



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



In the matter of:	)	
	)	
	)	ISCR Case No. 21-01210
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Aubrey M. De Angelis, Esq., Department Counsel  
For Applicant: *Pro se*

08/23/2022

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On August 13, 2021, the Defense Counterintelligence and Security Agency Consolidated Adjudications Facility (DCSA CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E, personal conduct. The DOD CAF acted under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines effective June 8, 2017 (AG).

Applicant answered the SOR on November 13, 2021, 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) on March 9, 2022. The evidence

included in the FORM is identified as Items 4-6. (Items 1-3 include pleadings and transmittal information.) The FORM was mailed to Applicant, who received it on April 29, 2022. Applicant was given an opportunity to file objections and submit material in refutation, extenuation, or mitigation. He did not file any objections or submit any additional evidence. Items 4-6 are admitted into evidence without objection. The case was assigned to me on August 4, 2022.

### **Procedural Ruling**

In the body of the FORM, Department Counsel moved to amend the SOR to add a second allegation under Guideline E (SOR ¶ 1.b). The allegation in substance would be that Applicant deliberately failed to disclose his use of marijuana from 2003 to 2007 on his April 11, 2012 security clearance application (SCA). As noted above, the FORM was mailed to Applicant on March 9, 2022. Applicant signed as receiving the package on April 29, 2022. There is no evidence that Applicant read the FORM to make himself aware of the proposed additional allegation. This contrasts from his receipt of the SOR where he clearly reviewed the original SOR allegation as signified by his written admission to it (See Item 3). Therefore, because of procedural due process concerns over whether Applicant received actual notice of the added allegation, and out of an abundance of caution, I am denying Department Counsel's motion to amend. However, while I will not consider the evidence applying to the proposed amended allegation for disqualification purposes, I will consider it as it may relate to the application of any mitigating conditions and during my whole-person assessment.

### **Findings of Fact**

In Applicant's answer, he admitted the allegation in the SOR. I adopt his admission as a finding of fact. After a thorough and careful review of the pleadings and exhibits submitted, I make the following additional findings of fact. (Item 3)

Applicant is 35 years old. He is single, never married. He has worked as a quality specialist for his current employer, a federal contractor, since 2020. He received a high school diploma in 2005. He honorably served on active duty in the U.S. Marine Corps from 2007 to 2015. He held a security clearance while in the Marine Corps. (Items 4-6)

The SOR alleged Applicant falsified material facts on his August 2020 SCA when he answered that he had used marijuana from June 2003 to December 2019 and that he intended to use marijuana in the future, when in actuality he had not used marijuana since 2007 and he had no intentions of using it in the future. (Item 1)

Applicant listed his uses of marijuana as alleged above in his August 2020 SCA. He also stated that in the SCA that he intended to use marijuana in the future. In an earlier SCA from April 2012, that he completed while in the Marine Corps, he denied any uses of illegal drugs, including marijuana within the last seven years. (Items 4-5)

In September 2020, Applicant was interviewed by a background investigator and was asked about his 2020 SCA admissions to marijuana use. Applicant admitted that he lied on his 2020 SCA about his prior marijuana uses. He clarified that he had not used illegal drugs, including marijuana, since 2007 when he joined the Marine Corps. He further explained that he lied about using marijuana from 2008 to 2019 because he decided he did not want to be considered for a security clearance. He believed that if he gave disqualifying information, such as recent illegal drug use, he would not be considered for a security clearance. He went on to tell the investigator that he regretted his decision to lie about his drug use. He restated that he has not used any illegal drugs since he was approximately 20 years old and before he was a Marine. (Item 6)

In June 2021, Applicant answered interrogatories as part of the adjudicative process for his clearance. He was again asked to explain his reason for lying on his August 2020 SCA about using marijuana beyond 2007. He stated that he was not happy with his job and thought if he could get disqualified from having a clearance he might also be “let go” by his employer, thereby allowing him to collect unemployment until the Covid pandemic was over. His disqualifier would be his fictitious drug use after 2007. (Item 6)

### **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 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(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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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 personal conduct security 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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying in this case. The following disqualifying condition is 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant’s multiple admissions to deliberately providing false information on his August 2020 SCA about his marijuana use from 2007 to 2019 satisfy this disqualifying condition. AG ¶ 16(a) applies.

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

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

(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; and

(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 contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Applicant's background interview was conducted in September 2020, approximately one month after he completed his 2020 SCA. The summarized interview prepared by the investigator is not dispositive on whether Applicant was confronted with his false information on his SCA. The interview summary just states: "DRUG INVOLVEMENT: Subject discussed Subject's drug involvement." Since an applicant has the burden to establish mitigating conditions, Applicant did not meet that burden here. AG ¶ 17(a) does not apply.

Deliberately providing false information on a SCA is not a minor offense and it occurred as recently as 2020. Additionally, the evidence established that this is not the first time Applicant provided false information on a SCA. He also did so on his 2012 SCA when he failed to disclose his 2005-2007 drug use. Multiple occasions of Applicant providing deliberate false information on his SCAs casts doubt on his reliability, trustworthiness, and judgment. AG ¶ 17(c) does not apply.

Although Applicant acknowledged his behavior by admitting his past falsification and expressing remorse, he failed to provide any information that shows he has taken positive steps to change that behavior. There is insufficient evidence to indicate that such behavior is unlikely to recur. AG ¶ 17(d) does not 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 guideline 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 considered Applicant's military service. However, I also considered that he lied about using marijuana for his own personal agenda. He previously lied about his marijuana use on an earlier SCA. He has demonstrated he is willing to falsify documents if he believes it will benefit his own self-interests. I note that because he chose to have his case decided on the written record, without a hearing, I was unable to observe his demeanor or make any findings on his credibility.

Overall, the record evidence leaves me with questions and doubts about 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.

### 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

Subparagraph 1.a: 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 interest to grant Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge