



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-11307
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank Jr., Esquire, Department Counsel  
For Applicant: *Pro se*

September 30, 2008

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**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

On 8 May 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, and E.<sup>1</sup> Applicant submitted an undated answer, and requested a decision without hearing. DOHA assigned the case to me 26 September 2008. The record in this case closed 24 September 2008, the day Department Counsel indicated no objection to Applicant’s response to the government’s File of Relevant Material (FORM).

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<sup>1</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

## **Findings of Fact**

Applicant admitted the SOR allegations, except for SOR 1.b. He is a 37-year-old data monitor employed by a defense contractor since October 2005. He has not previously held a clearance.

When Applicant completed a clearance application in October 2005 (Item 4), he disclosed a one-time use of marijuana in August 2001 (question 24), his non-judicial punishment for a positive urinalysis in October 2001 (question 23), and his resulting general (under honorable conditions) discharge from the military in December 2001 (question 19). He failed to disclose that he had used marijuana in 1998, before enlisting in the military. He failed to disclose that he resumed using marijuana while in the military in 2001. He failed to disclose that he had used marijuana in summer 2005, just months before applying for his clearance.

Applicant's marijuana use while in the military resulted in positive urinalyses in August 2001, October 2001, and December 2001. He received non-judicial punishment for these offenses in December 2001, and was processed for administrative separation from the military effective the end of December 2001.

When military law enforcement officials began investigating Applicant's positive urinalyses in October 2001, Applicant denied having ever used any illegal drugs, including marijuana. Applicant made this false statement because he was trying to protect himself (Item 5). When Applicant answered government interrogatories in October 2007 (Item 5), he misrepresented the extent of his drug use, claiming to have used marijuana once in summer 2005, and once in June/July 2001. He stated an intent to not use illegal drugs in the future.

Applicant asserts that he has not used marijuana since summer 2005, and has no intent to do so. He claims he does not associate any more with marijuana smoking acquaintances. He cites his increased maturity, his marriage in September 2003, and his trying to start a family with his wife as reasons he will not use drugs in the future.

## **Policies**

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guidelines are Guideline H (Drug Involvement) and Guideline E (Personal Conduct) .

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>2</sup>

### Analysis

The government established a case for disqualification under Guideline H, by demonstrating Applicant's sporadic marijuana use 1998 and summer 2005.<sup>3</sup> However, Applicant has not mitigated the security concerns. There was nothing unusual about the circumstances of his marijuana use, so I cannot conclude that the marijuana use is unlikely to recur.<sup>4</sup> He has not demonstrated intent to not abuse these drugs in the future.<sup>5</sup> Applicant's marijuana use occurred in three different periods of his life, before, during, and after his military service. All the marijuana use occurred after he was 27 years old. Without some corroboration of his changed circumstances or his character and work, his past falsifications make it difficult to credit his claims of rehabilitation. Under these circumstances I cannot conclude that Applicant is unlikely to use drugs in the future. Accordingly, I resolve Guideline H against Applicant.

The government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. He deliberately concealed his illegal drug use during a criminal investigation in October 2001, and misrepresented the extent

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>¶25.(a) any drug abuse ; (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

<sup>4</sup>¶ 26.(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 [Emphasis supplied];

<sup>5</sup>¶ 26.(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.

of his marijuana use in October 2005 and October 2007.<sup>6</sup> He did so knowing that these issues were of security concern to the government.

None of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. His eventual disclosures cannot be considered either forthright or prompt.

Applicant's failure to disclose his illegal drug use and financial issues demonstrates a lack of candor required of cleared personnel. The government has an interest in examining all relevant and material adverse information about an Applicant before making a clearance decision. The government relies on applicants to truthfully disclose that adverse information in a timely fashion, not when it is perceived to be prudent or convenient. Further, an applicant's willingness to report adverse information about himself provides some indication of his willingness to report inadvertent security violations or other security concerns in the future, something the government relies on to perform damage assessments and limit the compromise of classified information. Applicant's conduct suggests he is willing to put his personal needs ahead of legitimate government interests. I resolve Guideline E against Applicant.

### **Formal Findings**

#### **Paragraph 1. Guideline H: AGAINST APPLICANT**

Subparagraph a: Against Applicant  
Subparagraph b: Against Applicant  
Subparagraph c: Against Applicant  
Subparagraph d: Against Applicant

#### **Paragraph 2. Guideline E: AGAINST APPLICANT**

Subparagraph a: Against Applicant  
Subparagraph b: Against Applicant  
Subparagraph c: Against Applicant

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<sup>6</sup>¶16.(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, . . . [or] determine security clearance eligibility or trustworthiness. . . ;

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

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JOHN GRATTAN METZ, JR  
Administrative Judge