



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-05613
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: Pro Se

April 28, 2008

**Decision**

---

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on June 26, 2006. (Gov X 4) On June 29, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines H (Drug Involvement), Guideline J (Criminal Conduct), and Guideline E (Personal Conduct). (Gov X 1) 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 revised Adjudicative Guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on July 25, 2007. He admitted all the allegations. He elected to have the matter decided on the written record in lieu of a hearing. (Gov X 3)

Department Counsel submitted the Government's written case on August 8, 2007. Applicant received a complete file of relevant material (FORM), and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the disqualifying conditions. He provided additional information on April 2, 2008. Department Counsel noted no objection to consideration of the additional material on April 4, 2008. The case was assigned to me on April 17, 2008. Based upon a review of the case file and the pleadings, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant admitted the factual allegations under Guidelines H, J, and E. I thoroughly and carefully reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is a 28 year-old technician for a defense contractor. Applicant has worked for that company for over five years. He is not married. He served in the Marine Corps from September 1997 until August 2002. He received an Other than Honorable Discharge. (Gov X 4)

Applicant admitted in an affidavit to security investigators that he used two tablets of Ecstasy 13 to 15 times from December 2001 to August 2002 while on active duty in the Marine Corps. He admitted he used marijuana by smoking it about 50 times from December 2001 until August 2002 while in the Marine Corps. He also admitted that during this same time frame, he experimented with LSD one time, twice used cocaine, used Ketamine once or twice, and GHB once. He did not purchase the drugs but received them from friends. He also admitted to using marijuana about 15 times from October 2002 until December 2006. (Gov X 5, at 4-5)

Applicant noted that he started using illegal drugs after receiving punishment for driving while under the influence of alcohol. He thought the punishment was unfair and he was tired of being told what to do by his command and he thought the chores given him were a silly form of punishment. He was at a low point in his life from all of his troubles, and wanted to escape from reality. (Gov X 5, at 4)

Applicant initially represented to security investigators that he could continue to use marijuana. He explained that he meant that he did not plan to continue to use marijuana but would be around friends who did use the drug. Since November or December 2006, he no longer associates with friends who smoke marijuana. Applicant stated he has not sold or cultivated or trafficked in drugs. He has no financial concerns raised by drug use. He does not feel that his use of drugs would adversely affect his life. (Gov X 5, at 5)

Applicant admits that while in the Marine Corps he received non-judicial punishment in December 2001 for driving under the influence of alcohol. He was found guilty and sentenced to 45 days restriction, 45 days of extra duty, reduced one pay grade, and forfeited \$900. He also admitted he used illegal drugs in violation of the

Uniform Code of Military Justice from December 2001 until August 2002. He was court-martialed for violating Article 112(a) of the Uniform Code of Military Justice for using controlled substances while on active duty with the Marine Corps. He received restriction, and a reduction in rank. In August 2002, he was administratively discharged from the Marine Corps with an Other than Honorable Discharge. (Gov Xs 4 and 5)

Applicant notes that since his discharge from the Marine Corps, he has worked for his employer delivering services to the Marine Corps. He has over ten years experience with Marine Corps Air Traffic Control systems, and has been entrusted with sensitive material and documentation. He works hard and is an honest and reliable employee. He looks back on the incidents in the Marine Corps as things he wishes he never did.

Three of his fellow workers or supervisors provided letters attesting to his honesty and reliability. The lead electronic technician stated Applicant performs a variety of duties in electronics and electromechanical areas. He can be relied on to accomplish assigned tasks in a competent manner without supervision. A fellow technician notes that he has worked with Applicant for over five years. Applicant is entrusted with confidential information and documentation and he handles his responsibilities effectively. He considers Applicant as an outstanding gentleman and a pleasure to work with. His immediate supervisor notes Applicant is a very competent technician who has traveled to Department of Defense sites to provide technical assistance to military units. He has proven he can accomplish all assigned tasks with a high degree of proficiency and he highly recommends him. (Response to FORM, dated April 3, 2008)

### **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised Administrative Guidelines. 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 common sense 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. 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, 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.

