



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of:	)	
	)	
-----	)	ISCR Case No. 05-01612
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Melvin A. Howry, Esquire, Department Counsel  
*For Applicant: Pro se*

May 4, 2010

**Decision**

MOGUL, Martin H., Administrative Judge:

On July 31, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline E for Applicant. The action was taken under Executive Order 10865, Safeguarding Classified Information within Industry (February 20, 1960), as amended; Department of Defense Directive 5220.6, Defense Industrial Personnel Security Clearance Review Program (January 2, 1992), as amended (Directive); and the 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 responded to the SOR (RSOR) in writing on August 13, 2009, and requested a hearing before an Administrative Judge. I received the case assignment on September 21, 2009. DOHA issued a Notice of Hearing on November 16, 2009, and I convened the hearing as scheduled on December 17, 2009. The Government offered Exhibits 1 through 6, which were received and entered into evidence without objection. Applicant testified on his own behalf, and he submitted Exhibits A through F, which were also received and entered into evidence without objection. At the request of Applicant, the record remained open until January 4, 2010, to allow Applicant to offer post hearing

character letters. A cover letter and 12 character letters were submitted, and have been entered into evidence without objection collectively as Exhibit G. DOHA received the transcript of the hearing (Tr) on December 23, 2009. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his RSOR, Applicant admitted all of the SOR allegations; 1.a. through 1.h., under Guideline E. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 54 years old. He is married, and he has three children. Applicant works for a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **(Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he exhibited conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations.

1.a. Applicant executed a Security Clearance Application (SCA) on October 5, 2006. (Exhibit 1.) Question #24 a. of the SCA asked since the age of 16 or in the previous seven years, whichever is shorter, had Applicant illegally used any controlled substance? Applicant answered "Yes" to this question, and he listed the use of marijuana on one occasion in July 2000. The Government alleges, and Applicant has admitted in his RSOR, that he should have disclosed his use of marijuana, a few times weekly, from at least 1999 until at least August 2000.

1.b. Question 24 b. of Exhibit 1 asks whether Applicant had ever illegally used any controlled substance while possessing a security clearance. Applicant answered "No" to this question. The Government alleges, and Applicant has admitted in his RSOR, that he should have disclosed his use of marijuana, a few times weekly, until at least August 2000, after he had been granted a Department of Defense Security Clearance in approximately April 1997.

1.c. Applicant executed a Security Clearance Application (SCA), on January 14, 2003. (Exhibit 2.) Question #24 a. of the SCA asked since the age of 16 or in the previous seven years, whichever is shorter, had Applicant illegally used any controlled substance? Applicant answered "Yes" to this question, and he listed the use of marijuana on five occasions in July 2000. The Government alleges, and Applicant has admitted in his RSOR, that he should have disclosed his use of marijuana, a few times

weekly, from at least 1996 until at least August 2000, and his use of cocaine from at least 1996 to at least 1997.

1.d. Question 24 b. of Exhibit 2 asks whether Applicant had ever illegally used any controlled substance while possessing a security clearance. Applicant answered "No" to this question. The Government alleges, and Applicant has admitted in his RSOR that he should have disclosed his use of marijuana, until at least August 2000, after he had been granted a Department of Defense Security Clearance in approximately April 1997.

1.e. Applicant executed a Security Clearance Application (SCA), on December 5, 1996. (Exhibit 3.) Question #24 a. of the SCA asked since the age of 16 or in the previous seven years, whichever is shorter, had Applicant illegally used any controlled substance? Applicant answered "No" to this question. The Government alleges, and Applicant has admitted in his RSOR, that he should have disclosed his use of marijuana, and cocaine from at least 1989 to at least 1996.

1.f. Applicant used marijuana until at least August 2000 after he had been granted a Department of Defense Security clearance in approximately 1997. In his RSOR, Applicant admitted this allegation.

