



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



In the matter of: )  
)  
) ISCR Case No. 12-07611  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

05/21/2016

**Decision**

CREAN, THOMAS M., Administrative Judge:

Applicant mitigated drug involvement and personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on March 5, 2012, to obtain a security clearance required for employment with a defense contractor. (Item 3) Applicant was interviewed by a security investigator from the Office of Personnel Management (OPM) on March 29, 2012. (Item 4) After reviewing the results of the OPM investigation, the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance.

On August 11, 2014, DOD issued Applicant a Statement of Reasons (SOR) detailing security concerns for drug involvement (Guideline H) and personal conduct (Guideline E). 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) effective in the Department of Defense on September 1, 2006.

Applicant answered the SOR on August 25, 2014. He admitted the four allegations of drug involvement with explanation and the one allegation of personal conduct. He elected to have the matter decided on the written record. (Item 2) Department Counsel submitted the Government's written case on March 28, 2015. Applicant received the file of relevant material (FORM) on December 18, 2015, and he was provided the opportunity to file objections and to submit material to refute, extenuate, or mitigate the disqualifying conditions. Applicant did not provide any information in response to the FORM.

There was no direct information in the case file concerning Applicant's service and his illegal drug use in Afghanistan. Department Counsel requested additional information from Applicant. On May 19, 2016, in response to Department Counsel's request, Applicant provided information to clarify his use of drugs and service in Afghanistan. (Item 5) Department Counsel also added to the case file Applicant's response to a DOHA Interrogatory concerning use of drugs and service in Afghanistan that was not included in the original case file. (Item 6) In addition, Department Counsel provided clarifying information concerning the work performed by Applicant's employer in Afghanistan when Applicant was deployed there with the company. (Item 7) I was assigned the case on March 29, 2016.

### **Procedural Issues**

Applicant was advised in the FORM that the summary of the Personal Subject Interview with an OPM investigator (Item 4) was not authenticated and could not be considered over his objection. He was further advised that he could make any corrections, additions, or deletions to the summary to make it clear and accurate, and he could object to the admission of the summary as not authenticated by a Government witness. He was additionally advised that if no objection was raised to the summary, the Administrative Judge could determine that he waived any objection to the admissibility of the Personnel Subject Interview summary. Applicant did not respond to the FORM, so he waived any objection to the admissibility of the Personal Subject Interview summary. I will consider information in the Personal Subject Interview in my decision.

### **Findings of Fact**

I thoroughly reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 25 years old and graduated from high school in 2009. Applicant attended a community college from August 2009 until June 2011, without earning a degree. He worked at various part-time jobs while attending college. In June 2011, he started employment with his present defense contractor employer as an electronics intercept specialist. This work was performed under heavy combat conditions at a

Forward Operating Bases (FOB) in Afghanistan from June 2011 until March 2012. It appears he is still employed with the same contractor but the work is performed in the United States. (Item 3, e-QIP, dated August 11, 2014; Item 4, Personal Subject Interview (PSI), dated January 15, 2014; Item 7, Article, dated August 7, 2011)

The SOR alleges and Applicant admits drug involvement by using marijuana at various times from June 2009 until July 2013 (SOR 1.a), using Ambien from August 2013 until October 2013 (SOR 1.b), using LSD once in February 2011 (SOR 1.c); and illegally using Xanax that had not been prescribed for him from June 2010 until August 2010 (SOR 1.d). The Personal Conduct allegation under Guideline E is for using marijuana while deployed to Afghanistan in July 2013. (Item 2.a) All of the information concerning illegal drug use was provided by Applicant either in the e-QIP, his response to interrogatory questions, or questions from an OPM security investigator.

In response to illegal drug use questions on his e-QIP, Applicant reported that he used marijuana two or three times from June 2009 until August 2010. He described himself as not a habitual user. He reported using Xanax that was not prescribed for him two or three times in August 2010. He admitted experimentally using hallucinogenic mushrooms one time on his birthday in February 2011. During this time of drug involvement, Applicant was between eighteen and twenty years old. He stated on his e-QIP that he did not intend to use marijuana in the future. (Item 3)

In response to interrogatory questions concerning illegal drug use, Applicant stated that while working in Afghanistan in July 2013, he shared a joint of possible marijuana with co-workers. He also reported taking Ambien pills provided by medical personnel four or five times from August 2013 until October 2013. The Ambien was taken to aid in sleeping because of constant combat.