## **Analysis**

### **Guideline H, Drug Involvement**

The 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. Drugs are mood and behavior altering substances, and include those listed on the Controlled Substances Act of 1970. All of the drugs Applicant used are listed in the Act. Drug abuse is the illegal use of a drug or the use of a legal drug in a manner that deviates from approved medical direction. (AG ¶ 24)

Applicant’s admitted to using six different controlled substances from December 2001 until August 2002 while he served on active duty in the Marine Corps. He also admitted to continued use of marijuana from October 2002 until December 2006. His drug use raises Drug Involvement Disqualifying Conditions AG ¶ 25(a) (any drug use), and AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution).

I have considered the Drug Involvement Mitigating Conditions and find none apply. Applicant admitted using a variety of drugs and his last admitted use of an illegal drug was about 18 months ago which makes his use recent and frequent, therefore AG ¶ 26(a) (the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment) does not apply. Applicant notes that since November or December 2006, he has not used illegal drugs

and no longer associates with those that use drugs. He is a reliable worker for his employer and his supervisors and fellow workers have trust in his judgment. This clearly shows his demonstrated intent to stop using marijuana. However, this stated intent is only recent as opposed to his many years of drug use. AG ¶ 26(b) (a demonstrated intent not to abuse 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) applies in part since he has demonstrated an intent not to use drugs but the intent is only recent. He has not presented sufficient information to overcome the security concern for his use of illegal drugs. Guideline H is decided against Applicant

### **Guideline J, Criminal Conduct**

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature it calls into question a person's ability or willingness to comply with laws, rules, and regulations. (AG ¶ 30) Applicant received non-judicial punishment while on active duty with the Marine Corps. He also admitted to using illegal drugs while on active duty, as well as a number of years until December 2006. His use of illegal drugs violated both military and civilian criminal law. His conduct raises Criminal Conduct Disqualifying Conditions (CC DC) ¶ 31(a) (a single serious crime or multiple lesser offenses), and CD DC ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted).

Applicant raised Criminal Conduct Mitigating Conditions (CC MC) ¶ 32 (a) (so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment); and CC MC ¶ 32(d) (there is evidence of successful rehabilitation, including but not limited to the passage of time without recurrence of criminal activity, remorse, or restitution, job training or higher education, good employment record, or constructive community involvement). Initially, Applicant's criminal conduct occurred while he was on active duty with the Marine Corps. However, he continued to use illegal drugs so he continued to violate criminal law. His last admitted use was about 18 months ago. He willingly used drugs, so his use was not under unusual circumstances. His recent willing use of illegal drugs casts doubt on his reliability, trustworthiness, and good judgment. There is some evidence of successful rehabilitation in that Applicant has worked for his employer for about five years and has been a successful employee. He voiced his desire not to use illegal drugs again. However, since his criminal conduct was recent and willing, Applicant has not presented sufficient information to mitigate security concerns for his criminal conduct.

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

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations

can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. (AG ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information.

Applicant was court-martialed while on active duty with the Marine Corps for use of illegal drugs. He was administratively separated from the Marine Corps with an Other than Honorable Discharge, the lowest administrative discharge that can be given. His security clearance was revoked when it was alleged he used illegal drugs. This information raises Personal Conduct Disqualifying Condition ¶ 16(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. . .)

Applicant raised by his responses to the SOR and the FORM Personal Conduct Mitigating Conditions (PC MC) ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.) Applicant has stopped using illegal drugs. His employer and his fellow workers know of his past troubles and poor conduct in the Marine Corps and his use of drugs. They know that his security clearance has been revoked in the past for drug use. Since Appellant has acknowledged his past poor conduct and activities, he has taken steps to reduce and eliminate the negative impact of the activities. I find for Applicant as to Personal Conduct.

### **“Whole Person” Analysis**

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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) 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered Applicant's over five years of good service with his employer and his contribution to the mission of his employer. I considered his candor in providing adverse information concerning his own misconduct. I considered his criminal conduct during his active duty tour with the Marine Corps and that he has not had any criminal conduct since December 2006. I also considered his actions in driving while intoxicated and using illegal drugs. I considered that his tour with the Marine Corps was terminated under Other than Honorable Conditions. Applicant has not established that he is

trustworthy, reliable, and exercises good judgment. Overall, the record evidence leaves me with questions about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his drug involvement, criminal 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
Subparagraphs 1.a to 1.g:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraphs 2.a to 2.b:	Against Applicant
Paragraph 3 Guideline E:	FOR APPLICANT
Subparagraphs 3.a to 3.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.

---

THOMAS M. CREAN  
Administrative Judge