



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 12-04875
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: Ronald C. Sykstus, Esq.

08/22/2014

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant used cocaine frequently during periods of unemployment between 2007 and 2011. When he submitted a security clearance application in February 2011, he made a false official statement to the Government by intentionally denying that he had used illegal drugs within the preceding seven years. He continued to use cocaine and, in June 2011, failed a workplace urinalysis by testing positive for cocaine. He again used cocaine on several occasions between June and August 2011. Clearance is denied.

**Statement of the Case**

On February 11, 2011, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his employment with a defense contractor. After reviewing the results of Applicant's background investigation, which included an adverse information report filed in the Joint Personnel Adjudication System (JPAS) on July 7, 2011, and Applicant's responses to interrogatories issued by adjudicators for the Department of Defense (DOD), it could not

be determined that it is clearly consistent with the national interest to continue Applicant's access to classified information.<sup>1</sup> On March 21, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)<sup>2</sup> for drug involvement (Guideline H) and personal conduct (Guideline E).

Applicant timely answered the SOR (Answer) and requested a hearing. The case was assigned to me on May 13, 2014, and I convened a hearing on June 19, 2014. The parties appeared as scheduled. Department Counsel presented Government's Exhibits (Gx.) 1 - 3,<sup>3</sup> and Applicant presented Applicant's Exhibits (Ax.) A - P.<sup>4</sup> All exhibits were admitted without objection. Applicant also testified and presented four witnesses. DOHA received a transcript (Tr.) of the hearing on July 1, 2014.

### **Findings of Fact**

The Government alleged under Guideline H that Applicant used cocaine, as often as weekly, between 2007 and August 2011 (SOR 1.a); and that in June 2011, he tested positive for cocaine during workplace urinalysis testing (SOR 1.b). Applicant admitted both allegations.

The Government alleged under Guideline E, that Applicant intentionally made a false official statement when he omitted his use of drugs from his EQIP by answering "no" to the following question:

In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.), narcotics (opium, morphine, codeine, heroin, etc.), stimulants (amphetamines, speed, crystal methamphetamine, Ecstasy, ketamine, etc.), depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogens (LSD, PCP, etc.), steroids, inhalants (toluene, amyl nitrate, etc.), or prescription drugs (including painkillers)? Use of a controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any controlled substance. (SOR 2.a).

Applicant also admitted this allegation. Applicant's admissions are incorporated in my findings of fact. Having reviewed the response to the SOR, the transcript, and exhibits, I make the following additional findings of fact.

---

<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>2</sup> The adjudicative guidelines were implemented on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> A copy of Department Counsel's letter forwarding the Government's exhibits to Applicant in advance of hearing is included in the record as Hearing Exhibit (Hx.) 1. Also, an index listing each exhibit is included in the record as Hx. 2.

<sup>4</sup> An index listing Applicant's exhibits is included as Hx. 3.

Applicant is 52 years old and employed by a defense contractor as an integration specialist technician. He and his wife have been married since September 1999. Applicant was also married between 1986 and 1988. Between them, he and his current wife have four children and 15 grandchildren. Applicant did not finish high school because his family needed him to work to help make ends meet. However, he obtained his GED in 1985 and has also completed a course of study at a vocational and technical school. (Gx. 1; Gx. 2; Tr. 21 - 22)

Applicant has worked for his current employer (Company A) since January 2011. He also worked for the same company on different programs between 1999 and 2001, and between 2002 and 2006. After each period of employment, he was laid off due to lack of work. He was recalled in January 2011, but this time he was required to qualify for a security clearance for his current position. He has received numerous awards and other forms of recognition for his performance in the workplace. (Gx. 1; Gx. 2; Ax. F - P)

In March 2008 Applicant was hired by a different company (Company B) for similar work that did not require a clearance. He resigned that position in August 2010 because of disagreements with management over how he was performing his work. Both that employer and his current employer required new or recalled employees to pass a drug screening test. (Gx. 1; Gx. 2; Tr. 27 - 28)

Each time Applicant was laid off, he was able to find work with a moving company to keep money coming in. Some of the other workers there used illegal drugs, including cocaine and crack cocaine. After his second lay-off from Company A, at age 46, he started using cocaine and crack cocaine on a weekly or bi-weekly basis. He purchased the drug from someone he knew from his neighborhood and usually spent about \$30 on each purchase. (Gx. 2; Tr. 25 - 29, 44 - 51)

When Applicant was hired by Company B in 2008, he stopped using drugs because he knew he would have to take a drug test. He claims he did not use drugs after he passed the pre-employment drug test and while he was working for Company B. About two months after he left Company B, he resumed using cocaine. (Tr. 46 - 48, 58)

After Applicant was recalled by Company A and had submitted his EQIP, he was tested for drugs after being on the job about six months. He failed the drug test, but was allowed to remain employed by Company A provided he complete a company-sponsored drug counseling and rehabilitation program. He successfully completed that program. He is required to attend Alcoholics Anonymous (AA) meetings and is subject to periodic drug testing in addition to the usual random testing that occurs at Company A. He remains active in AA. (Answer; Gx. 2; Gx. 3; Ax. B - E; Tr. 35 - 41)

After Applicant failed his drug test in June 2011, he continued to use cocaine until August 2011, when he began drug counseling. Applicant explained that he felt despondent over the drug test results and figured he had nothing left to lose by resuming his drug use. (Gx. 2; Tr. 53 - 54)

