



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-01021
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

April 14, 2014

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the Drug Involvement and Personal Conduct security concerns. Applicant used marijuana in 2010 while holding a security clearance. He then intentionally omitted his drug use on his April 2013 Electronic Questionnaires for Investigative Processing (e-QIP). Eligibility for access to classified information is denied.

**Statement of the Case**

On April 9, 2013, Applicant submitted an e-QIP for a periodic review. On October 22, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement and Guideline E, Personal Conduct. The 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) effective after September 1, 2006.

Applicant responded to the SOR (Answer) on November 12, 2013. Applicant requested a hearing before an administrative judge in a letter dated January 24, 2014. The case was assigned to me on March 3, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 4, 2014, and the hearing was convened as scheduled on March 26, 2014. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 and 2, which were admitted without objection. Applicant offered Exhibit (AE) A, which was admitted without objection. Applicant testified on his own behalf and called two witnesses. DOHA received the hearing transcript (Tr.) on April 3, 2014.

### **Findings of Fact**

Applicant is a 56-year-old employee of a government contractor. He has worked for the government contractor for 30 years. He has held a security clearance for almost 20 years. He possesses a bachelor's degree. He has been married to his second wife for ten years, and has four adult children with his first wife. (GE 1; Tr. 25-26, 32.)

The SOR alleged that Applicant used marijuana in 2010 while possessing a DOD Secret security clearance. The SOR also alleged that Applicant deliberately omitted his marijuana use in 2010, and that he used marijuana in 2010 while holding a security clearance, on his April 2013 e-QIP. In his Answer and during his testimony, Applicant admitted all of the allegations contained in the SOR pertaining to his marijuana use and his intentional falsification of two responses on his e-QIP. (Answer.)

Applicant first used marijuana in 1974 while in high school. He used marijuana "about every day" from 1974 to 1979. He testified, "there was kind of a drug culture in [his city], and I was on the periphery and sometimes in the middle of it. And there was marijuana everywhere." However, he stopped using marijuana when he became active in a church. He disassociated himself from his drug-using friends at that time. (GE 2; AE A; Tr. 31-32, 37-38.)

In 1984, Applicant began employment with a government contractor. His employer has a policy that does not permit use of illegal substances. Applicant was aware of this policy. He was also aware of Federal and state laws criminalizing marijuana use. (GE 1; Tr. 36.)

For a week during the summer of 2010, Applicant hosted a friend from out of town. Applicant had not seen his friend for 25 years. Applicant had used marijuana with his friend during their youth. They were sympathizing over parenting difficulties when his friend offered Applicant a marijuana cigarette. Applicant smoked the marijuana cigarette. Applicant only used marijuana once during his friend's visit. Applicant has not seen his friend since his 2010 visit. The friend is now deceased. Applicant realized after his friend departed that he had erred in smoking marijuana, but Applicant did not report his marijuana use to his facility security officer (FSO) or human resources officer. He recognized that his marijuana use was "irresponsible." He does not intend to use illegal substances again. (AE A; Tr. 29-31, 35, 39-43, 47.)

On April 9, 2013, Applicant completed an e-QIP. Section 23, entitled “**Illegal Use of Drugs or Drug Activity**” asked Applicant: “**In the last seven (7) years**, have you illegally used any controlled substance? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance.” Applicant answered, “No.” Section 23 also inquired, “**While Possessing a Security Clearance** Have you **EVER** illegally used or otherwise been involved with a drug or controlled substance while possessing a security clearance other than previously listed?” Applicant answered, “No.” Applicant intentionally falsified his e-QIP because he was afraid it would affect his employment and security clearance if he told the truth about his marijuana use. (GE 1; GE 2; Tr. 44.)

Applicant testified that after he submitted his e-QIP, he felt guilty for having falsified Section 23. He claimed he spoke to a mentor at his company who was a senior member of management. He disclosed his marijuana use and subsequent falsification to his mentor and was advised he should tell the truth. (AE A; Tr. 27-29, 48, 67-69.)

Applicant was interviewed by an authorized agent for the Office of Personnel Management (OPM) in May 2013. During the interview Applicant disclosed his marijuana use, as stated above. He testified that he, “needed to make what [he]’d done right,” so he disclosed it to the investigator. (GE 2; Tr. 49.)

Applicant is well respected by those who know him, as verified by Applicant’s friend and subordinate, who testified on his behalf. Applicant is known at work as a “very good, moral, upstanding person.” Additionally, Applicant’s wife testified on his behalf. She expressed her frustration with Applicant’s choice to use marijuana and indicated she would not tolerate future use. (Tr. 58-61, 63.)

