



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



In the matter of: )  
)  
) ISCR Case No. 19-01051  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Erin P. Thompson, Department Counsel  
For Applicant: *Pro se*

11/26/2019

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct, Guideline H, drug involvement and substance misuse, and Guideline I, psychological conditions. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 14, 2019, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct, Guideline H, drug involvement and substance misuse, and Guideline I, psychological conditions. 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) effective within the DOD on June 8, 2017.

Applicant answered the SOR on June 4, 2019, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the

Government's file of relevant material (FORM), and Applicant received it on September 10, 2019. He was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. The Government's evidence is identified as Items 1 through 9. Applicant submitted a response to the FORM, which was marked as Applicant Exhibit (AE) A. There were no objections to Items 1 through 9 or AE A, and all are admitted into evidence. The case was assigned to me on October 30, 2019.

### **Findings of Fact**

Applicant admitted all of the SOR allegations. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 25 years old. He graduated from high school in 2012 and began working for a federal contractor the same year. He was granted a security clearance in 2012. He married in 2016. He and his wife are expecting a child.

In February 2017, Applicant and his wife purchased home and it caused financial strain and led to a conflict with his wife. They began seeing a marriage counselor, who referred Applicant to a psychiatrist. In October 2017, Applicant was diagnosed by the psychiatrist with moderate bipolar disorder. He was prescribed a medication as a mood stabilizer. The psychiatrist discussed the importance of Applicant being compliant with his treatment plan, including taking his medication. (Items 6, 7)

In November 2017, Applicant had an argument with his wife, during which he threw a bottle and punched a wall. He denied he hit his wife. He told his wife he was going to kill himself. She called the police because she was concerned for his safety. He was arrested and transported voluntarily to a hospital. During the psychiatric evaluation at the hospital, he admitted to a recent suicide gesture that involved putting a handful of his prescribed medication for bipolar disorder in his mouth, but then spitting them out. He described to the psychiatrist that this was a cry for attention from his wife and that he had no actual intent on killing himself. He also disclosed to the psychiatrist that he had used marijuana occasionally since he was 15 years old, and he had last used it several weeks prior to his hospitalization (November 2017). (Items 6, 7)

The arrest in November 2017 resulted in a disorderly conduct charge and a protective order barring him from assaulting, threatening, abusing, harassing, or otherwise harming his wife. He was not prevented from having contact with his wife. He was also ordered to attend a nine-week course on family violence. He was advised the matter would be expunged from his record since it was his first offense. In January 2018, he was ordered by the court to continue his mental health counseling. When Applicant was interviewed by a government investigator in May 2018, the matter had not been expunged, but Applicant resumed living with his wife without incident. (Item 8)

Due to the above incident, which was reported by Applicant to his employer, he was required to complete a new security clearance application (SCA) in December 2017. In his SCA, Applicant reported his arrest and bipolar diagnosis. He answered “no” to the questions asking if he had used any illegal drugs in the past seven years or while holding a security clearance. He was interviewed under oath by a government investigator on May 9, 2018. He told the investigator that he had not used illegal drugs or a controlled substance in the past seven years. On May 29, 2019, he was interviewed again under oath by a government investigator. He was confronted with his November 2017 disclosure to the psychiatrist about his marijuana use, where he self-reported that he used marijuana since he was 15 years old, and his last use was a few weeks prior to his hospitalization. He also self-reported to the psychiatrist that he occasionally used marijuana on a monthly or less than monthly basis. Applicant told the government investigator that if that was the information on record, then yes, he had used marijuana. (Items 3, 5, 9)

When asked by the investigator how often Applicant used marijuana, he stated he had not used it since before November 2017, and he seldom used it before then. He told the investigator he could not recall his prior uses. When confronted with why he failed to disclose his marijuana use on his December 2017 SCA and during his May 9, 2018 interview, he stated he omitted this information because he was afraid of losing his job. He stated he used marijuana once or twice a year with his sister-in-law. He never purchased it and only used it when it was offered to him by her and two other friends. He used marijuana because it made him feel calm and relaxed. When asked why he used marijuana while holding a security clearance, he did not have an explanation. He told the investigator that he did not intend to use marijuana in the future. Applicant used marijuana with varying frequency after being granted a security clearance from 2012 until 2017. (Item 5)

The DOD CAF requested Applicant submit to a psychological evaluation. He was evaluated by a licensed clinical psychologist (LCP) in January 2019. During his evaluation he disclosed that he intentionally omitted his marijuana use when he completed his SCA because he was afraid of losing his job. Due to discrepancies the LCP opined that it appeared Applicant continued to evidence poor candor when discussing his marijuana use. Applicant disclosed that he previously was treated by a psychiatrist who prescribed him a “mood stabilizer.” He could not recall the name of the medicine. He took it for about a year, but said that while using it he felt “out of it” and often fatigued. He decided to stop taking the medicine on his accord, and did not return to his psychiatrist to taper off the medication. (Item 4)

