance. He has a good job working overseas. He clearly, unequivocally, and credibly committed to remaining drug-

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<sup>7</sup> Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

free. I find that he demonstrated an appropriate period of abstinence and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

### **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 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. The following disqualifying conditions are potentially applicable:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant's drug use, criminal offenses, and his failure to address his charges for three years showed questionable judgment and an unwillingness to comply with rules and regulations. It also created a vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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 caused 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.

Under the same rationale discussed above for drug involvement, I find that the conduct is unlikely to recur; it does not cast doubt on Applicant's current reliability, trustworthiness, and good judgment; and it no longer serves as a basis for coercion, exploitation, or duress. AG ¶¶ 17(c), 17(d), and 17(e) are applicable.

### **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(a):

(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 E and H in this whole-person analysis. Applicant was a credible witness. I am satisfied that his illegal drug use is in the past.

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

### **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.e:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge