



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



In the matter of:

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|----------------------------------|---|------------------------|
| |) | |
| |) | ISCR Case No. 12-08423 |
| |) | |
| Applicant for Security Clearance |) | |

Appearances

For Government: Jeff A. Nagel, Esq., Department Counsel
For Applicant: *Pro se*

07/17/2013

Decision

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the written record in this case, I conclude that Applicant failed to rebut or mitigate the Government’s security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

Statement of Case

Applicant completed several applications for consideration for security clearances and access to protected information. In January 1999 and again in April 2008, he completed Standard Form 86 applications. In March 2009, he completed an Electronic Questionnaire for Investigations Processing (e-QIP). In December 2010 and January 2012, he completed Questionnaires for National Security Positions.

On February 20, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct. DOD acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as

amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD for SORs issued after September 1, 2006.

Applicant answered the SOR on March 25, 2013. He declined a hearing, and requested a decision on the written record. The Government compiled its File of Relevant Material (FORM) on May 9, 2013. The FORM contained documents identified as Items 1 through 9. On May 10, 2013, DOHA forwarded a copy of the FORM to Applicant, with instructions to submit any additional information and objections within 30 days of receipt. Applicant received the file on May 20, 2013. His response was due on June 20, 2013. He submitted two documents containing additional information, but he did not file any objections. On July 2, 2013, the case was assigned to me for a decision. I marked Applicant's responses to the FORM as Item A and Item B and admitted them to the record without objection.

Findings of Fact

The SOR contains six allegations of disqualifying conduct under Guideline H, Drug Involvement (SOR ¶¶ 1.a. through 1.f.), and eleven allegations of disqualifying conduct under Guideline E, Personal Conduct (¶¶ 2.a. through 2.k.). In his Answer to the SOR, Applicant admitted five of the Guideline H allegations (SOR ¶¶ 1.a., 1.b., 1.d., 1.e., and 1.f.) He denied the allegation at SOR ¶ 1.c. He also admitted nine allegations under Guideline E (SOR ¶¶ 2.a. through 2.i.). He denied the allegation at SOR ¶ 2.j., and he neither admitted nor denied the allegation at SOR ¶ 1.k. Applicant's admissions are entered as findings of fact. (Item 1; Item 3.)

The facts in this case are established by the record provided by the Government and by information provided by Applicant. The record evidence includes Applicant's five security clearance applications; official agency records; Applicant's responses to DOHA interrogatories; and letters of character reference provided by Applicant.¹ (See Items 1 through 9; Item A; Item B.)

After a thorough review of the record in the case, including the documentary evidence, relevant policies, and applicable adjudicative guidelines, I make the following additional findings of fact:

Applicant is 42 years old and never married. In 1998, he earned a master's degree in electrical engineering. In 2001, he earned a Master of Business Administration (MBA) degree. He has worked as a senior manager for his present

¹ Applicant was interviewed by an authorized investigator from the U.S. Office of Personnel Management (OPM) on April 18, 2012. In response to DOHA interrogatories, Applicant reviewed the investigator's report and made minor factual corrections to addresses and birthdates. On October 19, 2012, Applicant signed a statement affirming that, subject to those minor factual corrections, the investigator's report accurately reflected his interview. (Item 9.)

employer, a government contractor, since March 2008. He was first granted a security clearance in about 1998. His security clearance eligibility was renewed in 2003 and continued until 2011. He was also awarded, at times, eligibility for special access programs. In 2011, his access eligibility was revoked. (Item 4; Item 6; Item 7; Item 9.)

Applicant served in the U.S. military from April to December 1992. During his training as a recruit, Applicant was evaluated by a clinical psychologist and found to possess a personality disorder and a history of alcohol abuse that warranted treatment. He was offered alcohol treatment, which he declined. He was then ordered to participate in a treatment program, which he failed to complete. He was subsequently administratively separated from the military and received a general discharge under honorable conditions.² (Item 3.)

Applicant has a history of substance abuse. He used marijuana about 25 times between 1985 and 1989. He used marijuana about two times a year from 1989 to 1996. He used marijuana approximately 20 times a year in 1997 and 1998. He used marijuana approximately ten times between 2001 and 2002, while holding a security clearance. He also used marijuana five to ten times yearly from about October 2003 to July 2010, while holding a security clearance and while intermittently holding program access. Applicant's marijuana use is alleged at SOR ¶¶ 1.a, 1.b., 1.c., 1.d., 1.e., and 1.f. (Item 3; Item 9.)

