



ISCR Case No. 07-07037

January 31, 2008

## Decision

Applicant answered the SOR in writing on October 11, 2007, and elected to have his case decided on the written record. Department Counsel submitted the government's file of relevant material (FORM) on October 24, 2007. The FORM was mailed to Applicant on October 29, 2007, and it was received on November 20, 2007.

Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not object to the FORM, but submitted additional information in a timely manner. Department Counsel did not object to the additional information. The case was assigned to me on January 15, 2008.

### **Findings of Fact**

Applicant admitted all of the allegations in the SOR and they are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is a 33-year-old Ordinary Seaman who had worked for a federal contractor since 2003. He is not married and has no children.

Applicant used marijuana from 1991 until at least 2003 with varying frequency. He used cocaine from at least March 1993 until at least August 2006 with varying frequency. He used Ecstasy from 1999 until 2004 with varying frequency. He also used LSD and mushrooms twice in approximately 1993.

Applicant purchased cocaine from approximately 1995 until at least 2005. He also purchased Ecstasy from approximately 1999 until at least 2004 with varying frequency.

In about August 1999, Applicant was arrested and charged with Hit and Run and Driving Under the Influence of Alcohol (DUI). He pled no contest to the Hit and Run and was convicted of the DUI. He was sentenced to community service, fined approximately \$1,800, required to attend a six month alcohol program, and his driver's license was suspended.

On about December 11, 2004, Applicant was arrested and charged with DUI. He pled *nolo contendere* and was sentenced to 365 days in jail, 5 years probation, and fined approximately \$1,800. The punishment was deferred upon completion of an 18 month alcohol program in about May 2007.

In response to interrogatory questions, Applicant indicated he continues to drink alcohol and intends to continue in the future. He also indicated that he attended two court imposed DUI programs, one in 1999 and another in 2004.<sup>1</sup> In response to questions about his use of illegal substances, he stated "after my last DUI in December 2004 I matured and decided to move on and grow up. I rarely go out or drink so I basically stopped 2005 January on (sic) but slipped up August 2006."<sup>2</sup> In response to a question as to why he decided to stop using illegal substances, he stated: "In my 20's I like to go out, now I am getting married and want to prosper in life in every aspect.

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<sup>1</sup> GE 5.

<sup>2</sup> *Id.*

Health has become a priority also.”<sup>3</sup> He indicated he rarely goes out or drinks and further stated “so I basically stopped 2005 January.”<sup>4</sup> Applicant indicated he does not intend to use illegal drugs in the future because he is getting married and wants “to prosper in my life in every aspect.”<sup>5</sup>

Applicant checked a box in answering an interrogatory question concerning if he still associated with the same people with whom he used drugs. He checked “no.” He did not provide any other amplifying information about what substantive changes he has made in his life. On his SCA, Question 12 asked him to list three people who know him well. One person he listed knew him from 1989 to the present. This same person he listed in his interrogatories as a person with whom he used drugs.<sup>6</sup>

Applicant intentionally falsified his security clearance application (SCA) when his response was “No” to Question 24, which asked if he had illegally used any controlled substance in the last 7 years or since the age of 16. He also denied purchasing illegal drugs, which was false. He falsified material facts during an interview with an authorized investigator of the Office of Personnel Management on about January 24, 2007. He initially indicated his last use of marijuana was 1999, which was false. He had in fact continued to use marijuana until 2003. He also failed to provide information about his past illegal drug use until confronted with previous admissions he had made during his alcohol treatment program. He did not provide his illegal drug use information on his SCA because he thought it would look bad and he was immature. Applicant deliberately and intentionally provided false answers on his SCA and later during his interview.<sup>7</sup>

Applicant believes he is a good reliable person who has made some poor decisions, but has always been a good family member, friend and co-worker. He takes his job seriously and his life is improving. He plans to get married, buy a house, and start a family. He is ashamed of his past. He indicated he rarely drinks, but has not totally abstained.<sup>8</sup>

## **Policies**

When evaluating an Applicant’s suitability for a security clearance, the Administrative Judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list

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<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> GE 4 and 5.

<sup>7</sup> GE 5.

<sup>8</sup> *Id.*; Supplemental information.

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.

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

AG ¶ 24 expresses the security concern pertaining to drug involvement: "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 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; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

I have considered all of the drug involvement disqualifying conditions under AG ¶ 25 and especially considered (a) (*any drug abuse*) and (c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia*). Applicant used a variety of illegal drugs from at least 1991 to August 2006. He purchased cocaine and Ecstasy with varying frequency from 1995 to 2005. I find both of the above disqualifying conditions apply.

I have considered all of the drug involvement mitigating conditions under AG ¶ 26 and especially considered (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 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*). Applicant abused illegal drugs from 1991 to 2006. He purchased illegal drugs from 1995 to 2005. His drug use spanned a period of more than 15 years. He indicated he does not intend to use drugs again, but did not provide any information as to what steps he has taken to accomplish his intention. He admits he has lapsed in the past. The last time he used illegal drugs was in August 2006 when he used cocaine. His drug use is recent and frequent and casts doubt on his reliability, trustworthiness and good judgment. I find (a) does not apply. Considering how long he used illegal drugs, his most recent use of cocaine in 2006, the fact he listed a friend with whom he used drugs on his SCA as a present friend who knows him well, and that he failed to provide substantive information about any drug treatment, counseling, or significant consistent life changes, I find (b) does not apply. Applicant did not provide any information that he has attended a prescribed drug treatment program. Therefore, mitigating condition (d) does not apply.

## **Guideline G, Alcohol Consumption**

AG ¶ 21 expresses the security concern pertaining to alcohol consumption, “Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.”

I have considered all of the alcohol consumption disqualifying conditions under AG ¶ 22 and especially considered (a) (*alcohol-related incidents away from work, such as driving under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.*). Applicant has two arrests for DUI. He was to complete an 18 month alcohol program. No information was provided as to the status of the program and the charges that were pending against him. No information was provided regarding a diagnosis or prognosis. Applicant continues to consume alcohol. I find (a) applies to the facts.

I have considered all of the alcohol consumption mitigating conditions under AG ¶ 23. I especially considered (a) (*so much time has passed, or the behavior was so infrequent, or it 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*), and (b) (*the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser)*). Applicant was arrested and convicted for his first DUI in 1999. He continued to drink alcohol and was arrested again in 2004 for DUI. His jail time was deferred pending completion of an 18 month alcohol program. No information was provided to establish the completion of the program, or if there was a diagnosis or prognosis. Although Applicant stated he has curtailed his alcohol use, he continues to use it. Without additional information I find neither of the above mitigating conditions applies.

## **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.

I have considered all of the personal conduct disqualifying under AG ¶ 16 and especially considered (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*) and (b) *(deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative)* under this guideline. Applicant intentionally and deliberately falsified information about his illegal drug activity on his SCA. He also intentionally and deliberately was untruthful in divulging his drug activity when interviewed by the OPM investigator, until he was confronted with admissions he had made during an alcohol program. I find both disqualifying conditions apply.

I have considered the allegations in SOR ¶ 3.c and d and conclude the facts pertaining to the drug involvement and alcohol consumption security concerns are the same for the personal conduct security concerns. No other factual allegations were made regarding personal conduct as it pertains to these two subparagraphs. I find based on the facts and the adjudicative guidelines there are no separate personal conduct disqualifying conditions applicable. Therefore, I will not address separately the personal conduct allegations under the above paragraphs.

I have considered all of the personal conduct mitigating conditions under AG ¶ 16. Applicant admitted he did not divulge the truth because he did not want to look bad. When he was provided an opportunity to divulge the information during his interview he did not until he was confronted with the facts. After careful considerations of all of the facts I conclude none of the personal conduct mitigating conditions applies.

### **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) 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 the facts and circumstances surrounding this case. Applicant has a long history of drug abuse and a short history of abstinence. He also has a long history of alcohol abuse and a short history of responsible alcohol consumption. He believes he has matured and wants to lead a good life. However, he intentionally and deliberately lied on his SCA and to the OPM investigator.

Overall the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising from drug involvement, alcohol consumption, 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
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Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant

Paragraph 2, Guideline G:	AGAINST APPLICANT
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Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	Against Applicant

Paragraph 3, Guideline E:	AGAINST APPLICANT
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Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Dismissed
Subparagraph 3.d:	Dismissed

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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CAROL G. RICCIARDELLO  
Administrative Judge