



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-02417
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Benjamin Dorsey Esq., Department Counsel  
For Applicant: *Pro se*

03/07/2016

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant failed to mitigate the drug involvement and personal conduct security concerns related to his use of illegal drugs. Clearance is denied.

**Statement of the Case**

On March 27, 2015, the Defense Office of Hearings and Appeals (DOHA) 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 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 as of December 1, 2006.

Applicant answered the SOR on April 21, 2015, admitting all of the allegations and requesting a decision on the record instead of a hearing. On August 25, 2015,

Department Counsel prepared a File of Relevant Materials (FORM) setting forth the Government's case. Applicant received the FORM on September 3, 2015, and was instructed that he had 30 days to file a reply. Applicant did not reply within the time allotted, and the case was assigned to me on November 6, 2015.

### **Findings of Fact**

Applicant is a 51-year-old married man with two adult children. He has a high school diploma. After finishing high school, he joined the U.S. Marine Corps where he served from 1983 through his honorable discharge in 1986. (Item 5 at 11) Since 1987, he has worked for a defense contractor as a mechanical and structural engineer. (Item 5 at 9) He has held a security clearance since 2003. (Item 5 at 31)

In 1986, while on active duty, Applicant was awarded non-judicial punishment after testing positive for marijuana. Applicant admits to smoking marijuana before the drug test. However, he contends that he did not smoke it intentionally, as his roommate replaced the tobacco in his cigarettes with marijuana, and did not tell him until after he smoked it. (Item 2 at 4)

In 2002, Applicant was arrested and charged with driving under the influence (DUI) and possession of marijuana. Consequently, his driver's license was suspended for a year and he was ordered to attend alcohol education classes. (Item 6 at 1) Applicant contends that the marijuana was not his. Instead, it belonged to a younger family member who had driven the car earlier that day. When Applicant was stopped by the police, he had been in the process of speedily driving home, in anger, to confront his relative about the marijuana.

In 2005, Applicant was stopped for speeding. During the stop, the police officer noticed the odor of marijuana emanating from one of Applicant's pockets. A subsequent search revealed a small amount of marijuana, prompting Applicant's arrest and marijuana possession charge. Consequently, the court fined him and suspended his driver's license for six months. (Item 6 at 2)

Applicant denies that it was his marijuana that was in his pocket. He contends that he had confiscated it from a younger family member, and that he was transporting it to his hunting club to dispose of it in an old outhouse when the police stopped him. (Item 2 at 3)

Applicant has struggled with chronic back and neck pain for years. Despite multiple cortisone injections and comprehensive physical therapy, the pain persisted. Consequently, in 2012, Applicant decided to smoke marijuana to alleviate the pain and to help him sleep. He used it three or four times in one week. (Item 3 at 2) The marijuana neither alleviated the pain, nor helped him sleep, therefore, he stopped.

Applicant has no intentions of using marijuana again. His younger family members are now grown adults, living on their own. Moreover, he does not want to further damage his marriage, career, and self esteem. (Item 3 at 2)

Applicant did not report either the 2005 marijuana charge, nor the 2012 marijuana use to his facility security officer (FSO). He was afraid that if he did so, he would lose his job. Applicant completed a security clearance application in April 2013. He reported both episodes. (Item 5 at 26, 28)

## **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 H, Drug Involvement**

Under this guideline, “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.” (AG ¶ 24) Applicant has a history of marijuana use, beginning in 1986. His most recent use occurred while he had a security clearance. AG ¶¶ 25(a), “any drug abuse,” and 25(g), “any illegal drug use after being granted a security clearance.”

Applicant’s most recent use was approximately four years ago. Although his use or involvement with marijuana spanned nearly 30 years, it was fairly infrequent. Conversely, his explanations for the marijuana episodes of 1986, 2002, and 2005 are not credible. This lack of credibility undermines the probative value of his explanation that chronic pain prompted his 2012 use. Under these circumstances, the infrequency of his use or involvement, and the amount of time that has elapsed since his last use, fails

to trigger the application of the mitigating condition set forth in AG ¶ 26(a)<sup>1</sup>. For the same reasons, AG ¶ 26(b)(3), “an appropriate period of abstinence,” does not apply.

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

Under this guideline, “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.” Moreover, “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 use of marijuana in 2012 while holding a security clearance, as cross-alleged in SOR subparagraph 1.a and 2.a, triggers the application of AG ¶ 16(e), “personal conduct . . . that creates a vulnerability to exploitation, manipulation, or duress . . . .” Approximately four years have elapsed since Applicant’s last use. Moreover, surrounding circumstances in 2012 - Applicant’s chronic pain - may have clouded his judgment when he decided to use marijuana. These factors do not, on balance, mitigate the security concerns. Applicant’s explanations for each episode of marijuana involvement before 2012 were not credible. Moreover, they demonstrate a repeated propensity to shift the blame to others. Under these circumstances, it is too soon to conclude that the negative ramifications of the Applicant’s use while possessing a security clearance have been mitigated.

Applicant’s failure to disclose his drug-related charge of 2005 and his 2012 drug use to his security officer triggers the application of AG ¶ 16(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 following mitigating conditions under AG ¶ 17 are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts; and
  
- (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.

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<sup>1</sup>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.

Applicant disclosed both episodes before being confronted. The period between the time that Applicant used drugs in 2012 and the time that he completed the security clearance in 2013 is sufficiently short enough for AG ¶ 17(a) to apply to Applicant's omission of the 2012 use, as cross-alleged in subparagraphs 1.a and 2.b. I resolve subparagraph 2.b in Applicant's favor.

Conversely, this mitigating condition does not apply to the 2005 drug-related episode because eight years elapsed between the episode and the completion of the security clearance application. Nevertheless, the positive security inference generated by reporting the 2005 episode is sufficient to outweigh the negative inference of his failure to report it immediately, regardless of the time that it took for Applicant to report it. AG ¶ 17(c) applies to SOR subparagraph 2.c. I resolve this subparagraph in Applicant's favor.

### **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.

I considered the factors under the whole-person concept when I evaluated the application of both guidelines, and I conclude that they do not warrant a favorable conclusion.

### **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
Subparagraphs 1.a - 1.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

Subparagraphs 2.b - 2.c:

For 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