The LCP evaluation concluded that she did not find evidence of bipolar disorder, but found Applicant clearly evinces signs of poor anger control and impulsive behaviors. She noted Applicant used poor judgment by unilaterally discontinuing his medication regimen prescribed for his mood lability. She noted that “it appears more likely that his mood lability is part of a personality disorder, rather than a manic episode, per se, mood stabilizers are often used to assist individuals with personality disorders manage their mood states.” (Item 4)

The LCP further noted that Applicant was not forthcoming with information, which limited her ability to clearly determine the diagnosis, but she noted there were notable indications, specifically, “he displays impairments in affectivity, difficulties in interpersonal function, lack of remorse for his actions, deceitfulness, aggressiveness, and poor impulse control.” (Item 4) She concluded the following:

[Applicant] did not divulge that the mental health treatment he received was ordered by the court. He also did not report a psychiatric hospitalization, only that he was briefly evaluated at a hospital following an arrest for domestic violence. He down played his domestic violence history, and anger management issues. He did not report the rate of marijuana use noted within the investigation records. He was generally guarded, and his insight into his problematic behaviors was poor. He is not in treatment for the issues that have led to violent outbursts in the past, making him a risk for future outbursts. In sum, the aforementioned behaviors of concern indicate that [Applicant’s] psychological condition impairs his judgment and reliability; his personality disturbance makes him a security risk; and his prognosis is guarded. (Item 4)

In Applicant’s response to the FORM, he stated that he has been a diligent employee for seven years. He has applied for a new position to better himself. He voluntarily disclosed his arrest to his supervisor. He completed the requirements imposed by the court after his arrest. He and his wife attended marriage counseling for a couple of months. He has noticed a change in his life for the better. He has learned to control himself and home life has improved. (AE A)

### **Policies**

When evaluating an applicant’s suitability for national security eligibility, 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 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, these guidelines are applied 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 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. Directive ¶ E3.1.15 states 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, and has the ultimate burden of persuasion as to obtaining 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 that an 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 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 E: Personal Conduct**

AG ¶ 15 expresses the security concern for 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. 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. I find the following potentially applicable:

(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; and

(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.

Applicant deliberately falsified material facts on his December 2017 SCA when he failed to disclose his illegal use of marijuana with varying frequency from about 2010 until 2017 and while holding a security clearance after 2012. Applicant deliberately falsified material facts during his interview with a government investigator in May 2018, when he denied any illegal drug use in the last seven years. Applicant admitted he used marijuana with varying frequency from 2010 to 2017 and while holding a security clearance after 2012. There is sufficient evidence to conclude that Applicant was not completely forthcoming during his psychological evaluation with the LCP. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

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

(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.

The DOD CAF relies on people to be forthcoming and honest on their SCA, even when it involves derogatory information. AG ¶ 17(c) does not apply because deliberately failing to disclose information on an SCA and swearing to its accuracy is not a minor offense. When asked by a government investigator, under oath, if he used illegal drugs in the past, he denied any use. He deliberately lied to the government investigator. It was not until he was confronted with the information that he indicated that if the record said he used marijuana then it was accurate. Applicant did not voluntarily disclose his past drug use and continued to be deceptive. He was not forthcoming during his psychological evaluation, which prevented the LCP from making a more accurate diagnosis. I find Applicant's omissions, concealments and falsifications are serious and cast doubt on his reliability, trustworthiness, and good judgment. AG 17(a) does not apply.

### **Guideline I: Psychological Conditions**

The security concern for psychological conditions is set out in AG ¶ 27:

Certain emotional, mental, and personality conditions can impair judgment, reliability, or trustworthiness. A formal diagnosis of a disorder is not required

for there to be a concern under this guideline. A duly qualified mental health professional (e.g., clinical psychologist, or psychiatrist) employed by, or acceptable to and approved by the U.S. Government, should be consulted when evaluating potentially disqualifying and mitigating information under this guideline and an opinion, including prognosis, should be sought. No negative interference concerning the standards in this guideline may be raised solely on the basis of mental health counseling.

The guideline notes several conditions that could raise security concerns. I have considered all of the disqualifying conditions under AG ¶ 28, and the following are potentially applicable:

(a) behavior that casts doubt on an individual's judgment, stability, reliability, or trustworthiness, not covered under any other guideline and that may indicate an emotional, mental, or personality condition, including, but not limited to, irresponsible, violent, self-harm, suicidal, paranoid, manipulative, impulsive, chronic lying, deceitful exploitative, or bizarre behaviors;

(c) voluntarily or involuntarily inpatient hospitalization; and

(d) failure to follow a prescribed treatment plan related to a diagnosed psychological/psychiatric condition that may impair judgment, stability, reliability, or trustworthiness, including, but not limited to, failure to take prescribed medication or failure to attend required counseling sessions.

