



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



In the matter of:)	
)	
_____)	ISCR Case No. 06-26372
SSN: _____)	
)	
Applicant for Security Clearance)	

Appearances

For Government: D. Michael Lyles, Esquire, Department Counsel
For Applicant: *Pro Se*

Decision

MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant submitted a Security Clearance Questionnaire, Standard Form SF-86/EPSSQ Version (SF-86), dated May 18, 2005. On April 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline G (Alcohol Consumption), Guideline H (Drug Involvement), and Guideline E (Personal Conduct) regarding Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive), and the revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant acknowledged receipt of the SOR on May 3, 2007. He answered the SOR allegations in writing with brief narrative comments through a letter dated May 3, 2007. In that letter, he admitted all allegations contained in the SOR and requested a determination based on the written record.

In response to Applicant's answer, Department Counsel prepared a File of Relevant Material (FORM), dated September 7, 2007. That FORM advised Applicant of his opportunity to respond to its contents within 30 days after receipt of the FORM. Applicant received the FORM on November 29, 2007. No response was submitted by Applicant within the time provided.

The case was forwarded to DOHA for assignment to an Administrative Judge for a determination on the record on and assigned to an Administrative Judge on January 8, 2008. The case was reassigned to me on February 5, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to sensitive information is denied and the security clearance at issue is revoked.

Findings of Fact

Applicant provided few additional facts and no supplementary evidence in response to the SOR and he declined to respond to the FORM. Consequently, the facts of record are scant. Applicant is a 39-year-old employee of a defense contractor. He has been a senior technician for the same company since 1997. From 1986 through 1988, he served in the U.S. Army as a Specialist 4/Corporal [E-4], then served in the Army National Guard from 1988 through May 1991. In the interim, in 1989, Applicant received a diploma from a two-year program at a technological institute.

Beginning at the age of 16 or 17, Applicant started drinking alcohol socially. By his early 20's, he was consuming about six to ten beers on a weekend night. He did so to feel a "slight buzz of drunkenness."¹

In 1991 or 1992, at approximately 23 or 24 years of age, Applicant worked for a computer-related business. He stole a computer valued at approximately \$600. He never returned the computer to his employer.

On April 1, 1992, at the age of 24, he joined some friends for drinks after work on a work night. He had five or six vodka martinis within two to three hours. He was later arrested and charged with Driving While Intoxicated (DWI). Applicant considered the incident to be atypical of his usual drinking habits and tastes. He continued drinking beer on weekends at parties and at bars.

In 1992 through about 1993, Applicant worked in a restaurant. He had a romance with the district manager. She introduced him to marijuana. He used marijuana about four or five times during that time period, but never purchased it.

Applicant acquired his current work position in 1997. He eventually applied for a security clearance. In approximately October 1998, he was granted a security clearance.

¹ Item 7 (Report, § g, dated October 14, 2005).

On a few occasions in 1999 and 2000, Applicant again used marijuana. In the interim, on December 1, 1999, Applicant was arrested and charged with a second DWI. He became concerned about his alcohol use. He ceased drinking alcohol from December 1999 through about August 2000 and attended a counseling center's outpatient alcohol treatment program. Abstinence was not difficult for Applicant and he had no withdrawal symptoms. He was comfortable serving as a designated driver at parties. He reintroduced alcohol into his lifestyle in the summer of 2000. Applicant has not had a problem with alcohol since the December 1999 incident. He considers his present drinking patterns to consist of socially consuming beer with friends on weekends. He does not drink with the express purpose of getting intoxicated, and opines that he only gets to the point of intoxication about three to four times per year.²

On November 30, 2004, Applicant completed an SF-86. On that form, he answered "No" to **Question 27: You Use of Illegal Drugs and Drug Activity – *Illegal Use of Drugs*** – *Since the age of 16 or in the last 7 years, which ever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.) , hallucinogenics (LSD, PCP, etc.) or prescription drugs?* He also answered "No" to **Question 28: Your Use of Illegal Drugs and Drug Activity – *Use in Sensitive Positions*** – *Have you ever used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly or immediately affecting public safety.* Applicant again answered "No" to these two questions on SF-86 forms completed and signed on May 18, 2005, and October 14, 2005.³

On May 29 or May 30, 2005, over Memorial Day weekend,⁴ Applicant was at a social gathering and had more than his limit to drink. He succumbed to using marijuana with an acquaintance. He has since refrained from the use of illegal drugs. Despite this usage, Applicant again answered "No" to Questions 27 and 28 regarding illegal drugs and drug activity on an SF-86 form completed on October 14, 2005.

With regard to Applicant's drug use, it has been sporadic, infrequent, and he has expressed his intent to not again use illegal drugs in the future.⁵ He denied past drug use on his SF-86s on the advice of co-workers. He has since regretted not being truthful about these past incidents, but was not sure how to reconcile the facts without

² *Id.*

³ The FORM only includes a copy of Applicant's May 2005 and November 2004 SF-86 forms. Both reflect negative answers to Questions 27 and 28. The FORM does not include a copy of the referenced October 14, 2005, SF-86. Since the Applicant admitted to SOR allegations 3(a) and 3(b) concerning negative answers to those questions on the October 2005 SF-86 without objection, I will consider his admission as evidence of the fact asserted in the applicable allegations.