During his work assignments as a government contractor, Applicant completed security clearance applications in January 1999, April 2008, March 2009, December 2010, and January 2012. His background was also investigated by another government agency in July 2004 and August 2010. (Item 4; Item 5; Item 6; Item 7; Item 8; Item 9.)

Applicant completed a security clearance application in January 1999. Section 27 on the application asked the following:

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, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

Applicant answered "No" to Section 27. He failed to report that he had used marijuana approximately two times yearly from 1992 to 1996. He also failed to report that he had used marijuana approximately 20 times a year in 1997 and 1998. The SOR alleges at ¶ 2.b. that Applicant's failure to reveal this information was a deliberate falsification of material facts. (Item 1; Item 8.)

² The SOR alleges at ¶ 1.c. that Applicant was diagnosed with cannabis abuse in 1992 while serving in the U.S. military. Applicant denied the allegation and provided his discharge records, which did not indicate cannabis abuse. (Item 3.)

In July 2004, Applicant was interviewed by an investigator from another government agency as a part of a background investigation. During his background interview, Applicant reported that he used marijuana two or three times while in high school. He did not report the full extent of his marijuana use as alleged in SOR ¶¶ 1.a. through 1.f. The SOR alleges at ¶ 2.c. that Applicant's failure to report the full extent of his marijuana use during his 2004 background investigation was a falsification of material facts. (Item 1; Item 9.)

Applicant completed a security clearance application in April 2008. Item 27 on the application asked the following:

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, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs?

Applicant answered "No" to Item 27. The SOR alleges at ¶ 2.d. that Applicant failed to report the information alleged at SOR ¶ 1.c., that he had been diagnosed with cannabis abuse in 1992 while serving in the U.S. military.³ (Item 1; Item 7.)

Item 28 on the security clearance application Applicant completed in April 2008 asks: "Have you EVER used a controlled substance while possessing a security clearance; while employed as a law enforcement officer, prosecutor, or courtroom official; or while in a position directly and immediately affecting the public safety?" (Item 7.)

Applicant answered "No" to Item 28. SOR ¶ 2.e. alleges that Applicant falsified material facts when he failed to disclose that he used marijuana ten times between 2001 and 2002 while holding a security clearance, and when he also failed to disclose that he used marijuana approximately five to ten times a year from October 2003 to July 2010 while holding a security clearance and intermittent program access.⁴ (Item 1; Item 7.)

Applicant completed another security clearance application in March 2009. Section 23a on the application asks:

In the last 7 years, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.),

³ As noted previously, Applicant provided credible documentation to rebut the allegation at SOR ¶ 1.c. The record does not support that Applicant was diagnosed or evaluated with drug abuse or drug dependence. The allegation at SOR ¶ 2.d. is also rebutted by Applicant's evidence submitted in response to the allegation at SOR ¶ 1.c. (Item 3.)

⁴ SOR ¶ 2.e. alleges, in part, conduct which had not occurred when Applicant completed his April 2008 security clearance application. (Item 1; Item 7.)

narcotics (opium, morphine, codeine, heroin, etc.), stimulants (amphetamines, speed, crystal methamphetamine, Ecstasy, ketamine, etc.), depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), steroids, inhalants (toluene, amyl nitrate, etc.) or prescription drugs (including painkillers)? Use of a controlled substance includes ingesting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any controlled substance.

Applicant answered “No” to Section 23a. SOR ¶ 2.f. alleges that Applicant falsified material facts on his 2009 application when he failed to disclose that he used marijuana ten times between 2001 and 2002 while holding a security clearance, and when he also failed to disclose that he used marijuana approximately five to ten times a year from October 2003 to July 2010 while holding a security clearance and intermittent program access.⁵ (Item 1; Item 6.)

Applicant answered Section 23b when he executed his March 2009 security clearance application. Section 23b reads: “Have you EVER illegally used a controlled substance while possessing a security clearance; while employed as a law enforcement officer, prosecutor, or courtroom official; or while in a position directly and immediately affecting public safety?” (Item 6.)

Applicant answered “No” to Section 23b. SOR ¶ 1.g. alleges that Applicant falsified material facts on his March 2009 security clearance application when he sought to conceal that he used marijuana ten times between 2001 and 2002 while holding a security clearance, and when he used marijuana approximately five to ten times yearly from October 2003 to July 2010 while holding a security clearance and intermittent program access.⁶ (Item 1; Item 6.)

In December 2010,⁷ Applicant completed a security clearance application. Section 23a on the application asks the following:

In the last seven (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.), hallucinogenics (LSD, PCP, etc.), steroids, inhalants (toluene, amyl nitrate, etc.) or prescription drugs (including painkillers)? Use of a

⁵ SOR ¶ 2.f. also alleges, in part, conduct which had not occurred when Applicant completed his March 2009 security clearance application. (Item 1; Item 6.)

