



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



In the matter of:

SSN: -----

Applicant for Security Clearance

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ISCR Case No. 07-07219

Appearances

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: *Pro se*

February 11, 2008

Decision

CEFOLA, Richard A., Administrative Judge:

Applicant certified his Electronic Questionnaires for Investigations Processing (e-QIP), on July 11, 2006. On September 18, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines J, H and E for Applicant. 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 October 8, 2007, and requested an Administrative Determination by an Administrative Judge. Department Counsel issued a File of Relevant Material (FORM) on October 25, 2007. The Applicant did not respond to the FORM. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Findings of Fact

In his Answer to the SOR, dated June 25, 2007, Applicant admitted all of the factual allegations in Paragraphs 1, 2 and 3 of the SOR, with no explanations.

Guideline J - Criminal Conduct

1.a. and 1.b. In August of 1999, the Applicant was charged with, and subsequently found guilty of, Possession of Marijuana and Drug Paraphenilia (Government Exhibit (GX) 5 at page 9 and GX 6 at page 9). As a result of this conviction, the Applicant was fined \$500 (*Id*). In August of 2005, a bench warrant was for Applicant's arrest for failure to pay his fine (GX 5 at page 9). This warrant appears to be still outstanding (*Id*).

1.c. In November of 1999, the Applicant was charged with, and subsequently pled guilty to, Tampering with Evidence (GX 5 at pages 9~10, and GX 6 at pages 9~10). The Applicant paid a fine and court costs totaling about \$300 (*Id*).

Guideline H - Drug Involvement

2.a.~2.c. The Applicant "first used marijuana as a freshman in high school around 09/93" (GX 5 at page 10). During his high school years he smoked the drug "twice weekly" (*Id*). "After graduation from high school in 06/1996, and up to 01/2001, . . . he was using marijuana on a weekly basis" (GX 5 at page 10~11). Until "12/2002 [when the Applicant last used marijuana] . . . [he] was smoking marijuana once per month" (GX 5 at page 11). During the period of his marijuana abused, Applicant purchased the illegal substance about 100 times, spending "\$20.00 per occasion" (*Id*).

Guideline E - Personal Conduct

3.a. In answering "Section 24: Your Use of Illegal Drugs and Drug Activity" on his July 11, 2006 e-QIP, the Applicant disclosed only a one time use of marijuana in August of 1999 (GX 4 at pages 29~30). The Applicant gives no explanation for this obvious falsehood.

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 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 Paragraph 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 Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph E3.1.15, the Applicant is responsible “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 J - Criminal Conduct

The security concern relating to the guideline for Criminal Conduct is set out in AG Paragraph 30:

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.

The guideline notes several conditions that could raise security concerns. Under AG Subparagraph 31(a), “*a single serious crime or multiple lesser offenses*” is potentially disqualifying. Similarly under AG Subparagraph 31(c), “*allegations or admissions of criminal conduct, regardless of whether the person was formally prosecuted or convicted*” may raise security concerns. I can find no countervailing mitigating conditions that are applicable in Applicant’s case. Although his last conviction was in November of 1999; from all appearances, he still has an outstanding warrant for

his arrest, as he has yet to pay a \$500 fine as a result of his prior August 1999 conviction for drug possession.

Guideline H - Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG Paragraph 24:

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.

The guideline also notes several conditions that could raise security concerns. Under AG Subparagraph 25(a), "*any drug abuse*" may be disqualifying. As is the "*purchase*" of illegal drugs under Subparagraph 25(c). Here the Applicant used marijuana fairly extensively for nearly ten years from September of 1993 to December of 2002. This is countered, however, by the mitigating condition found in Subparagraph 26(a). The Applicant's Drug Involvement "*happened so long ago [more than five years ago] . . . that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.*"

Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG Paragraph 15:

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.

The guideline notes several conditions that could raise security concerns. Under AG Subparagraph 16(a), "*deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . .*" Here, the Applicant falsified his e-QIP as it concerns his past Drug Involvement. In answer to the SOR, he gives no explanation for this clear falsification. I can find no countervailing mitigating conditions that are applicable.

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 Subparagraph 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.

Here, the Applicant was clearly less than candid with the Government regarding his past drug abuse. Furthermore, he has an outstanding warrant for his arrest. Overall, the record evidence leaves me with questions or doubts as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, Although I find for the Applicant as to his past Drug Involvement, I conclude Applicant has not mitigated the security concerns arising from his Criminal Conduct 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 J:	AGAINST THE APPLICANT
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Subparagraph 1.a:	Against the Applicant
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Subparagraph 1.b:	Against the Applicant
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Subparagraph 1.c:	Against the Applicant
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Paragraph 2, Guideline H:	FOR APPLICANT
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Subparagraph 1.a:	For Applicant
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Subparagraph 1.b:	For Applicant
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Subparagraph 1.c:	For Applicant
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Paragraph 3, Guideline E:	AGAINST THE APPLICANT
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Subparagraph 1.a:	Against the Applicant
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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.

RICHARD A. CEFOLA
Administrative Judge