



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 05-11518  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Edmunds, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 22, 2008

**Decision**

CURRY, Marc E., Administrative Judge:

On, December 28, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and J. 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 January 16, 2008, admitted all of the allegations and requested a hearing. The case was assigned to me on February 14, 2008. DOHA issued a notice of hearing on February 21, 2008 scheduling it for March 11, 2008. During the hearing, I received three government exhibits, three Applicant exhibits, and the testimony of three Applicant witnesses. DOHA received the hearing transcript (Tr.) on March 19, 2008. Based on a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

## Findings of Fact

Applicant is a 24-year-old single man with a high school education. Since September 2004, he has worked for the same employer as a cable technician. His duties include installing cable and intercom networks for government and private sector clients (Tr. 14).

According to his supervisor, he is an outstanding employee whose maturity has grown tremendously since he first began working for him (Tr. 34). The supervisor's confidence in Applicant's abilities compelled him to select Applicant instead of older, more experienced personnel to direct some of the company's projects (Tr. 34).

Applicant also works part-time as a white water rafting instructor. Before obtaining his cable technician job, he worked for a white water rafting company full-time. His supervisor characterized him as "a great employee" (Tr. 43).

From ages 16 to 20, Applicant smoked marijuana. During the first two years of this period, while in high school, he smoked it approximately 10 times per day (Tr. 17). Once, he used it before escorting a group of white water rafters down a river (Answer).

After being caught with marijuana in the school parking lot, Applicant entered drug treatment (Tr. 18). His use decreased to twice per week after the counseling (Tr. 18).

Applicant abused other drugs during his teens including cocaine five times, LSD, every other day for three months, and oxycontin, a prescription pain reliever, once (Tr.19, 21).

Applicant has neither used illegal drugs, nor abused prescription drugs since Spring 2004. In September 2004, he completed a security clearance application (SF 86). In response to Question 27 (*Your Use of Illegal Drugs and Drug Activity - Illegal Use of Drugs Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualones, tranquilizers etc.), hallucinogenics (LSD, PCP, etc), or prescription drugs?*), Applicant under reported the length of time he used marijuana, and did not disclose his other drug use (Answer). During a 2005 interview with an investigative agent, Applicant disclosed the cocaine use, and under reported his LSD use, stating that he used it once (Exhibit 3 at 4).

After the 2005 interview, the investigative agent obtained Applicant's drug treatment records, which indicated the extent of his LSD use (Exhibit 2 at 2). In 2006, the government propounded interrogatories to Applicant seeking, among other things, an explanation for under reporting the LSD use. In response, Applicant stated, "I did not realize it was that much of a necessity for the investigation" (*Id.*). At the hearing, he

stated he did not disclose it because he “thought it would be bad for the investigation” (Tr. 24).

## **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” (AG ¶ 15). Applicant’s minimization of his marijuana use, and his omission of his other drug use from his 2005 security clearance application raises the issue of whether 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.

Applicant was not candid about his drug use because he was afraid that full disclosure would negatively affect his security clearance investigation. Fear of adverse personal consequences does not mitigate falsification. He compounded his SF 86 falsification by continuing to minimize his LSD use when an agent interviewed him in

2005. He did not disclose it until 2007, in response to government interrogatories. I conclude AG ¶ 16(a) applies without mitigation.

### **Guideline J, Criminal Conduct**

Under this guideline, “criminal activity creates doubt about a person’s judgment, reliability, and trustworthiness” (AG ¶ 30). Also, “by its very nature, it calls into question a person’s ability or willingness to comply with laws, rules and regulations” (*Id.*). Applicant’s SF 86 falsification constitutes a felony under 18 U.S.C. § 1001. I was particularly concerned by his piecemeal, reluctant disclosure of his drug use throughout the investigative process. AG ¶ 31(a), “a single serious crime or multiple lesser offenses,” applies without mitigation.

### **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.”

Applicant was only 21 years old when he completed the SF 86, and he did not completely omit his drug use from the SF 86. He appears to have matured as demonstrated by his exceptional work performance. Given his falsification, and his repeated failure to correct it, it is too soon to conclude he does not pose a security risk. Clearance is denied.

### **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 J:	AGAINST APPLICANT
Subparagraphs 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