⁶ Like SOR ¶ 2.f., SOR ¶ 2.g. alleges, in part, conduct which had not occurred when Applicant completed his March 2009 security clearance application. (Item 1; Item 6.)

⁷ The SOR states, incorrectly, that Applicant executed the security clearance application referenced in SOR ¶ 2.h. in April 2010. (Item 1.)

controlled substance includes ingesting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance.

Applicant answered “Yes” to Question 23a and provided the following information: “Smoked marijuana with friends typically during vacations/long weekends. Used approx. 50 times over 7 year period (5-10x per year) Last time used 7/4/2010.” He identified the period of use as October 2003 to July 2010. The SOR alleges at ¶ 2.h. that Applicant falsified material facts on his 2010 security clearance application when he sought to conceal his use of marijuana five to ten times yearly from about October 2003 to July 2010 while holding a security clearance and intermittent program access.⁸ (Item 1; Item 5.)

Question 23b on the application Applicant completed in December 2010⁹ asks the following: “Have you EVER used a controlled substance while possessing a security clearance; while employed as a law enforcement officer, prosecutor, or courtroom official; or while in a position directly and immediately affecting the public safety?” Applicant answered “No” to Question 23b. The SOR alleges at ¶ 2.i. that Applicant falsified material facts when he sought to conceal that he used marijuana approximately ten times between 2001 and 2002 while holding a security clearance and when he sought to conceal that he used marijuana five to ten times yearly from October 2003 to July 2010 while holding a security clearance and intermittent program access. (Item 1; Item 5.)

On two separate days in August 2010, Applicant was interviewed by an investigator at another government agency. During the first interview, on August 17, 2010, Applicant admitted using marijuana approximately 25 times from 1985 to 1989 while he was in high school. He stated that he used marijuana approximately twice a year from 1989 to 1998. He also stated that he used marijuana once in 2008, four times in 2009, and one time in 2010. When the investigator asked him why he used marijuana after being granted a security clearance in 1998, Applicant stated that he never considered how his drug use could affect his security clearance. He also admitted withholding information about his marijuana use when completing security forms because he feared that if his drug use were known, his clearance would be denied. (Item 9.)

One week later, Applicant was interviewed again. During his second interview, he revised his report of marijuana use. He stated that he used marijuana 20 times a year in 1997 and 1998. He admitted using marijuana ten times in 2005 and five times during 2006. He estimated that he used marijuana ten times in 2009 and five times in 2010. He reported that his last use of marijuana was in July 2010. He stated that he knew he was

⁸ The SOR allegation at ¶ 2.h. is contrary to the evidence produced by the Government. (Item 5.)

⁹ The SOR states, incorrectly, that Applicant executed the security clearance application referenced in SOR ¶ 2.i. in April 2010. (Item 1.)

expected to abstain from drug use while holding a security clearance. He stated he intended to refrain from illegal drug use in the future. (Item 9.)

In July 2011, another government agency revoked Applicant's program access, citing his long-term use of illegal drugs and his recent illegal drug use while in security access. In revoking Applicant's access, the other government agency noted that Applicant's drug use was inconsistent with security standards required of individuals with access to sensitive programs. (Item 9.)

In January 2012, Applicant completed a Questionnaire for National Security Positions. In response to Section 23, he admitted illegal marijuana use in the past seven years, and he admitted using illegal drugs while holding a security clearance. When asked to estimate the month and year of his first use of an illegal drug, Applicant wrote: "10/2003." (Item 4.)

In his answer to the SOR, Applicant asserted that he no longer associates with individuals who use drugs, and he had no intent to use illegal drugs in the future. In response to the FORM, Applicant provided letters of character reference from two former supervisors. Both individuals praised Applicant's integrity, work ethic, and trustworthiness. (Item 3; Item A; Item B.)

Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, and it has emphasized that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of protecting national security.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies these 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 applicant or proven by Department Counsel. . . .” The applicant has the ultimate burden of persuasion in 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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

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 because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. AG ¶ 24(a) defines drugs as “mood and behavior altering substances.” The definition of drugs includes “(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.” AG ¶ 24(b) defines drug abuse as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”

The record in this case establishes that Applicant used marijuana, at various times, for 25 years, from 1985 to 2010. However, the record does not establish that Applicant was diagnosed with cannabis abuse in about 1992 while serving in the military. Accordingly, SOR ¶ 1.c. is concluded for Applicant.

