



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



In the matter of: )  
)  
) ISCR Case No. 14-02418  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: *Pro se*

02/02/2016

**Decision**

WHITE, David M., Administrative Judge:

Applicant falsely denied illegal drug use during the year preceding his 2011 submission of an Electronic Questionnaire for Investigations Processing. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on May 29, 2013.<sup>1</sup> On March 4, 2015, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns

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<sup>1</sup>Item 2. He also submitted Item 3, a Questionnaire for Non-Sensitive Positions (SF-85), on Oct. 4, 2011.

under Guideline E (Personal Conduct).<sup>2</sup> 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 that came into effect in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on May 15, 2015, and requested that his case be decided by an administrative judge from the Defense Office of Hearings and Appeals (DOHA) on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on July 21, 2015. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on August 24, 2015. He submitted no additional material within the succeeding 30 days, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. DOHA assigned the case to me on December 10, 2015.

### **Findings of Fact**

Applicant is 27 years old. He has worked in engineering and scientific positions on an Air Force base since May 2010, under various arrangements through his university and a defense contractor. He earned a bachelor's degree in May 2011, and a master's degree in May 2013, both in electrical engineering. He has never married and has no children.<sup>5</sup>

In his response to the SOR, Applicant admitted the truth of the sole allegation against him, with some explanation. Applicant's admissions, including his March 11, 2015 answers to DOHA Interrogatories in Item 4, are incorporated into the following findings of fact.

Applicant admitted, on his SF-86 and during his June 20, 2013 interview with an investigator for the Office of Personnel Management (OPM),<sup>6</sup> that he used marijuana from May 2006, while in high school, until February 2009, when the police raided a party

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<sup>2</sup>Item 1.

<sup>3</sup>Item 1. The FORM erroneously cites the dates of the SOR and Applicant's response as 2014 vice 2015.

<sup>4</sup>Department Counsel submitted four Items in support of the SOR allegations.

<sup>5</sup>Item 2; AE A.

<sup>6</sup>Applicant verified the accuracy of the OPM investigator's summary of this interview, and adopted it as his statement under oath in his response to DOHA Interrogatories dated March 11, 2015. Item 4.

at the home he shared with several roommates with whom he was smoking it. The police confiscated their remaining marijuana and paraphernalia, and Applicant was fined, required to perform community service, and required to complete a substance abuse class. During his OPM interview, he admitted that he also used marijuana at a party during August 2011, and said that he failed to previously disclose that “by mistake.”<sup>7</sup>

Applicant also admitted, in his 2013 SF-86 and OPM interview, to wrongfully using painkillers and Adderall that had been prescribed for friends while he was in college. He took a friend’s Adderall twice to help him on tests during college. He took painkiller medications that were prescribed for a friend on several occasions during 2008. He initially said that he took those painkillers to relieve symptoms from removal of a wisdom tooth, but subsequently admitted that he had a prescription for the painkiller after that procedure, and later used his friend’s prescription drugs “for recreation and to get high.”<sup>8</sup>

After first declaring, several times during his June 2013 OPM interview, that he had no other use of illegal drugs to disclose, Applicant admitted to additional drug abuse that he had not disclosed on either his 2011 (SF-85) or 2013 (SF-86) Questionnaires. He used (psilocybin) mushrooms during October or November, 2011 but intentionally did not disclose it on his 2013 SF-86 because he knew that it might disqualify him from clearance eligibility. He also admitted that he “dropped acid” (LSD) during July 2007 and intentionally did not list this drug abuse for the same reason. Both of these incidents involved experimental use of drugs provided by a friend.<sup>9</sup>

Applicant signed and certified the truth of his Electronic Questionnaire for Non-Sensitive Positions (SF-85) on October 4, 2011, in connection with his work as a university graduate assistant under contract with an Air Force research laboratory. In response to the question, in Section 14 of that application, that asked whether he had illegally used illegal drugs during the last year, he answered, “No,” and failed to disclose his marijuana use in August 2011, as described above.<sup>10</sup>

In his response to the SOR Applicant said, “I was afraid to report every detail of my experience throughout college, which I don’t mean to use this as an excuse. At the time, I did not think that my actions would ever reflect into my professional career, as it was only an occasional thing. I also did not mean to answer that question untruthfully.”<sup>11</sup>

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<sup>7</sup>Item 2; Item 4.