⁴ *See Id.* at § h.

⁵ Item 4 (Applicant's Answer to the SOR).

risk to his well-being. He voluntarily came forward with facts about his past drug use when he applied for a higher clearance, thinking this would be an opportune time to come clean. He disclosed these facts in an October 14, 2005, interview.⁶ He is relieved that he has since done so. With regard to alcohol consumption, he has not had any other alcohol-related incidents since his 1999 DWI. Applicant stresses that these issues do not reflect the more mature man he is today.

Policies

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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." 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.

The Government must present evidence to establish controverted facts alleged in the SOR. 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. . . ." ⁷ The burden of proof is something less than a preponderance of evidence.⁸ The ultimate burden of persuasion to obtain a favorable clearance decision is on the applicant.⁹

⁶ See Item 7 (Review Documents, October 14, 2005, Report).

⁷ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

⁸ *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

⁹ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 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 Executive Order 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”¹⁰ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.¹¹ The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of an applicant.¹² It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

Based upon consideration of the evidence, I find the following adjudicative guidelines to be the most pertinent to the evaluation of the facts in this case:

Guideline G – Alcohol Consumption. *The Concern:* Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.

Guideline H - Drug Involvement. *The Concern:* 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. “Drugs” are defined as mood and behavior altering substances, and include drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and inhalants and other substances. “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

¹⁰ *Id.*

¹¹ *Id.*

¹² Executive Order 10865 § 7.

Guideline E - Personal Conduct. *The Concern:* 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.

Conditions pertaining to these adjudicative guidelines that could raise a security concern and may be disqualifying, as well as those which would mitigate security concerns, are set forth and discussed in the conclusions below.

Analysis

Guideline G, Alcohol Consumption

Issues regarding one's reliability and trustworthiness can arise from unbridled alcohol consumption because it can lead to uncontrolled impulses and questionable judgment. Applicant was arrested and charged with DWI in 1991 and in 1999 during his personal time off work. Therefore, Alcohol Consumption (AC) Disqualifying Condition (DC) 1, AG ¶ 22(a) (*alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*) applies. With a disqualifying condition thus established, the burden shifts to Applicant to mitigate related security concerns.

Applicant started consuming alcohol as a teen. He is now nearly 40-years-old. He has experienced two alcohol-related incidents in the intervening years. His first DWI occurred when he was in his early 20s, nearly 16 years ago. His second DWI occurred nearly a decade ago. He completed a lengthy out-patient treatment program. There is no evidence any professional ever determined that he was alcohol dependent. Although he still continues to consume alcohol, there is no evidence of a subsequent alcohol-related incident in the past decade. Consequently, AC Mitigating Condition (MC) 1, AG ¶ 23(a) (*so much time has passed, or the behavior was infrequent, or it happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment*) applies.

After the 1999 DWI, Applicant became concerned about his alcohol use. He underwent approximately eight months of out-patient treatment without difficulty. There is no indication in the record he was determined to be alcohol dependent, although facts indicate he abused alcohol then drove an automobile in 1991 and 1999. He quit drinking alcohol for nine months without difficulty. He resumed moderate use of alcohol in September 2000. He now comports his behavior appropriately when imbibing, and has not had another alcohol-related incident. Although additional testimony would help clarify what other, if any, precautions Applicant has taken to preclude future alcohol-related incidents from again happening, AC MC 2, AG ¶ 23(b) (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a patten of abstinence (if*

alcohol dependent) or responsible use (if an alcohol abuser) applies. None of the other AC MCs apply.

Guideline H, Drug Involvement

Use of an illegal drug such as marijuana can raise questions about an individual's reliability and trustworthiness. Marijuana may impair judgment and its use raises questions about a person's ability or willingness to comply with the law. Here, Applicant used marijuana on a few occasions in 1992–1993. In October 1998, he was granted a security clearance, but again used marijuana on a few occasions in 1999–2000, and on one isolated occasion in late May 2005. Consequently, both Drug Involvement (DI) DC 1, AG ¶ 25(a) (*any drug abuse*) and DI DC 7, AG ¶ 25(g) (*any illegal drug use after being granted a security clearance*) apply. With disqualifying conditions thus established, the burden shifts to Applicant to mitigate related security concerns.

Applicant's use of illegal drugs was limited to the occasional use of marijuana, an illegal substance. From 1992 through 1993, Applicant, then in his early 20's, partook of the narcotic on a few occasions because his girlfriend used the drug. He then abstained until he again used it on a few occasions in 1999 through 2000. He used it one more time in May 2005. Applicant candidly divulged his past drug use in order to set his record straight and has since affirmatively stated his intent to never again use drugs. Given the sporadic and infrequent nature of his past use, this should not be a difficult resolution to keep. Although his singular use of marijuana in 2005 brings his drug use into the new millennium, the fact that the majority of his use occurred a number of years ago and the fact that he has resolved not to use marijuana again, give rise to DI MC 1, AG ¶ 26(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*) applies. None of the other DI MCs, however, apply.

Applicant's past drug use is a matter of fact. He candidly and voluntarily came forward about his previously concealed past on his own initiative. He has corrected the record, and taken responsibility for his past actions. Moreover, Applicant has expressed his resolve to never again use illegal drugs. Given his sporadic and nominal past use, the majority of which was in the distant past, there is no reason to believe he will relapse or that such incidents will recur.

Guideline E, 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. Here, Applicant failed to disclose his past use of marijuana in his 2004 and 2005 SF-86s. He similarly sought to conceal his past use of marijuana while possessing a security clearance. Consequently, Personal Conduct (PC) DC 1, 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities) applies.*¹³ With PC DC 1 thus raised, the burden shifts to Applicant to mitigate the related security concerns.

Although Applicant ultimately disclosed the truth regarding the theft of office equipment from a former employer and drug use that dates back to the early 1990s, he did not do so until sometime between May 2005 and October 14, 2005, the date of his last SF-86. Although the October 14, 2005, SF-86 is not part of the official FORM, Applicant admitted he answered “No” to the illegal drug use questions on that SF-86. On that same day, however, he voluntarily disclosed his past drug use to an investigator. While he made prompt efforts to correct matters with regard to the October 2005 questionnaire, such promptness does not extend to those prior SF-86 questionnaires completed between 1998 and May 2005, when he denied past illegal drug use while maintaining a security clearance. Therefore, PC MC 1, AG ¶ 17 (*the individual made prompt, good faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*) cannot apply.

Applicant partly attributes his concealment of facts on his SF-86 questionnaires to the advice of colleagues. Without more information, the exact role and rank of these workplace peers cannot be discerned. Consequently, PC MC 2, AG ¶ 17(b) (*the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully*) cannot apply. Furthermore, drug involvement is a significant consideration in the granting of a security clearance inasmuch as drug use affects sound judgment and demonstrates questionable concern regarding the law. Although Applicant last used marijuana almost three years ago, in May 2005, he did so almost immediately after certifying he had not used drugs in the past seven years and had not used drugs while maintaining a security clearance. Consequently, doubt lingers as to his good judgment and trustworthiness. Under these facts, the sum of the considerations under PC MC 3, 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*) does not apply.

Finally, it cannot be ignored that Applicant took it upon himself to come clean and disclose the truth of his past illegal drug use. Therefore, PC MC 5, AG ¶ 17(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*) applies.

¹³ This is especially true given the guideline’s statement – “[o]f 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.”

Although Applicant is to be applauded for voluntarily disclosing the truth about his drug use from the early 1990s through May 2005, it cannot be ignored that he continued to use drugs after he was granted a security clearance in 1998. Nor can it be ignored that he repeatedly denied drug use on SF-86 questionnaires multiple times in the year preceding his 2005 disclosure. Although nearly three years have passed since he last used drugs and although nearly two and a half years have passed since he took corrective action, Applicant failed to provide any additional facts which might tend to further mitigate security concerns. Without such information, it can only be concluded that insufficient time has passed to reestablish the level of trust he once enjoyed with the government for access to protected information. Consequently, Applicant has failed to mitigate personal conduct security concerns.

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(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) 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 public trust position 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, as well as the "whole person" factors noted above. Here, little is known about the Applicant because he has declined to significantly expand the record beyond the documents contained in the FORM. What is known is that he is a mature man, just shy of age 40. His use of alcohol in his teens and 20s can be dismissed as youthful indiscretions, and he has demonstrated through nearly a decade of incident-free conduct that alcohol does not presently detract from his abilities, cause questionable judgment, or lead to impulsive behavior.

Applicant has used marijuana, an illegal substance. He did so in his early 20s and into his 30s, but his use was sporadic and minimal. While his use included a singular and isolated incident that occurred as recently as May 2005, his declaration to never again helps to allay concerns that drug use might impair his judgment.

Applicant's denials concerning drug use, however, lead to serious questions regarding his personal conduct vis-a-vis his willingness to comply with laws, rules, and regulations, and his exercise of sound judgment. He has helped rehabilitate the quality of his judgment by voluntarily disclosing his past drug use. In doing so on the heels of completing an SF-86 in which he denied drug use, and following that denial weeks later

with another instance of drug use, however, leaves issues remaining about the constancy of that judgment. With little more than his contrition and the passage of less than three years since his disclosure to speak for his judgment in light of the scant available facts, personal conduct security concerns remain unmitigated. Any doubt concerning personnel being considered for access to classified information must be resolved in favor of the national security.¹⁴ Clearance is revoked.

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 G:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Paragraph 3, Guideline E	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant
Subparagraph 3.d:	Against Applicant
Subparagraph 3.e:	Against Applicant

Conclusion

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is denied.

ARTHUR E. MARSHALL, JR.
Administrative Judge

¹⁴ AG ¶ 2(b).