Applicant was first granted a security clearance in approximately 1998. His security clearance eligibility was renewed in 2003 and continued to 2011. During that time, he was also awarded special access. Applicant used illegal drugs while holding a security clearance.

Applicant's behavior casts doubt on his reliability, trustworthiness, and good judgment. It also raises security concerns about his ability or willingness to comply with laws, rules, and regulations. I conclude that Applicant's illegal drug use and his use of marijuana after being granted a security clearance raise security concerns under AG ¶¶ 25(a) and 25(g). AG ¶ 25(a) reads: "any drug abuse [as defined at AG ¶ 24(b)]." AG ¶ 25(g) reads: "any illegal drug use after being granted a security clearance."

Two Guideline H mitigating conditions might apply to the facts of Applicant's case. If Applicant's drug use "happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on [his] current reliability, trustworthiness, or good judgment," then AG ¶ 26(a) might be applicable in mitigation. If Applicant demonstrated an "intent not to abuse any drugs in the future by (1) disassociation from drug-using associates and contacts, (2) changing or avoiding the environment where drugs were used, (3) abstaining from drug use for an appropriate period, or (4) signing a statement of intent with the automatic revocation of his security clearance for any violation," then AG ¶ 26(b) might be applicable.

Applicant used marijuana, at various times, from 1985 to 2010, a period of 25 years. His drug use was sustained and habitual. His drug use occurred while he held a security clearance and was granted special access.

Although Applicant claimed he had not used marijuana since July 2010, his past illegal drug use continues to cast doubt on his current reliability, trustworthiness, and good judgment. Applicant provided no information to demonstrate his intent not to abuse drugs in the future. He failed to provide documentation establishing that he had abstained from drug use for an appropriate period or that he had disassociated from those with whom he had used drugs in the past. He failed to demonstrate that he had changed his conduct to avoid environments where drugs are used. He did not provide a signed statement of his intent not to abuse drugs in the future, with automatic revocation of his security clearance for any violation.

Applicant's illegal drug use occurred during his adult years and constituted an ongoing lifestyle choice. Insufficient time has elapsed to demonstrate whether he will abstain from illegal drug use in the future. I conclude that AG ¶¶ 26(a) and 26(b) do not apply in mitigation to SOR allegations at ¶¶ 1.a., 1.b., 1.d., 1.e., and 1.f.

Personal Conduct

AG ¶ 15 explains why personal conduct is a security concern:

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.

As an initial matter, I note that Applicant admitted nine of the eleven personal conduct allegations. He denied one allegation, and he neither admitted nor denied another.

The allegation at SOR ¶ 2.d. cross-references the allegation at SOR at ¶ 1.c., which Applicant rebutted with evidence from his military record. I conclude the allegation at SOR ¶ 2.d. for Applicant because the same rebuttal information he provided to rebut the SOR allegation at ¶ 1.c. also applies to this allegation.

The allegation at SOR ¶ 2.e. incorporates information from SOR ¶¶ 1.e. and 1.f. about Applicant's drug use while holding a security clearance. Applicant admitted the allegation, even though it incorporates behavior in 2009 and 2010 which had not occurred when Applicant completed his security clearance application in April 2008. Nevertheless, when he completed his 2008 security clearance application, Applicant knew he had used illegal drugs while holding a security clearance in 2001 and 2002, and from 2003 until April 2008, and he did not reveal or acknowledge that information.

The allegations at SOR ¶¶ 2.f. and 2.g. also incorporate information from SOR ¶¶ 1.e. and 1.f. about Applicant's drug use while holding a security clearance. Applicant also admitted these allegations, even though they reference behavior in 2010 which had not occurred when Applicant completed his security clearance application in March 2009. However, when he completed his 2009 security clearance application, Applicant knew he had used illegal drugs while holding a security clearance in 2001 and 2002, and from 2003 until March 2009. He did not reveal that information.

When Applicant completed his December 2010 security clearance application, he responded "Yes" when asked if he had used illegal drugs. He specified marijuana use from October 2003 to July 2010. However, SOR ¶ 2.h. alleges that Applicant answered "No" to illegal drug use on his December 2010 application. The allegation is contradicted by the Government's evidence, and I conclude SOR ¶ 2.h. for Applicant.

