



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 05-02859  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: *Pro Se*

May 13, 2008

**Decision**

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CURRY, Marc E., Administrative Judge:

On, January 20, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, personal conduct, and J, criminal conduct. 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 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 answered the SOR on February 14, 2008, and requested an administrative determination. In his answer, he partially admitted the allegations, agreeing that the misconduct occurred as alleged, but denying the dates that the SOR alleges the misconduct occurred. On March 14, 2008, department counsel prepared a File of Relevant Material (FORM). Applicant received it on March 17, 2008, and mailed a reply on April 23, 2008. The case was assigned to me on April 29, 2008. Department

counsel objected to the inclusion of the reply into the record, and I overruled the objection. I have reviewed the FORM and the reply, and have concluded that eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is a 53-year-old married man with two adult children. He served in the U.S. Air Force from 1974 through his honorable discharge in 1978. Shortly after leaving the Air Force, he enrolled in college, graduating in 1983. Currently, he works as a senior software engineer. He supervises 43 engineers, and has held a security clearance since 1984.

Applicant smoked marijuana approximately once per month from 1978 to 2002 (Item 9 at 2, Item 10 at 1, Item 11 at 1). He failed to disclose this drug use, as required, on three successive security clearance applications executed between December 2000 and July 2003. When confronted by a security clearance investigator in October 2003, Applicant admitted using marijuana through 2002 (Item 11 at 2). In August 2004, during another investigative interview, Applicant admitted smoking marijuana, but stated he stopped in 1989 (*Id.*). He falsified the date he stopped out of “self-rationalization” and fear of losing his security clearance (*Id.*).

### **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, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

## Analysis

### Guideline E, Personal Conduct

Under this guideline, “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.” Applicant’s deliberate omission of marijuana use from three successive security clearance applications, and his subsequent false statement to an agent regarding when he stopped using marijuana trigger the application of 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,” and AG ¶ 16(b), “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority or other official government representative.”

Applicant omitted his marijuana use from the security clearance applications and misled the government investigator about it because he feared he would lose his security clearance if disclosed. Lying to the government in the belief that it is necessary to save one’s security clearance does not mitigate the personal conduct security concern.<sup>1</sup> Applicant has failed to mitigate the personal conduct security concern.

### Guideline J, Criminal Conduct

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness.” Because Applicant’s falsifications constitute felonies under 18 U.S.C. § 1001, AG ¶ 30(a) applies. Given the recurrent and recent nature of Applicant’s falsifications, I conclude none of the mitigating conditions apply. Applicant has not mitigated the criminal conduct security concern.

### 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), as follows:

- (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

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<sup>1</sup>DISCR OSD Case No. 89-1586 (App. Bd., October 26, 1990).

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.

I remain troubled by Applicant's multiple falsifications of his security clearance application. Even after disclosing it to a government investigator, he continued to provide false information about the duration of his use. Upon considering the whole person factors, particularly, the significance, recency, and recurrent nature of the conduct, 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 |
| Subparagraphs 1.a - 1.f:  | Against Applicant |
| Paragraph 2, Guideline J: | AGAINST APPLICANT |
| Subparagraph 2.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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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MARC E. CURRY  
Administrative Judge