When Applicant submitted his EQIP in February 2011, he answered “no” to all of the questions pertaining to illegal drug use in the preceding seven years. He did so knowingly because he was ashamed of his involvement with illegal drugs. He also falsified his answer because he was afraid he would lose his job for lack of a security clearance. (Answer; Gx. 2; Tr. 34 - 35)

Applicant submitted an affidavit attesting to his intent to abstain from any future drug use. He also presented several character witnesses. They all testified that he is an excellent worker, a good father and neighbor who is generous with his time, and that he is honest and reliable. However, none of the witnesses, including his wife (Tr. 72), knew that he continued to use cocaine after he submitted his EQIP or after he tested positive for drugs in the workplace. (Ax. A; Tr. 64 - 108)

### **Policies**

A security clearance decision is intended to resolve whether it is clearly consistent<sup>5</sup> with the national interest for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>6</sup> and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the “whole-person” concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government’s case.

---

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> Directive. 6.3.

Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>7</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government.<sup>8</sup>

## Analysis

### Drug Involvement

Applicant began using cocaine at age 46. He continued to use cocaine after he submitted his EQIP in February 2011, and after he had resumed working for Company A. After he tested positive for cocaine in June 2011, he continued using the drug for another two months. Applicant bought and possessed cocaine on numerous occasions between 2007 and 2011. This information raises a security concern articulated at AG ¶ 24 as follows:

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances; and

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

More specifically, information about Applicant’s drug use requires application of the following AG ¶ 25 disqualifying conditions:

(a) any drug abuse (see above definition);

---

<sup>7</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>8</sup> See *Egan*; AG ¶ 2(b).

(b) testing positive for illegal drug use; and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

I also have considered the following AG ¶ 26 mitigating conditions, which may be pertinent to these facts and circumstances:

(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) a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation; 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 last used cocaine in August 2011. He also completed company-sponsored drug treatment and rehabilitation requirements as a condition of his continued employment. Applicant is still subject to regular drug testing because of his past conduct, and he submitted a written statement as to his intent to abstain from future drug use. Weighed against these positive factors is the fact that Applicant stopped using cocaine long enough in 2008 to pass a drug test for work at Company B. When he was recalled to Company A, it appears he did not expect to be tested for drugs and continued to use cocaine after returning to work in a potentially classified environment and after submitting his EQIP. These facts indicate Applicant has been somewhat calculating when it comes to his alternating use of and abstinence from cocaine. His current abstinence is being enforced through drug testing that would not otherwise be imposed were the risk of recurrent drug use not at issue. Despite his representations that his drug use is permanently behind him, the totality of available information bearing on this issue undermines confidence that Applicant will not use drugs in the future. I conclude that none of the AG ¶ 26 mitigating conditions apply.

### **Personal Conduct**

Applicant deliberately lied about his use of cocaine when he applied for a security clearance in 2011. He did so to protect his own interests. This information is sufficient to raise a security concern about his personal conduct, which is addressed at AG ¶ 15, as follows:

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.

Specifically, the record requires application of the following AG ¶ 16 disqualifying condition:

(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.

Of the mitigating conditions listed under this guideline at AG ¶ 17, the following are pertinent to these facts and circumstances:

(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.

Applicant was concerned that if he disclosed his drug use he would not get the security clearance required for his continued employment. It was not until after he tested positive for cocaine and the matter was discussed with a Government investigator during his background investigation that he admitted his involvement with illegal drugs. Applicant had no intention of being truthful about his drug use as he continued to use cocaine after he submitted his EQIP. I conclude AG ¶ 17(a) does not apply.

Falsification of such information is not a minor infraction, particularly where it is the Applicant's first opportunity to demonstrate willingness to place the Government's interests first. However, if it is unlikely to recur the security significance of such conduct lessens. In assessing whether Applicant is now sufficiently credible and willing to be candid about adverse information in his background, I have considered the uninformed testimony of his witnesses. None of them knew that he had used cocaine or that he had continued to use cocaine after returning to work at Company A. It also appears that his wife was unaware that Applicant continued to use drugs after he tested positive in June 2011. Based on these facts, and along with all of the other adverse information in this record, I conclude AG ¶ 17(c) does not apply, and that Applicant has failed to mitigate the security concerns raised under this guideline.

### **Whole-Person Concept.**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines H and E. I have also reviewed the record before

me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is now 52 years old and has established a good reputation at work for reliability and trustworthiness. He is respected by his supervisors and coworkers for his leadership and his expertise. However, the value of this positive information abates when compared to Applicant's lack of candor with those same individuals regarding the facts probative of his suitability for a clearance. Further, Applicant's illegal drug involvement is still a concern owing to his demonstrated willingness to use drugs unless he is subject to external controls, such as workplace drug testing. Available information suggests that his drug use and his lack of candor may recur.

In summary, a fair and commonsense assessment of all information bearing on Applicant's suitability for access to classified information shows continued reasonable doubts about his judgment, trustworthiness, and reliability. Because protection of the national interest is the primary concern here, those doubts are resolved in against continuing Applicant's security clearance.

### **Formal Findings**

Formal findings 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 H:	AGAINST APPLICANT
Subparagraphs 1.a - 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest to continue Applicant's access to classified information. Request for a security clearance is denied.

---

MATTHEW E. MALONE  
Administrative Judge