



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-00546
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

09/17/2013

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant neither falsified material facts on his 2006 or 2012 security clearance applications, nor did he fail to disclose material facts during the corresponding investigative interviews. Nevertheless, his 2013 alcohol-related conviction generates personal conduct security concerns that he failed to mitigate. Clearance is denied.

**Statement of the Case**

On June 5, 2013, the Department of Defense Consolidated Adjudications Facility (DODCAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. 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).

Applicant answered the SOR on June 11, 2013, admitting subparagraphs 1.a, 1.e, and 1.h, and admitting, in part, and denying, in part, the remaining allegations.<sup>1</sup> He requested a hearing, whereupon the case was assigned to me on July 11, 2013.

On July 24, 2013, a notice of hearing was issued scheduling the case for August 6, 2013. At the hearing, I received six Government exhibits marked as Government Exhibits (GE) 1 through 6, in addition to two Applicant exhibits, marked as Applicant's Exhibit (AE) A and B. Also, I received Applicant's testimony. The transcript was received on August 14, 2013.

### **Procedural Ruling**

At the close of the hearing, Department Counsel moved to amend SOR subparagraph 1.a to read, as follows:

You used marijuana from about March 1994 to about 1998, and once in December 2007.

Applicant did not object to the motion, and admitted to the amended allegation.

### **Findings of Fact**

Applicant is a 33-year-old married man with three children, ages ten, nine, and five. He has a high school education. Applicant is an audiovisual technician. He has worked in this field since 2004, and has been working on his current job since February 2013. His work duties include servicing audiovisual equipment at classified locations. (Tr. 16-17)

Applicant is highly respected on the job. According to his former employer, Applicant was a talented employee who started as a warehouse specialist before being quickly promoted to the position of integration engineer "because of his dedication and dependability." (AE B) According to the vice president of the company where Applicant currently works, Applicant is a reliable man "who always takes responsibility for his actions." (AE A)

Applicant abused marijuana throughout high school, from 1994 to 1998. (Answer to SOR subparagraph 1.a, as amended by Department Counsel) In 1996, Applicant was arrested and charged with possession of alcohol, possession of marijuana, and assault. (GE 2 at 1; GE 4 at 9) As a result of this arrest, he was sentenced to one month in a juvenile detention facility and placed on probation for two years. (GE 2 at 1) Also, the juvenile court ordered him to enter into a rehabilitation center, as a result of the arrest. (GE 4 at 9) How long he attended the rehabilitation center is unclear from the record.

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<sup>1</sup>SOR subparagraphs 1.b through 1.d, 1f and 1.g each allege that Applicant omitted relevant information from security clearance applications or from security clearance investigators. Applicant admitted to all of the omissions, but stated they were not intentional.

In 1997, Applicant was arrested and charged with possession of marijuana with intent to distribute. (GE 2 at 1) He was convicted and ordered to spend one year in a juvenile detention center. (GE 2 at 1)

Applicant stopped using marijuana after high school, and stayed drug-free for approximately nine years. In December 2007, Applicant used marijuana at a party. (Tr. 27) By then, he had a security clearance. (Tr. 30) Applicant has not smoked marijuana since then.

In December 2012, Applicant attended a company Christmas party and consumed five to seven beers. After the party, while driving home, he accidentally rear-ended a vehicle in front of him at an intersection. (GE 4 at 8) When the police arrived, they administered a breathalyzer to Applicant. He failed it, and was arrested and charged with driving under the influence of alcohol (DUI). (GE 4 at 8) Subsequently, Applicant was found guilty. He appealed, and in March 2013, Applicant pleaded guilty to the lesser charge of reckless driving. He was sentenced to 30 days in jail (suspended), fined approximately \$800, and ordered to attend an alcohol awareness class. Also, the court placed him on supervised probation for a year, restricted him to driving to work only, and ordered the installation of an interlock breathalyzer system in his car. GE 4 at 8) Currently, Applicant remains on probation with an interlock ignition device on his car. (Tr. 58; GE 5 at 2) He recently completed the alcohol awareness class. (Tr. 56-58)

The SOR alleges that in 2006, Applicant falsified a security clearance application by answering “no” in response to Section 24, regarding whether he had used any illegal drugs in the last seven years. (SOR subparagraph 1.b) Further, the SOR alleges that Applicant falsified material facts during a January 2007 follow-up interview with an investigative agent when he stated that his last use of marijuana was in 1998. (SOR subparagraph 1.d) Applicant had not used marijuana within seven years of when he completed the 2006 security clearance application, and his marijuana use did not recur until after the completion the 2007 subject interview. (Answer to SOR subparagraph 1.a)

