



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



In the matter of: )  
)  
) ISCR Case No. 12-07533  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

05/29/2013

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guidelines H (Drug Involvement) and E (Personal Conduct). Eligibility for access to classified information is denied.

**Statement of the Case**

On February 13, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. This action was taken under Executive Order (EO) 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) implemented on September 1, 2006.

The SOR set forth reasons why DOD adjudicators could not find under the Directive that it is clearly consistent with the national interest to grant Applicant a security clearance. On March 3, 2013, Applicant answered the SOR and elected to have a decision based on the administrative record in lieu of a hearing. On March 15,

2013, Department Counsel prepared a File of Relevant Material (FORM) that contained documents identified as Items 1 through 11. A complete copy of the FORM was mailed to Applicant on March 18, 2013, and he received it on March 23, 2013. He was given 30 days from its receipt to file objections or submit matters in refutation, mitigation, or extenuation. He did not submit any objections or other information within the allotted time period. The case was assigned to me on May 8, 2013.

### Findings of Facts

Applicant is a 34-year-old employee of a defense contractor. He has worked for his current employer since December 2007. He graduated from college with a bachelor's degree in January 2001. He is married and his wife is expecting their first child. He first held a security clearance in about April 2002.<sup>1</sup>

The SOR set forth two allegations under Guideline H. SOR ¶ 1.a alleged that Applicant used marijuana with varying frequency from about 1997 to about November 2009. SOR ¶ 1.b alleged that he used marijuana while possessing a secret and top secret security clearance. Under Guideline E, the SOR first cross-alleged the Guideline H allegation that he used marijuana while possessing security clearances (SOR ¶ 2.a) and then asserted that Applicant falsified his responses to five questions on three separate security clearance applications (SOR ¶¶ 2.b through 2.f). In his Answer to the SOR, Applicant admitted each SOR allegation. His admissions are incorporated as findings of fact.<sup>2</sup>

On October 30, 2001, Applicant submitted a security clearance application (SF-86). In that SF-86, he responded "No" to Question 27 that asked, "Since the age of 16 or in the last 7 years, whichever is shorter, have you used any controlled substance, for example, marijuana . . . ?". On April 4, 2002, the Defense Industrial Security Clearance Office (DISCO) determined he was eligible for a secret security clearance.<sup>3</sup>

On February 27, 2008, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). In that e-QIP, he responded "No" to both Section 24a that asked, "Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana . . . ?", and Section 24b that asked, "Have you ever illegally used a controlled substance . . . while possessing a security clearance . . . ?". On June 4, 2008, DISCO determined he was eligible for a top secret security clearance.<sup>4</sup>

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<sup>1</sup> Items 4, 5, 6, and 10.

<sup>2</sup> Items 1 and 3.

<sup>3</sup> Item 6.

<sup>4</sup> Item 5.

On July 13, 2010, an other government agency (OGA) issued Applicant a letter stating,

On 21 June 2010, the [OGA] cancelled your security processing for additional access to classified information and terminated your existing access. You reported that you illegally used marijuana from 1997 to 2009. You estimated that you used marijuana approximately 680 to 750 times between 2001 and November 2009. As such, you were determined to be an unlawful user of controlled substances. Therefore, pursuant to 50 U.S.C. Section 435(c), the [OGA] disqualified your application.<sup>5</sup>

The OGA letter indicated that decision was not considered a security clearance disapproval and Applicant was not required to indicate on future government forms that he was denied a security clearance because of that action. On June 21, 2010, Applicant's access to SCI was revoked and that decision was later upheld on appeal.<sup>6</sup>

On April 6, 2011, Applicant submitted another e-QIP. In that e-QIP, he responded "No" to both Section 23a that asked, "In the last 7 years, have you illegally used any controlled substance, for example, . . . THC (marijuana, hashish, etc.) . . . ?", and Section 24b that asked, "Have you EVER illegally used a controlled substance while possessing a security clearance . . . ?". On April 25, 2011, the Defense Security Service suspended his security clearance.<sup>7</sup>

On May 18, 2011, a special investigator of the Office of Personnel Management (OPM) interviewed Applicant and obtained a sworn affidavit from him. In that affidavit, Applicant recanted his "No" response to Section 23a of the e-QIP, noted above. He noted that he previously disclosed his marijuana use during a polygraph interview and stated,

I used marijuana sparingly when possessing a security clearance. I used marijuana from approximately 2001 to 2003 approximately 3 times a week and from 2003 to 11/2009, I used marijuana approximately twice a year as I started to remove myself from its use. The last time I used marijuana which was smoked in a cigarette form was in 11/2009.<sup>8</sup>

In the affidavit, Applicant also indicated that he never purchased marijuana; that he never sold, distributed, or manufactured any drug; that he was never diagnosed as an abuser of any drug; and that he has not received drug treatment.<sup>9</sup>

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<sup>5</sup> Item 8.

