



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



In the matter of: )  
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)  
[NAME REDACTED] ) ISCR Case No. 14-02218  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: Braden Murphy, Esq., Department Counsel  
For Applicant: *Pro se*

01/09/2015

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant used marijuana sporadically between 1997 and 2009, at times while he held a security clearance for his duties in the military. He also deliberately withheld the fact of his drug use from security clearance applications in 1999 and 2001. However, his personal and professional circumstances have significantly improved, he has abstained from illegal drug use for over four years, and he fully disclosed his drug involvement in his application for his first industrial security clearance. His past misconduct no longer reflects adversely on his judgment, truthfulness, and reliability. Applicant's request for a clearance is granted.

**Statement of the Case**

On July 7, 2013, Applicant submitted an Electronic Questionnaire for Investigations Processing (EQIP) to obtain a security clearance required for his employment with a defense contractor. After reviewing the results of Applicant's background investigation, adjudicators for the Department of Defense (DOD) could not determine that it is clearly consistent with the national interest to continue Applicant's

access to classified information.<sup>1</sup> On July 11, 2014, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the adjudicative guidelines (AG)<sup>2</sup> for drug involvement (Guideline H) and personal conduct (Guideline E).

Applicant timely answered the SOR (Answer) and requested a decision without a hearing. His Answer included 13 exhibits (Enclosures 1 - 13) that have been admitted without objection.<sup>3</sup> However, on October 14, 2014, Department Counsel timely requested a hearing.<sup>4</sup> The case was assigned to me on November 18, 2014, and I convened a hearing on December 16, 2014. The parties appeared as scheduled. Department Counsel presented Government's Exhibits (Gx.) 1 and 2,<sup>5</sup> which were admitted without objection. Applicant testified but presented no additional documents. DOHA received a transcript (Tr.) of the hearing on January 2, 2015.

### **Findings of Fact**

The Government alleged under Guideline H that Applicant used marijuana "with varying frequency" between September 1996 and September 2009 (SOR 1.a); that the drug use alleged in SOR 1.a occurred while Applicant held a DOD security clearance (SOR 1.b); and that his drug use between June 3, 1999 and December 2, 2011, occurred while Applicant was serving as a member of the U.S. Army National Guard (SOR 1.c). In response, Applicant admitted SOR 1.a and 1.b, but averred that the alleged dates were incorrect. As to SOR 1.c, Applicant denied using drugs while actually on active duty in the National Guard, but admitted that he was a member of the National Guard during the period he used marijuana.

The Government alleged under Guideline E, that Applicant intentionally made a false official statement when he omitted his use of drugs from a March 21, 2001, security clearance application (SF 86) by answering "no" to the following question:

Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, cocaine, crack cocaine, THC (marijuana, hashish, etc.), narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs (including painkillers)? (SOR 2.a).

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<sup>1</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>2</sup> The adjudicative guidelines were implemented on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> Tr. 10 - 12.

<sup>4</sup> A copy of Department Counsel's hearing request, including associated communications with Applicant, is included in the record as Hearing Exhibit (Hx.) I.

<sup>5</sup> An index listing each exhibit is included in the record as Hx. 2.

In response, Applicant denied SOR 2.a based on the listed dates of the drug use (September 1996 to September 2009) he allegedly omitted from the SF 86. He also disclosed that he omitted his drug use from a 1999 SF 86 he submitted when he enlisted in the National Guard. At hearing, Applicant admitted that he also falsified his March 21, 2001 SF 86 (Gx. 2). Further, Department Counsel moved to amend SOR 2.a to show that the last date of Applicant's drug use that was omitted was actually June 1999. As this amendment conformed to the information already introduced, I granted the motion. (Tr. 57 - 59)

Applicant's admissions are incorporated in my findings of fact. Having reviewed the response to the SOR, the transcript, and exhibits, I make the following additional findings of fact.

Applicant is 38 years old. He and his wife have been married since October 2012. Since July 2013, he has worked for a large defense contractor as a network data communications administrator. Applicant earned an associate's degree from a community college in December 2002. He also is about two semesters away from earning a bachelor's degree for which he attended classes between December 2005 and December 2008. Aside from his defense contractor job, Applicant also owns and maintains a rental property. (Answer; Gx. 1)

Applicant first used marijuana in 1997. He used the drug once or twice annually until June 1999, when he enlisted in the Army National Guard. Applicant did not use marijuana again until 2003. Applicant used marijuana once or twice a year until May 2009, but is adamant that he never used drugs while in an active duty status. His use was limited to rare civilian social settings in which marijuana was being used. Although some of his hometown friends still use marijuana, it has been more than two years since he was around anyone using marijuana. In May 2009, his brother and only sibling committed suicide. Applicant cites that event as a turning point in how he lived his life. He had to become more responsible and mature so that he and his parents could cope with his brother's death. Applicant intends to permanently abstain from illegal drugs and submitted a notarized statement to that effect. (Answer Enclosure 1; Gx. 1; Tr. 29 - 30, 35 - 46, 55, 57 - 59)

When Applicant enlisted in the National Guard, he submitted a security clearance application executed on June 3, 1999. On advice of his recruiter, Applicant omitted from the form the fact that he had used marijuana over the previous two years. In March 2001, Applicant was required to submit another SF 86 for his military duties. Again, he omitted the fact that he had used marijuana up to June 1999. Applicant testified that he relied on the advice his recruiter had given him when he enlisted and decided to again conceal his drug use. At his hearing, Applicant acknowledged that he deliberately falsified his 2001 SF 86. (Answer Enclosure 4; Gx. 2; Tr. 31 - 35, 49 - 50)