When Applicant completed his security clearance application in 2006, he disclosed his 1996 arrest, in response to Section 23,<sup>2</sup> for possession of alcohol, but he did not disclose either of his marijuana charges. Applicant contends that the omission was unintentional. He voluntarily disclosed these arrests during his 2007 investigative interview. (GE 2 at 1) The investigative agent characterized him as “forthright and corporative [sic].” (GE 2 at 2)

Applicant completed a security clearance application in March 2012. In response to Section 22,<sup>3</sup> he did not list his 1997 arrest for possession of marijuana with intent to distribute. Moreover, the Government contends that he did not disclose this arrest to the

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<sup>2</sup>Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?

<sup>3</sup>Have you ever been involved in an offense involving alcohol or drugs?

investigator during the follow-up interview in May 2012. Elsewhere on the 2012 security clearance application, Applicant disclosed that he was ordered to attend drug treatment on two occasions between 1996 and 1998. (GE 3 at 32-33) Also, he listed the name, address, and phone number of the drug treatment center where he received the court-ordered treatment. (GE 3 at 32-33) As for the 2012 interview, Applicant contends that he discussed the 1997 arrest with the agent, but the agent did not address the issue in depth because it had been covered during the earlier investigation. (Tr. 46)

## **Policies**

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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.”

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 to obtain a security clearance.

## **Analysis**

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

The security concern under this guideline is 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. (AG ¶ 15)

Applicant’s answers to questions on his 2006 and 2012 security clearance applications, together with responses during corresponding subject interviews raise the question of whether the following disqualifying condition under AG ¶ 16 apply:

(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; and,

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

When Applicant completed his 2006 security clearance application, he had not used marijuana in more than seven years. Consequently, his answer to Section 24 was truthful. Similarly, Applicant's corresponding subject interview occurred in January 2007, approximately 11 months before Applicant's marijuana use recurred. Therefore, Applicant did not engage in falsification either on his 2006 security clearance application or during the 2007 interview. Neither of the disqualifying conditions apply. I resolve SOR subparagraphs 1.b and 1.d in Applicant's favor.

Although Applicant did not disclose his marijuana-related arrests that occurred between 1996 and 1997 on his 2006 security clearance application, he voluntarily disclosed them to an investigative agent during his subsequent subject interview. This fact, together with the investigative agent's positive credibility determination compel me to accept Applicant's contention that the omissions were unintentional. Neither of the disqualifying conditions apply, and I resolve SOR subparagraph 1.c in Applicant's favor.

Applicant did not disclose his 1997 arrest for possession of marijuana when he completed the March 2012 security clearance application. Because he listed two episodes of court-ordered drug treatment that occurred between 1996 and 1998, and listed all of his other charges, I conclude that his contention that his security clearance application omission was unintentional is credible. I resolve SOR subparagraph 1.f in Applicant's favor.

As for SOR subparagraph 1.g, which alleges Applicant omitted his 1997 arrest during his 2012 subject interview, Applicant thoroughly discussed this arrest during a 2007 subject interview as part of an earlier investigation. Under these circumstances, I conclude that its omission from the 2012 interview was immaterial. I resolve SOR subparagraph 1.g for Applicant.

Applicant's history of drug use and his 2012 DUI trigger the application of AG ¶ 16(c), as follows:

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.

Applicant's habitual marijuana use occurred in high school, and the one recurrence in the 15 years since finishing high school occurred nearly six years ago. Although the nature and seriousness of the recurrence was certainly significant because of Applicant's possession of a security clearance at the time, it is sufficiently outweighed by its isolation and remoteness in time. I resolve SOR subparagraphs 1.a and 1.e in Applicant's favor.

Conversely, Applicant's DUI occurred less than a year ago, and he is still on probation with an interlock ignition device installed on his car. Under these circumstances, it is too soon to conclude Applicant has mitigated the security concern. None of the mitigating conditions apply to SOR subparagraph 1.h.

### **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.

Applicant deserves credit for overcoming a troubled adolescence to become a valued employee and a stable family man. Moreover, his testimony was credible and contrite. These positive attributes, however, are outweighed by the recency and seriousness of the 2012 DUI. Consequently, I conclude that Applicant has failed to mitigate the security concerns.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	AGAINST APPLICANT
Subparagraphs 1.a-1.g:	For Applicant
Subparagraph 1.h:	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.

MARC E. CURRY  
Administrative Judge