Applicant completed five security clearance applications. On three of those applications, he denied illegal drug use, and on four of the applications, he denied using illegal drugs while holding a security clearance. When he was interviewed in a background investigation by another government agency in 2004, Applicant concealed the extent of his drug use by stating that he had used marijuana only two or three times in high school. During a background investigation by another government agency in August 2010, Applicant again concealed the extent and duration of his drug use in the first of two interviews, and he only admitted the full extent of his drug use in a second

interview. The other government agency revoked Applicant's program access when it learned of his long history of marijuana use, his drug use while in having access to classified information, and his lack of candor in providing full, frank and truthful answers about his drug use. Applicant's personal conduct raises security concerns under AG ¶ 16(a), AG ¶ 16(b), and AG ¶ 16(e)(1).

AG ¶ 16(a) reads: "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."

AG ¶ 16(b) reads: "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative."

AG ¶ 16(e)(1) reads: "personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . ."

Applicant admitted that he failed to report his marijuana use on the security clearance applications he executed in 1999, 2008, and 2009. He admitted that he failed to report his drug use while holding a security clearance on the security clearance applications he executed in 1999, 2008, 2009, and 2010.

Applicant admitted he concealed information about his drug use in a background interview in 2004 with an investigator from another government agency. The record established that Applicant was not forthcoming about the full extent of his illegal drug use in the first of two interviews he had with an investigator from another government agency in August 2010. Applicant acknowledged that he feared he would lose his security clearance if he told the truth about his drug use.

Several Guideline E mitigating conditions might apply to the facts of this case. Applicant's disqualifying personal conduct might be mitigated under AG ¶ 17(a) if "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." If "the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security process" and "[u]pon being made aware of the requirement to cooperate or provide information, the individual cooperated fully and completely," then AG ¶ 17(b) might apply. If "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 case doubt on the individual's reliability, trustworthiness, or good judgment," then AG ¶ 17(c) might apply.

Additionally, AG ¶ 17(d) might apply in mitigation if “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 occur.” AG ¶ 17(e) might apply if “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.”

Applicant is a mature adult who has, in the course of his employment as a government contractor, completed several security clearance applications. He knew, or should have known, of the importance of telling the truth to the Government when seeking a security clearance. He also knew that his drug use was substantial and would raise security concerns, especially when it became known that he used illegal drugs while holding a security clearance. Applicant’s lack of truthfulness misled the Government and caused it to trust him with classified and privileged information.

Applicant made no good-faith efforts to correct the falsifications in his security clearance applications or in his background interviews before being confronted with the facts. He did not claim that the falsifications occurred as a result of improper or inadequate advice of authorized personnel. His falsifications were neither minor nor infrequent. Instead, they appear to constitute a pattern and cast doubt on Applicant’s reliability, trustworthiness, and good judgment.

After thoroughly reviewing the documentary evidence in this case, I conclude Applicant used marijuana about 25 times between 1985 and 1989. He used marijuana about two times a year from 1989 to 1996. He used marijuana approximately 20 times a year in 1997 and 1998. He used marijuana approximately ten times between 2001 and 2002, while holding a security clearance. He also used marijuana five to ten times yearly from about October 2003 to July 2010, while holding a security clearance and while holding special access intermittently. I also conclude that his falsifications on his security clearance applications and in his background interviews with another government agency were deliberate. Accordingly, none of the Guideline E mitigating conditions apply.

Whole-Person Concept

Under the whole-person concept, an administrative judge must evaluate an applicant’s eligibility for a security clearance by considering the totality of an 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 the facts and circumstances raised by the written record in this case. Applicant is well-educated and is considered to be a valued employee by his former supervisors. Applicant's illegal drug use over many years raises serious concerns about his trustworthiness and reliability.

When he executed his security clearance applications in 1999, 2008, and 2009, Applicant was not forthcoming about his illegal drug use. Because the Government did not know about Applicant's drug use, it trusted him with a security clearance. Applicant then continued his drug use while entrusted with a security clearance. Applicant's lack of candor raises serious security concerns about his reliability, trustworthiness, and judgment.

Applicant failed to meet his burden of persuasion in mitigating the Government's security concerns under the drug involvement and personal conduct adjudicative guidelines. Overall, the record evidence in this case leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance.

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:

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|----------------------------|-------------------|
| Paragraph 1, Guideline H: | AGAINST APPLICANT |
| Subparagraphs 1.a. - 1.b.: | Against Applicant |
| Subparagraph 1.c.: | For Applicant |
| Subparagraphs 1.d. - 1.f.: | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 2.a. - 2.c.: | Against Applicant |
| Subparagraph 2.d.: | For Applicant |
| Subparagraphs 2.e. - 2.g.: | Against Applicant |
| Subparagraph 2.h.: | For Applicant |
| Subparagraphs 2.i. - 2.k.: | 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.

Joan Caton Anthony
Administrative Judge