1.g. Applicant's access to Sensitive Compartmented Information was revoked in 2001 by another Government Agency as a result of Applicant's drug usage. In his RSOR, Applicant admitted this allegation.

1.h. Applicant was denied program access by the United States Air Force in 2004, as a result of Applicant's drug usage and his failure to provide truthful answers during security processing. In his RSOR, Applicant admitted this allegation. Exhibit 6 includes a letter from the United States Air Force, dated Applicant 29, 2004, which explained that Applicant was denied program access because of his failure, on multiple occasions, to furnish complete and truthful information about his drug usage.

At the hearing, Applicant testified that he first informed the Government of his marijuana usage after he underwent a polygraph examination and was told that he failed. Thereafter he confessed that he had used marijuana. He estimated that he used marijuana once every two weeks from 1993 until 2000. (Tr at 37-41.) He also testified that he used marijuana and cocaine more frequently in the 1980s. (Tr at 45.)

Applicant conceded that he knew he had used drugs more frequently than what he identified on the most current SCA (Exhibit 1 ). He stated, "I don't really know why I did it. I wanted to do a good job for the company. I wanted my Clearance. I admit it was totally wrong." (Tr at 43.) He also admitted that when he completed the first SCA in 1996, he was still using marijuana regularly, but he was afraid that if he was honest about his drug usage, he would not get his clearance. (Tr at 60.)

## **Mitigation**

Applicant submitted one character letter at the time of the hearing (Exhibit A) and 12 additional letters post hearing, from individuals who have known him in different capacities. (Exhibit G.) All of the letters were very positive in describing Applicant. Since it is not clear if any of them were aware of the nature and frequency of Applicant's drug usage, nor about his misrepresentations to the Government, I find their recommendations to be of limited value. Applicant also submitted 12 Performance Reviews from his previous and present employers. (Exhibits B through E.) They were consistently positive and satisfactory.

## **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.

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 applicant or proven by Department Counsel. . . ." The Applicant 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 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).

## **Analysis**

### **Guideline E - Personal Conduct**

With respect to Guideline E, the evidence establishes that Applicant furnished to the Government incomplete, untruthful answers regarding the extent of his drug involvement on three SCAs that he executed in 1996, 2003, and 2006. The record is clear that he was aware of true extent of his marijuana and cocaine usage, and that he knowingly failed to furnish that information to the Government so that he could receive and then maintain a Security Clearance. He also continued using illegal substances after he received a Security Clearance. His dishonest conduct also continued while working with the United States Air Force and with another Government agency.

The Government relies heavily on the honesty and integrity of individuals seeking access to our nation’s secrets. When such an individual intentionally falsifies material facts, or fails to furnish relevant information to a Government investigator, it is extremely difficult to conclude that he nevertheless possesses the judgment, and honesty necessary for an individual given a clearance. In this case, I conclude that Applicant knowingly and willingly failed to give complete, honest answers regarding his drug usage to the Government.

AG ¶ 16 notes several conditions that could raise security concerns and could potentially apply in this case. I conclude that AG ¶ 16. (a) applies because of Applicant’s deliberate omission, concealment, and falsification of relevant facts from three different personnel security questionnaires, which were used to determine Applicant’s security clearance eligibility.

AG ¶ 17 provides conditions that could mitigate security concerns from Personal Conduct. I find that none of the Mitigating Conditions apply in this case.

Applicant’s conduct, considered as a whole, exhibits questionable judgement, unreliability, and a lack of candor. I resolve Guideline E against Applicant.

## **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) 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 have considered the potentially disqualifying and mitigating conditions under Guideline E, in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above, including Applicant's long history of using marijuana and cocaine, especially after receiving a Security Clearance, and his lack of honesty and candor with the information he furnished to the Government, I find that the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has not mitigated the 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 E:	AGAINST APPLICANT
Subparagraph 1.a.-1.h.:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

Martin H. Mogul  
Administrative Judge