Applicant held an interim security clearance through the National Guard from 1999 until 2003, when he received a final secret clearance based on his 2001 SF 86. None of the civilian jobs he held from 1999 until 2013 required a security clearance, so his National Guard clearance lapsed when he was honorably discharged in 2009. When

Applicant was hired for his current job in 2013, he submitted an EQIP and disclosed his use of marijuana. (Answer Enclosures 4 and 5; Gx. 1 and 2)

Applicant's military career was characterized by excellent performance. Among his many decorations were an Army Commendation Medal and four Army Achievement Medals. He deployed to Iraq as part of Operation Iraqi Freedom between April 2003 and April 2005. Applicant was honorably discharged as a staff sergeant (paygrade E-6) after 12 years of service, but testified he would have remained in the National Guard had it not been for the effect his brother's death had on his parents. Applicant did not want to have to return to combat as an only child. (Answer Enclosures 3, 4, 6 - 9, 12 and 13; Tr. 27 - 29, 41, 51 - 52)

Applicant enjoys an excellent reputation in his community and in the workplace. He is known for his honesty and reliability. Applicant is also regarded as a generous co-worker and neighbor who volunteers at a local food bank and supports a shelter for domestic abuse victims. While deployed to a combat zone, he exhibited similar traits and continued to serve his community by writing a periodic column about his experiences in Iraq for his hometown newspaper. Applicant was always conscientious about protecting sensitive information when performing his military duties. (Answer Enclosure 9)

### **Policies**

A security clearance decision is intended to resolve whether it is clearly consistent<sup>6</sup> with the national interest for an applicant to either receive or continue to have access to classified information. Each decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>7</sup> and consideration of the pertinent criteria and adjudication policies in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific applicable guidelines should be followed whenever a case

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<sup>6</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>7</sup> Directive. 6.3.

can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>8</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access in favor of the Government.<sup>9</sup>

## Analysis

### Drug Involvement

Applicant began using marijuana at age 21. His use between 1997 and 2009 was infrequent, at best. However, he also used marijuana while a member of the National Guard and while he held a security clearance in the military. This information raises a security concern articulated at AG ¶ 24 as follows:

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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(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; and

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

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<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; AG ¶ 2(b).

More specifically, information about Applicant's drug use requires application of the following AG ¶ 25 disqualifying conditions:

- (a) any drug abuse (see above definition); and
- (g) any illegal drug use after being granted a security clearance.

I also have considered the following AG ¶ 26 mitigating conditions, which may be pertinent to these facts and circumstances:

- (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) dissociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; and (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant used marijuana sporadically over a 12-year span. But he last used the drug more than five years ago. Although his drug involvement occurred while holding a security clearance and during his affiliation with the National Guard, Applicant's circumstances have significantly changed in ways that make it unlikely he will repeat such conduct. The end of his drug involvement coincided with the death of his brother, a seminal event in Applicant's life. He left a successful National Guard career because he wanted to care for his parents and lead a more stable and predictable lifestyle. His recent marriage, his work in the community, and his excellent reputation at work are the manifestations of a maturation that precludes any risky or improper conduct. Applicant's period of abstinence, his lack of contact with persons who use drugs, and his written commitment to abstain from further drug use support a conclusion that he has mitigated the security concerns raised under this guideline.

## **Personal Conduct**

In 2001, Applicant omitted his drug use as alleged in SOR 2.a. This information is sufficient to raise a security concern about his personal conduct, which is addressed at AG ¶ 15, 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.

Specifically, the record requires application of the following AG ¶ 16 disqualifying condition:

(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.

The central question in these determinations is whether Applicant intended to mislead the Government by omitting his drug use. Applicant admitted that he lied when he submitted his 2001 SF 86. In response to the SOR, he disclosed that he also lied about his drug use when he applied for a security clearance during his National Guard enlistment in 1999. Although not alleged in the SOR, I have considered this information as probative of his intent and willingness to deceive or mislead. Applicant stated that he was advised in 1999 by his Army recruiter to omit his drug use. When Applicant again had to apply for a clearance through the National Guard, he harkened back to the recruiter's guidance and decided to again omit the fact that he had used marijuana. He provided no other reason for his failure to list his drug use in 2001. All available information supports application of AG ¶ 16(a).

By contrast, all available information supports application of the mitigating condition at 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*). Applicant's deliberate falsifications were not minor. He received a security clearance based on incomplete information about his suitability. However, Applicant's falsifications occurred more than 13 years ago. The positive changes in his personal and professional circumstances since 2009 are such that he is not likely to repeat poor decisions he made when he was younger. Indeed, he disclosed his drug use when he applied for his first industrial clearance, and he has been candid and forthright in response to the Government's information. Available information shows that his past conduct is not indicative of his current judgment, reliability, and trustworthiness. The security concerns under this guideline are mitigated.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines H and E. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is now 38 years old and married. His military performance, at times in a combat environment, was superb, as shown by his numerous awards and his evaluation reports. In civilian life, he has always worked and has established a solid reputation at work and in his community for reliability, trustworthiness, and integrity. He is respected by his supervisors and coworkers for his leadership and his expertise. This record shows the previous defects in Applicant's conduct and honesty that were demonstrated by his drug use and falsifications no longer exist. The adverse information in Applicant's background is no longer indicative of his current suitability for access to classified information. In

summary, a fair and commonsense assessment of this record shows that the security concerns raised by the Government's information have been mitigated.

### **Formal Findings**

Formal findings 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.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all of the foregoing, it is clearly consistent with the national interest to continue Applicant's access to classified information. Request for a security clearance is granted.

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MATTHEW E. MALONE  
Administrative Judge