



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



In the matter of: )  
)  
) ISCR Case No. 14-00379  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

October 16, 2014

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on August 23, 2013. On May 5, 2014, as further amended on June 25, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E for Applicant. 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 within the Department of Defense after September 1, 2006.

Applicant answered the SOR, and its amendment, in writing on May 22, 2014, and on July 1, 2014, respectively, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request on June 27, 2014, and I received the case assignment that same date. DOHA issued a notice of hearing on July 18, 2014, and I convened the hearing as scheduled on August 15, 2014. The Government offered Exhibits (GXs) 1 and 2, which were received without

objection. Applicant testified on his own behalf, as did his wife. DOHA received the transcript of the hearing (TR) on August 25, 2014. I granted Applicant's request to keep the record open until September 15, 2014, to submit additional matters. On August 29, 2014, he submitted Exhibit (AppX) A, which was received without objection. The record closed on September 15, 2014. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answers to the SOR, Applicant admitted the factual allegations in all of the Subparagraphs of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is 59 years of age, and served in the United States Navy for six years from 1973~1979. (TR at page 27 line 10 to page 30 line 7, and AppX A at pages 1~5.)

#### **Guideline H - Drug Involvement**

1.a.~1.c. Applicant smoked marijuana periodically while in high school, and continued his usage while in the Navy. (TR at page 27 line 10 to page 28 line 11.) He used marijuana periodically, with "numerous breaks over the years," until his last usage in June of 2012, when he also purchased the drug. (TR at page 28 line 12 to page 29 line 15.) Applicant estimated he smoked marijuana "a lot." (TR at 29 lines 12~15.) Previously, in June of 1993, he was also arrested for and found guilty of Possession of Marijuana. (TR at page 29 line 16 to page 30 line 11, and GX 2 at page 3.) Although he avers no future use of marijuana, he can not 100% rule it out. (TR at page 34 lines 20~25.)

#### **Guideline E - Personal Conduct**

2.a. Applicant answered "No," to "Section 23 - Illegal Use of Drugs or Drug Activity . . . In the last seven (7) years," on his August 23, 2013, e-QIP, thereby denying his 2012 usage and purchase of marihuana. (TR at page 36 line 9 to page 40 line 24, and GX 1 at page 40.) This was a wilful falsification.

### **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 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 commonsense decision. According to AG Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 as 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.

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**

The security concern relating to the guideline for Drug Involvement is set out in Paragraph 24:

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.

The guideline also notes several conditions that could raise security concerns. Under Subparagraph 25(a), “*any drug abuse*” may be disqualifying. In addition, “*illegal . . . purchase*” under Subparagraph 25(c) may be disqualifying. Here, Applicant used marijuana, periodically, for a period of about 40 years. His last usage and purchase of the illegal substance was in 2012.

I can find no countervailing mitigating condition that is applicable here. Subparagraphs 26(a) and 26(b)(4) require that Applicant’s “*behavior happened so long ago, was so infrequent . . . that it is unlikely to recur . . .*,” and that he has shown “*a demonstrated intent not to abuse any drugs in the future . . .*” The Applicant’s 40 years of periodic usage ended only two years ago, and he testified that he was not 100% sure he would not use marijuana in the future.

### **Guideline E - Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 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.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(a), “*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form . . .*” Here, Applicant falsified his answer to Sections 23 on his August 2013 e-QIP. He used and purchased marijuana the year prior to executing this document. I can find no countervailing Mitigating Condition that is applicable here.

### **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. Under AG Subparagraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Subparagraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The Applicant has the unqualified support of his spouse who abhors the use of illegal drugs (TR at page 45 line 18 to page 49 line 9), and has done well in his current employment. (AppX A.) However, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. He was clearly less than candid with the Government as to his past drug abuse. For this reason, I conclude Applicant has not mitigated the security concerns arising from his Drug Involvement and Personal Conduct.

### **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:	Against APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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.

Richard A. Cefola  
Administrative Judge