<sup>6</sup> Items 8 and 11.

<sup>7</sup> Items 4 and 7.

<sup>8</sup> Item 9.

<sup>9</sup> Item 9.

In responding to interrogatories on October 27, 2012, Applicant responded “Yes” to the question that asked if he currently associated with individuals who use illegal drugs. He noted that he had family members with drug issues, but also indicated that he did not frequent places where drugs were present.<sup>10</sup>

In his Answer to the SOR dated March 3, 2013, Applicant stated, “The reason why I was not forthcoming about my use of marijuana was because quite frankly I believed if I did I would not be granted a security clearance and therefore not get the job I was highly qualified and submitted for.” He indicated that the frequency of his use of marijuana has decreased over the years. He stated that he last smoked marijuana in November 2009. He also stated that he no longer puts himself in situations where marijuana or other drugs are used.<sup>11</sup>

Applicant provided no reference letters or other character evidence.

### **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 to be 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, administrative judges apply the guidelines 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(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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable security decision.

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<sup>10</sup> Item 7.

<sup>11</sup> Item 3.

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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 H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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;

(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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25 and find the following are potentially applicable:

(a) any drug abuse; and

(g) any illegal drug use after being granted a security clearance.

From 1997 to November 2009, Applicant used marijuana, including while he held a secret and top secret security clearance. The evidence is sufficient to raise the above disqualifying conditions.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26 and the following are potentially applicable:

(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; and

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant has an extensive history of marijuana use. He engaged in that misconduct between the ages of 19 to 31. He acknowledged that he has family members that continue to have drug issues. He stated that he last used marijuana in November 2009. As discussed below, however, Applicant falsified material facts about his drug involvement on security clearance applications on multiple occasions to obtain a security clearance, which cause me to place little weight on his statements about stopping the use of marijuana.

Given his 12-year history of marijuana use, I cannot find that his drug abuse happened under unusual circumstances, that it is unlikely to recur, and that it does not cast doubt on his current reliability, trustworthiness, or good judgment. I find that sufficient time has not passed to conclude that he has put his wrongful drug involvement behind him. In making that finding, I note that I did not have the opportunity to hear Applicant's testimony, observe his demeanor, or evaluate his credibility.

AG ¶¶ 26(a) and 26(b) partially apply, but do not mitigate the Guideline H security concerns.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to Personal Conduct:

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.

AG ¶ 16 describes four conditions that could raise a security concern and may be disqualifying in this case:

(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;

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information;

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information. This includes but is not limited to consideration of:

(1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information;

\* \* \*

(3) a pattern of dishonesty or rule violations; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing . . . .

Applicant admitted that he deliberately falsified responses in security clearance applications submitted in 2001, 2008, and 2011. He also admitted that he used marijuana while possessing a security clearance. AG ¶¶ 16(a), 16(c), 16(d), and 16(e) apply.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of unauthorized personnel or legal counsel advising or instructing the individual specifically concerning security clearance process. Upon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and truthfully;

(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;

(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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant repeatedly falsified information about his drug involvement on his security clearance applications. His most recent falsification occurred in 2011 after he had previously admitted his drug involvement to a government investigator. He provided false information because he thought he would not obtain a security clearance if he told the truth. He also used marijuana for years while holding a security clearance. His misconduct raises serious security concerns about his reliability, trustworthiness, and good judgment. I find that none of the mitigating conditions apply to the allegations in SOR ¶¶ 2.a through 2.f.

### **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 relevant 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 considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment. Applicant has worked for his current employer for over five years. Nevertheless, little or no evidence warranting a favorable whole-person assessment had been presented. He abused drugs over a 12-year period. He has recently and on multiple occasions falsified information on security clearance applications. He has shown an unwillingness to comply with laws, rules, and regulations. Applicant's disregard of the law raises doubts about his eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has failed to mitigate the drug involvement and personal conduct security concerns.

### **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
Subparagraphs 2.a – 2.f:	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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James F. Duffy  
Administrative Judge