In response to questions from Department Counsel, Applicant stated that the substance he used may not have been marijuana. He was told by some of his co-workers that the substance was marijuana. Others said it was a compressed tobacco. However, Applicant believed at the time of use that he was using marijuana. Ambien was provided by the medics on the FOB to enable personnel to sleep. The medical people were not doctors but were responsible for providing medical support to the personnel on the FOB. The FOB was under constant mortar and small arms fire that made sleep difficult. (Item 5)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Administrative Guidelines. 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 burden of persuasion 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.

## **Analysis**

### **Drug Involvement**

The use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, because it may impair judgment and raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. Drugs are defined as mood and behavior altering substances, including drugs material and other chemical compounds identified and listed in the Controlled Substances Act of 1970. Marijuana and LSD cannabis is included in the Schedule 1 list. (AG ¶ 24)

All information concerning his drug use was provided by Applicant during the security clearance process. He used marijuana two or three times as a teenager with friends between June 2009 and August 2010. During the same periods, he used Xanax not prescribed for him a few times and hallucinogenic mushroom once. In 2013, while working as a civilian on a FOB in Afghanistan, he was provided Ambien by medical personnel for sleep. Applicant's use of marijuana in 2009 to 2010, LSD in February 2011, Xanax in August 2010 and Ambien from August to October 2013 raises the following Drug Involvement Disqualifying Conditions under AG ¶ 25 (a) (any drug use).

I considered the following Drug Involvement Mitigating Conditions under AG ¶ 26:

(a) the behavior happened so long ago, was so infrequent, or happened under such unusual 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 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).

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of drug involvement, there must be an evaluation of whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

These mitigating conditions apply. Applicant admits to intermittent, limited use of marijuana and other illegal drugs as a teenager in 2010. He did not use illegal drugs again for about three years before using marijuana once in 2013 as a civilian in Afghanistan. He has not used illegal drugs since 2013. Applicant now realizes that he is an adult working in the defense industry and as such he cannot use illegal substances. He stated a clear indication not to use illegal drugs in the future. His last use of marijuana was over three years ago, and other illegal drugs about six year ago. His Ambien use in 2013 was for a valid reason and provided by medical personnel. His usage of illegal drugs was infrequent and under circumstances that are not likely to recur. Applicant's present environment is one of maturity and a professional life that prohibits illegal drug use. There has been an appropriate period of abstinence, and a change in lifestyle and circumstance. Applicant mitigated security concerns for drug involvement.

## Personal Conduct

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information.

Applicant used marijuana and other illegal drugs on a limited basis with friends while a teenager in 2009 to 2010. He used it again once in 2013 while he was a civilian employee of a defense contractor serving in Afghanistan in a combat heavy environment. He disclosed his illegal drug use on his March 2012 e-QIP. He was honest and truthful demonstrating his reliability and trustworthiness. Applicant was a civilian in Afghanistan when he last used marijuana. I do not find Applicant's use of Ambien in the combat zone to be illegal. Ambien was provided by the medical personnel to personnel serving on an FOB so they could get some sleep. Applicant's use of marijuana under these circumstances potentially raises the following security concerns under Personal Conduct Disqualifying Condition AG ¶ 16:

(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, or other characteristics indicating that the person may not properly safeguard protected information; and

(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:

(2) disruptive, violent, or other inappropriate behavior in the workplace; and

(3) a pattern of dishonesty or rules violations.

I considered Personnel Conduct Mitigating Conditions under AG ¶ 17:

(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.

This mitigating condition applies. Applicant used marijuana only one time with co-workers while in Afghanistan. In fact, what he used may not have been marijuana. However, Applicant thought it was marijuana. He was working from an FOB with heavy combat in the area. The FOB received mortar and small arms fire continuously. Applicant only used marijuana once in over six years, and that use was over three years ago. His use of marijuana was infrequent, and his use was unique as a young civilian serving on a FOB under heavy combat conditions. Applicant mitigated personal conduct security concerns for his use of marijuana in Afghanistan.

### **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 considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I considered that Applicant served over nine months as a civilian in a combat zone under heavy fire while working in an unique and important mission for a defense contractor. Applicant admitted using marijuana with varying frequency while a student. He used it as a civilian one time in Afghanistan. His last use of marijuana was over three years ago. These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude that Applicant has mitigated drug involvement and personal conduct security concerns. Eligibility for access to classified information is granted.

### **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 H: FOR APPLICANT

Subparagraphs 1.a -1.d: For Applicant

Paragraph 2, Guideline E: FOR APPLICANT

Subparagraph 2.a: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge