



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



In the matter of:)	
)	
)	ISCR Case No. 07-09077
)	
)	
Applicant for Security Clearance)	

Appearances

For Government: Melvin A. Howry, Esq., Department Counsel
For Applicant: *Pro se*

May 31, 2011

Decision

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant has not mitigated the Drug Involvement or Personal Conduct security concerns. Eligibility for access to classified information is denied.

Statement of the Case

On January 12, 2011, 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 E, Personal Conduct. The action was taken under Executive Order (EO) 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 September 1, 2006.

Applicant answered the SOR on February 3, 2011. Department Counsel requested a hearing before an administrative judge in an undated submission. The case was assigned to me on March 1, 2011. DOHA issued a notice of hearing on March 15, 2011, and the hearing was convened as scheduled on April 4, 2011. The Government

offered Exhibits (GE) 1 through 13, which were admitted without objection. It also introduced three documents for Administrative Notice, marked I through III. The Applicant offered Exhibits (AE) A through F, which were also admitted without objection, and testified on his own behalf. DOHA received the transcript of the hearing (Tr.) on April 12, 2011.

Findings of Fact

Applicant admitted SOR allegations 1.c., 1.d., 1.e., 1.f., 1.g., 1.h., 1.j., 1.k. 2.a., 2.b., 2.c., 2.d., 2.f., 2.h., and 2.i.¹ He denies allegations 1.a., 1.b., 1.i., 2.e., and 2.g. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is a 55-year-old employee of a defense contractor. He has worked for his employer for five years. He is divorced and has a 17-year-old daughter. He is taking classes toward earning an associate's degree. He served briefly in the Air Force from August 1973 through September 1974, when he was discharged from the Air Force because he was experiencing "flashback phenomena during his technical training" due to his extensive usage of LSD prior to entering the military, as well as his "multiple prior service illegal drug use," and his "use of illegal drugs" after entering the Air Force. (GE 2; GE 4 through GE 8; AE C; Tr. 42, 51-52, 57-59, 77-80.)

Applicant has a long history with illegal substances. He first used illegal drugs in high school. His accounts regarding the types of illegal drugs used, duration of use, and frequency of drug use change throughout the evidence. However, it is clear that his drug history includes use of marijuana, methamphetamines, cocaine, heroin, PCP, mushrooms, mescaline, LSD, and hashish. (GE 6; GE 8; GE 9; Tr. 44-51.)

Applicant's marijuana use began in approximately 1973 and continued until at least summer of 2009, with varying frequencies. He began using marijuana in high school. His use continued after joining the Air Force in 1973, despite applying for a security clearance through the Air Force. He used marijuana periodically until approximately 2003, when his use increased to daily. At that time, Applicant was prescribed the drug "morphine sulfate" and was unable to sleep. He used marijuana to help him sleep. From 2004 to 2006, he was prescribed "lithium sulfate" and again used marijuana to help him sleep. Although he testified that his last marijuana use was in 2004, he later confessed his marijuana use continued through 2006, when he stopped taking the lithium sulfate. Upon further examination, he admitted his last use of marijuana was "probably last summer," referring to the summer of 2009. (GE 6; GE 8 through GE 11; GE 13; Tr. 44-46, 62-63, 97-100.)

Applicant admitted he used LSD and mescaline approximately six times in 1973 at parties "to be sociable." While in the Air Force, Applicant used hashish approximately 6-to-12 times. (GE 3.) In a February 2008 Affidavit, he also admitted:

¹ The SOR was incorrectly lettered and alleged this allegation as a second 2.g. Applicant's answer addresses this allegation as 2.i.

From the ages of fifteen through thirty, I used various drugs. . . I snorted crystal methamphetamine in the form of a powder on a monthly basis, which made me feel high for a duration of twelve hours. I snorted cocaine in the powder form two to three times a year, which made me feel high for a duration of twelve hours. I injected heroin two to three times a year, which made me feel high for a duration of four to eight hours. I smoked Phencyclidine (PCP) in the form of a powder two to three times a year, which made me feel high for a duration of two to three hours. I orally ingested mushrooms two to three times a year, which made me feel high for a duration of two to three hours. (GE 6; Tr. 50-51.)

In 1994, Applicant voluntarily attended a treatment program for his alcohol and drug use, to include marijuana dependency. The first two weeks of the program were inpatient and the remaining ten weeks were an outpatient program. Applicant contends that he had no aftercare requirements and sought no further treatment until 2003. (GE 6, Tr. 52- 55, 85-86.)

In 2003, Applicant sought treatment for his addiction to prescribed pain killers he had been taking to help deal with degenerative disk disease. During his treatment, he was diagnosed as bi-polar and prescribed lithium sulfate. The medical records also note Applicant had been abusing marijuana. He attended approximately six weeks of outpatient treatment. After treatment, he attended support groups including Narcotics Anonymous and Marijuana Anonymous. He last attended a support group in 2003. (GE 10; Tr. 37-40; 63-67, 85-93.)

Subsequently, he switched medical insurances and was required to find a new doctor to treat him in 2004. His general practitioner referred him to a psychiatrist. The psychiatrist continued to prescribe him lithium sulfate for his bi-polar diagnosis and additionally diagnosed him with cannabis dependence, after he disclosed extensive marijuana use for over 35 years to her. At hearing, he testified that he only saw the psychiatrist two-to-three times. However, the psychiatrist's records reflect that Applicant met with her five times from March 2004 through October 2004. He returned to his general practitioner for treatment after terminating his relationship with the psychiatrist. He decided to take himself off the lithium in approximately 2006 since he does not believe he is bi-polar. He presented a letter from his treating clinical psychologist that he has met with twice since the initial consultation, who opined Applicant "could be considered a reliable historian who is not exhibiting any issues consistent with judgment or honesty problems." She also noted "it would appear that since [Applicant] has ceased using cannabis and/or any other substances and has learned how to maintain any symptoms consistent with depression or mood lability [*sic*], he is doing quite well at this time." Applicant has signed and notarized a statement indicating that he "will not use Cannabis in violation of Federal Law" and he "understand[s] and agree[s] that any future use of a controlled substance will result in automatic revocation of my security clearance." (GE 10; GE 11; GE 12; GE 13; AE F; Tr. 37-40; 63-67, 85-93.)

Applicant's security clearance applications indicate that he held a secret security clearance issued by another government agency in 1988. He testified that he held the

clearance for three years. In truth, he applied for a clearance on a July 1989 security clearance application. That application included, "Question 15: Medical/Financial a. Have you ever used any narcotic, depressant, stimulant, hallucinogen (to include LSD or PCP) or Cannabis (to include marijuana or hashish) except as prescribed by a licensed physician?" To which Applicant answered "No," seeking to conceal his prior drug use. Applicant admitted he did not list his marijuana use on the application "because [he] knew if [he] admitted to it, [he] wouldn't get the clearance." (GE 1; TR 60.)

Applicant was interviewed by the Defense Security Service in connection with his security clearance application in 1990. During this interview, he gave a written statement and again falsified information regarding his drug use when he claimed, "I last used marijuana in 1973." Further, he failed to disclose his use of methamphetamines, cocaine, heroin, PCP and mushrooms in the same statement. At the hearing, Applicant did not deny he made false statements in his March 1990 signed and sworn statement. (GE 3; Tr. 61.)

Applicant's lies continued on his Electronic Questionnaire for Investigations Processing (eQIP) dated July 2006. On the eQIP, he was asked, "Section 21. Your Medical Record In the last 7 years, have you consulted a mental health professional (psychiatrist, psychologist, counselor, etc) or have you consulted with another health care provider about a mental health related condition?" and omitted his counseling with the psychiatrist from March 2004 through October 2004. The eQIP also asked, "Section 24. Your Use of Illegal Drugs and Drug Activity: a. Since the age of 16 or in the last 7 years, whichever is shorter, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics (opium, morphine, codeine, heroin, etc.), amphetamines, depressants (barbiturates, Methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs, and b. Have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly or immediately affecting public safety?" Applicant answered both of these questions, "No," intentionally concealing he was still using marijuana and had used marijuana while holding a security clearance in approximately 1989-1991. (GE 4.)

In February 2008, Applicant executed and submitted an affidavit to an agent of the Office of Personnel Management that indicated, "from the ages of fifteen through thirty, I used various drugs. I smoked marijuana out of a bowl and joint and also ingested it within various foods on a daily basis." He deliberately falsified this statement, as he knew and sought to conceal that he used marijuana until at least 2009. (GE 6.)

Applicant completed a second eQIP in October 2009. On the eQIP, he was asked, "Section 21. Your Medical Record In the last 7 years, have you consulted a health professional regarding an emotional or mental health condition or were you hospitalized for such a condition?" and again omitted his counseling with the psychiatrist from March 2004 through October 2004. The eQIP also asked, "Section 23. Your Use of Illegal Drugs and Drug Activity: a. Since the age of 16 or in the last 7 years, have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, THC (marijuana, hashish, etc.), narcotics (opium, morphine, codeine, heroin, etc.),

stimulants (amphetamines, Ecstasy, ketamine, etc), depressants (barbiturates, Methaqualone, tranquilizers, etc.), hallucinogenics (LSD, PCP, etc.), or prescription drugs (including painkillers)? and b. Have you ever illegally used a controlled substance while employed as a law enforcement officer, prosecutor, or courtroom official; while possessing a security clearance; or while in a position directly or immediately affecting public safety?" Again, Applicant answered, "No," concealing his marijuana use and his drug use while holding a secret clearance, detailed above.

Applicant presented documentation that shows his work evaluations find him "exceptional" on the majority of his evaluation criteria. He also presented photographs depicting Applicant in several of his job functions. (AE A; AE B; AE D.)

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 and mitigating conditions, 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, administrative judges apply the guidelines in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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.

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 the applicant or proven by Department Counsel." The applicant has the ultimate burden of persuasion to obtain 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 EO 10865 provides that adverse 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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25 and especially considered the following:

- (a) any drug abuse;

- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence; and

- (g) any illegal drug use after being granted a security clearance.

The Government presented sufficient information to support the factual allegations under Guideline H (SOR 1.a. through 1.k.). Applicant began using illegal substances in the early 1970’s to include marijuana, methamphetamines, cocaine, heroin, PCP, mushrooms, mescaline, LSD and hashish. He purports his last use of marijuana to have been in summer 2009. He used marijuana while holding a secret security clearance from 1989-1991. Additionally, in 2004 he was diagnosed with cannabis dependence by his treating psychiatrist. These facts, established through the Government’s information and through Applicant’s admissions, raise a security concern under all of the above disqualifying conditions.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26 and especially considered the following:

- (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;

(b) a demonstrated intent not to abuse any 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; and

(c) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Although Applicant has not used methamphetamines, cocaine, heroin, PCP, mushrooms, mescaline, LSD or hashish for a number of years, his use of marijuana through at least 2009 is recent. Applicant's marijuana use did not occur under unusual circumstances. While he asserts that he mainly used marijuana to help him sleep due to side effects of prescription medications, he continued his marijuana use long after he ceased taking the prescription medications. Moreover, the fact that he held a security clearance did not prevent him from engaging in this questionable conduct. He continued to use marijuana after his treatment for marijuana dependency. Mitigation under AG ¶ 26(a) applies in part, only in regard to his early use of methamphetamines, cocaine, heroin, PCP, mushrooms, mescaline, LSD and hashish.

As to AG ¶ 26(b)(4), Applicant provided a signed statement indicating that he will not use marijuana in the future. However, Applicant's failure to disclose his illegal drug use on his 1989 security clearance application, his 1990 sworn statement, his 2006 eQIP, his 2008 affidavit, and his 2009 eQIP, undermines the reliability of any such statement. Applicant has a history of falsifying documents provided to the Government and cannot be taken at his word. Further, he failed to show that he has disassociated himself from drug-using contacts, that he has changed his environment in a meaningful way, or has an appropriate period of abstinence. No mitigation is available under AG ¶ 26(b).

With respect to AG ¶ 26(d), Applicant has received treatment for cannabis dependency. However, his marijuana use recurred, despite his past treatment. His current clinical psychologist opined that he has "ceased using cannabis" and is not exhibiting issues with judgment and honesty. Applicant did not present evidence that established she treated him for his drug use specifically, or that since 2009 he completed any type of prescribed drug treatment program. From his clinical psychologist's letter, it is impossible to tell if she was aware of the full extent of Applicant's drug use and history of falsification. She has only treated Applicant twice in approximately a seven month period, after their initial interview in August 2010. Her letter is not convincing evidence of successful rehabilitation. Further, due to Applicant's past relapses, not enough time has passed to ascertain whether Applicant will abstain for marijuana use in the future, given a 40-year history of use. AG ¶ 26(d) does not apply.

As of the date of the hearing, Applicant claimed he had not used marijuana in almost two years. There is no bright line defining an appropriate period of reform and rehabilitation. In some cases, two years could be interpreted as a sufficient period of abstinence. However, the fact that Applicant used marijuana for approximately 40 years and knowingly used marijuana after he was granted a security clearance in 1989, indicates Applicant lacks the judgment needed to hold a security clearance and weighs against a conclusion that sufficient time has passed. The partial mitigation under AG ¶ 26 does not overcome the gravity of the fact that Applicant chose to use marijuana while he held a security clearance.

Guideline E, Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 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. 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 could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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

(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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant admits to the falsification of his July 1989 Security Clearance Application, his 1990 sworn statement, his 2008 affidavit, Section 24.a. and 24.b. on his 2006 eQIP, and Section 23.a. and 23.b. on his 2009 eQIP. The Government also presented sufficient information to establish that Applicant falsified Section 21 on his 2006 e-QIP and Section 21 on his 2009 eQIP. His explanation that he omitted his psychiatrist from these documents unintentionally is simply not credible. The

Government has established sufficient concern under AG ¶ 16(a) to disqualify Applicant from possessing a clearance.

Further, Applicant's 40-years of illegal drug use cast doubts on Applicant's trustworthiness, reliability, and judgment. During his 40-years of drug use, Applicant chose to engage in the use of illegal substances, while possessing a security clearance. His personal conduct displays questionable judgment and creates vulnerability to exploitation, manipulation, or duress. AG ¶ 16(e) is disqualifying.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant's falsification and poor judgment is unmitigated. Falsification of information provided to the Government cannot be considered minor. Applicant concealed his marijuana use and use of marijuana while possessing a clearance from the Government throughout the time he held a secret clearance from 1989 to 1991, and in his attempts to get a clearance in 2006 through 2009. He also concealed his treatment in 2004 with the psychiatrist. He made no attempts to disclose his drug use and treatment and repeatedly lied about the facts when he was confronted with the truth during his interviews and subsequent statements. His lies extend from 1989 to the interrogatories he completed in 2008, and throughout the hearing in the instant matter, as he was not honest about the date of his last use during the hearing. Because of Applicant's long history of lying and his extensive history of marijuana use, I cannot find that such behavior is unlikely to recur. While Applicant may be seeking counseling, he has only met with his clinical psychologist twice since his initial assessment and he has failed to show positive steps to establish he is now reliable.

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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis.

Weighing in Applicant's favor are his successful performance at work and his excellent work performance ratings. However, his conduct overall indicates a lack of judgment and trustworthiness, and raises doubts as to whether he understands what is required of those who hold security clearances.

Overall, the record evidence fails to satisfy the doubts raised about Applicant's suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from the cited adjudicative guidelines.

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
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
Subparagraph 1.g.:	Against Applicant
Subparagraph 1.h.:	Against Applicant
Subparagraph 1.i.:	Against Applicant
Subparagraph 1.j.:	Against Applicant
Subparagraph 1.k.:	Against Applicant

Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a.:	Against Applicant
Subparagraph 2.b.:	Against Applicant
Subparagraph 2.c.:	Against Applicant
Subparagraph 2.d.:	Against Applicant
Subparagraph 2.e.:	Against Applicant
Subparagraph 2.f.:	Against Applicant
Subparagraph 2.g.:	Against Applicant
Subparagraph 2.h.:	Against Applicant
Subparagraph 2.i.:	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.

Jennifer I. Goldstein
Administrative Judge