Applicant is credited for his civic involvement coaching sports, chaperoning events, and supporting his local schools. He has acted as a “church leader” and has assisted in counseling drug users through his church. (AE A; Tr. 33-35.)

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 AG ¶ 2 describing 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 clearance 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.

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.

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

- (a) any drug abuse;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

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

The Government presented sufficient information to support all of the factual allegations under Guideline H (SOR ¶ 1.a). Applicant used marijuana in 2010 while holding a security clearance. The facts established through the Government's evidence and through Applicant's admissions raise security concerns under all of 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 used marijuana on a daily basis from 1974 to 1979. He abstained from using it for 31 years, from 1979 to 2010. In 2010 he used marijuana with an old friend he had not seen for 25 years. Applicant's decision to use marijuana in 2010, while possessing a security clearance, was in clear violation of his employer's prohibition, security regulations, Federal law, and state law. His decision to use marijuana in 2010 casts doubt on his current reliability, trustworthiness, and good judgment. Given that he used it again after 31 years of abstinence, I cannot hold that future use is unlikely to recur. In this instance, an appropriate period of abstinence has not been demonstrated. The evidence does not support the application of AG ¶ 26(a).

AG ¶ 26(b) has limited application. Applicant stated that he does not intend to use marijuana in the future. His wife is supportive of his decision to refrain from marijuana use. The friend he used marijuana with in 2010 is now deceased. These are factors that weigh in Applicant's favor. However, as noted above, Applicant has not yet demonstrated an appropriate period of abstinence. Further, the evidence does not contain an explicit "signed statement of intent with automatic revocation of clearance for any violation." Applicant has not provided sufficient evidence to meet his burden of proof to overcome the concerns raised by his drug involvement.

## Guideline E, Personal Conduct

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

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 conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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

(e) 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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant was dishonest about his marijuana use. He deliberately omitted his 2010 marijuana use on his April 2013 e-QIP. He knew his actions were illegal, a violation of security policies, and in violation of his employer's policies. Additionally, his marijuana use created a vulnerability to exploitation, manipulation, or duress, and is an activity that could affect his personal, professional, or community standing. Using marijuana and later falsifying his e-QIP demonstrate that he lacked good judgment to comply with rules and regulations that are counter to his desires. The above disqualifying conditions 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;

(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; and

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

Applicant corrected the falsifications concerning his 2010 marijuana use while possessing a security clearance on his e-QIP when he disclosed it to the OPM agent in May 2013. His disclosure to the agent was before he was confronted with facts to the contrary, but his disclosure was not prompt or timely. Applicant waited until the routine interview with the OPM agent to disclose his falsification to the Government. That disclosure took place approximately three years after the marijuana use and about a month after the falsifications. While he may have discussed the falsifications with a member of management who urged him to be truthful, this disclosure was not independently corroborated. Further it was not an attempt "to correct the omission, concealment, or falsification," but appears to have been done in confidence without the incident having been further reported to human resources or the FSO. Applicant clearly knew he made a mistake when he was not honest on his e-QIP. Yet, he procrastinated reporting his deliberate omission of material information. The evidence does not support the full application of AG ¶ 17(a).

Applicant's eventual disclosure of his marijuana use does not mitigate the concerns relating to his poor judgment and resulting vulnerability to coercion. He made poor decisions to violate laws, security procedures, and company policies when he used marijuana. He failed to produce sufficient evidence that similar lapses in judgment are unlikely to recur, without the passage of more time or other evidence that demonstrates trustworthiness and good judgment. He has not obtained counseling or taken other steps to indicate future use is unlikely to occur. The evidence does not show AG ¶¶ 17(c) and 17(d) are applicable.

Applicant has earned an excellent reputation at work. However, not enough time has passed to know whether Applicant could again be tempted and persuaded to violate laws or other rules for his own personal benefit, as he did when he knowingly used marijuana after being granted a security clearance. AG ¶ 17(e) is not supported by the record.

### **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 pertinent facts and circumstances surrounding this case. Applicant is highly respected by those who know him. He has not used marijuana since 2010. He has divulged information about his drug use, although not always in an expedient manner. He testified that he will not use illegal substances in the future. His wife testified she would not tolerate future drug use. However, Applicant was a 53-year-old mature adult with a high level of responsibility in his company. Yet he knowingly violated laws, security procedures, and company policies. His marijuana use occurred after 31 years of abstinence. Not enough time has passed since Applicant's drug use in 2010 to permit a finding that future drug use is unlikely to occur.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Personal Conduct security concerns.

### **Formal Findings**

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

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

---

Jennifer I. Goldstein  
Administrative Judge