<sup>8</sup>Item 2; Item 4.

<sup>9</sup>Item 4.

<sup>10</sup>Item 1; Item 3.

<sup>11</sup>Item 1.

The record lacks mitigating evidence addressing the quality of Applicant's professional performance or his track record with respect to handling sensitive information and observation of security procedures. No character witnesses provided statements describing his judgment, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 (DCs) and mitigating conditions (MCs), 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, these guidelines are applied 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(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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 ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

## **Analysis**

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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 raise security concerns and may be disqualifying. One applies to the allegation in this case:<sup>12</sup>

(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.

Applicant admitted that he smoked marijuana at a party during August 2011. He affirmatively certified, on his October 4, 2011 SF-85, that he had not used any illegal drugs within the past year. His claim, that he “did not mean to answer that question untruthfully,” is not credible. He failed to disclose his August 2011 drug abuse on his May 2013 SF-86 as well, claiming during his June 2013 OPM interview that this omission was also a mistake. However, he admitted during that interview that he intentionally failed to disclose several other incidents of drug abuse because he thought they would disqualify him from obtaining a security clearance.<sup>13</sup> His deliberate concealment of recent drug abuse on his October 2011 SF-85 demonstrated questionable judgment, untrustworthiness, lack of candor, and unwillingness to comply with rules and regulations.

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<sup>12</sup>AG ¶¶ 16 (b) and (e) also cover several aspects of Applicant's conduct, but they were neither alleged nor argued by the Government as disqualifying conditions.

<sup>13</sup>Applicant's omission of his August 2011 marijuana use on his 2013 SF-86 and his subsequent admission of additional drug abuse during his 2013 OPM interview were not alleged in the SOR, and therefore do not support security concerns independent of the SOR-alleged omission from his 2011 SF-85. These facts are discussed here solely because they are material and relevant to this determination that his omission of the recent drug abuse on his 2011 SF-85 was deliberate concealment of what he knew to be a relevant fact.

AG ¶ 17 provides conditions that could mitigate personal conduct security concerns. Four MCs have potential applicability under the facts in this case:

- (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 did not make a prompt, good-faith correction of his false denial of his then-recent drug abuse in 2011, but instead excluded it from his 2013 SF-86 as well. His significant history of additional, and intentionally undisclosed, drug abuse was apparently not sufficient to raise Government security concerns under Guidelines E or H. However, that pattern of denial and omission precludes a determination that Applicant's falsification concerning his August 2011 marijuana abuse was an innocent mistake. His willingness to conceal potentially damaging information makes him vulnerable to exploitation or duress. Thus, Applicant failed to meet his burden to establish significant mitigation under any of these conditions.

### **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 an accountable adult, who is responsible for the conduct that underlies the security concerns expressed in the SOR. His deliberate attempt to conceal his drug abuse from the DoD demonstrated untrustworthiness, unreliability, and bad judgment.

Applicant offered insufficient evidence of counseling, rehabilitation, better judgment, or responsible conduct in other areas of his life to offset resulting security concerns. The potential for being subjected to pressure, coercion, or duress remains largely undiminished, and he has not demonstrated a basis from which to reasonably conclude that he should be trusted to honestly disclose facts that could adversely affect national security in the future.

Overall, the record evidence leaves me with substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his personal conduct.

### **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 E:	AGAINST APPLICANT
Subparagraph 1.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.

DAVID M. WHITE  
Administrative Judge