Applicant's anger issues led to a charge of domestic violence. His suicide gesture, which he indicated was not serious, led to his wife contacting the police and his hospitalization where he was treated by a psychiatrist who diagnosed him with bipolar disorder. He was ordered by the court to continue treatment. He was prescribed medication by the psychiatrist, but discontinued it on his own accord, without consultation with his treating psychiatrist. It was not alleged that he failed to follow a treatment plan. He did fail to continue his mental health counseling ordered by a court in January 2018. The DOD CAF ordered a psychological evaluation. THE LCP did not agree with the previous diagnosis of bipolar disorder. However, the LCP was unable to provide an accurate diagnosis because Applicant was uncooperative. Therefore, the evidence is insufficient to conclude that Appellant was diagnosed with a psychological or psychiatric condition. AG ¶ 28 (d) does not apply. The LCP diagnosed Applicant with an unspecified personality disorder, but not a condition. However, Applicant's uncooperative behavior, suicide gesture, and failure to be completely candid with the LCP and his hospitalization casts doubt on his judgment, stability, reliability, and trustworthiness. AG ¶¶ 28 (a) and 28 (c) apply.

The guideline also includes conditions that could mitigate security concerns arising from psychological conditions. The following mitigating conditions under AG ¶ 29 were considered:

(a) the identified condition is readily controllable with treatment, and the individual has demonstrated ongoing and consistent compliance with the treatment plan;

(b) the individual has voluntarily entered a counseling or treatment program for a condition that is amenable to treatment, and the individual is currently receiving counseling or treatment with a favorable prognosis by a duly qualified mental health professional;

(c) recent opinion by a duly qualified mental health professional employed by, or acceptable to and approved by, the U.S. Government that an individual's previous condition is under control or in remission, and has a low probability of recurrence or exacerbation;

(d) the past psychological/psychiatric condition was temporary, the situation has been resolved, and the individual no longer shows indications of emotional instability; and

(e) there is no indication of a current problem.

Applicant did not offer any evidence that he has resumed psychological counseling or treatment. The current prognosis by the LCP is guarded. Because Applicant failed to be candid during his evaluation, the LCP has concerns that Applicant's behavior may continue to raise concerns about his judgment and reliability and his personality disturbance makes him a security risk. There is insufficient evidence to apply any of the mitigating conditions.

#### **Guideline H: Drug Involvement and Substance Misuse**

The security concern relating to the guideline for drug involvement and substance misuse is set out 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.

AG ¶ 25 provides conditions that could raise security concerns. The following are potentially applicable:

(a) any substance misuse; and



(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana with varying frequency from 2010 to 2017. He told his psychiatrist that his last use was weeks before his November 2017 hospitalization. He used marijuana with his sister-in-law. He did not purchase it but used it when offered by her and occasionally friends. Applicant use of marijuana while holding a security clearance began in 2012 and continued to 2017. The above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns. The following mitigating conditions under AG ¶ 26 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) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome the 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 being 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; and

(d) satisfactory completion of a prescribed drug treatment program, including, but not limited to, rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant was consistently dishonest about his drug use. He stated to the government investigator that he does not intend to use marijuana in the future, but other than this statement, he failed to offer evidence to corroborate his commitment. He used marijuana with his sister-in-law, but did not indicate that he would disassociate himself from her, tell her that he will no longer use marijuana with her, or that she should not bring it when she visits. He has not provided a signed statement of his commitment to abstain from illegal drug use. There is no evidence he has participated in drug treatment and has a favorable prognosis. Applicant knowingly used marijuana for years while holding a security clearance and has failed to provide persuasive evidence that marijuana use is unlikely to recur. His drug use while holding a security clearance casts doubt on his judgment, reliability, and trustworthiness. None of the above mitigating conditions apply.

## 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(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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E, H, and I in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

Applicant is 25 years old. He has worked for a federal contractor since 2012 and held a security clearance during that time. He repeatedly used marijuana while holding a security clearance. He deliberately failed to disclose his past marijuana use on his SCA, and he deliberately concealed this information when he was interviewed by a government investigator. He was not candid when being evaluated by the Government's LCP. Applicant has not met his burden of persuasion. The record evidence leaves me with serious 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 security concerns arising under Guideline E, personal conduct, Guideline H, drug involvement and substance misuse, and Guideline I, psychological conditions.

### 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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline I:	AGAINST APPLICANT

Subparagraphs 2.a-2.d:	Against Applicant
Paragraph 3, Guideline H:	AGAINST APPLICANT
Subparagraphs 3.a-3.b	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 continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge