



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



In the matter of: )  
)  
) ISCR Case No. 07-15530  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Kathryn MacKinnon, Esq., Department Counsel  
For Applicant: *Pro Se*

April 8, 2009

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline E, Personal Conduct. Applicant’s eligibility for a security clearance is denied.

On November 21, 2008, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines E. 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 December 22, 2008, and requested a hearing before an administrative judge. The case was assigned to me on February 12, 2009. DOHA issued a Notice of Hearing on February 18, 2009. I convened the hearing as scheduled on March 23, 2009. The Government offered Exhibits (GE) 1 through 3. Applicant did not object and they were admitted. Applicant and one witness testified.

Applicant also offered Exhibit (AE) A. Department Counsel did not object and it was admitted. DOHA received the transcript of the hearing (Tr.) on March 30, 2009.

### **Findings of Fact**

Applicant denied the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 26 years old and single. She has an associate's degree and has worked as a program specialist for a defense contractor since April 2006. Previously she worked from December 2005 until her present employment doing the same job, but with a different contractor.

On February 16, 2006, Applicant completed a security clearance application (SCA). In response to section 24 asking about her use of illegal drugs in the past, she stated she had used marijuana approximately 20 times between September 2001 and November 2004. Applicant knew when she completed the SCA that she used marijuana more than 20 times during this time period and intentionally under reported her drug use. Her explanation for failing to be completely honest was because she was worried that she would not be granted a security clearance if she accurately reported her drug use or that she would lose her job. She thought her drug use would negatively impact her ability to be granted a security clearance. Applicant admitted at her hearing that she was not truthful when answering questions on her SCA regarding her drug use.<sup>1</sup>

In Applicant's answer to the SOR, she explained her rationale for under reporting her drug use as follows:

I deny this statement. I disclosed the amount of times I used marijuana in the in person interview. During this interview I explained that I was afraid that by telling the truth in the form that I wouldn't get a clearance, but thought that I should be honest 2 years later when I was interviewed.<sup>2</sup>

On February 9, 2007, Applicant was interviewed by an investigator from the Office of Personnel Management (OPM). During the interview she admitted while at college from September 2001 to November 2004 she would smoke marijuana most days. It gave her a calming effect and gave her creativity for her art work. During this interview she admitted that she purchased marijuana on two to three occasions. She also admitted she failed a drug test given by an employer in 2004. She was given subsequent drug tests, which she passed. On October 15, 2008, Applicant swore to the accuracy of her February 9, 2007, statement.<sup>3</sup>

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<sup>1</sup> Tr. 36-37.

<sup>2</sup> Answer to SOR.

<sup>3</sup> GE 2.

At her hearing Applicant testified she intentionally minimized the amount of her marijuana use and drug purchases during her February 9, 2007, OPM interview because she was nervous and scared she would not get a security clearance.<sup>4</sup>

On April 3, 2007, Applicant was again interviewed by an investigator from OPM. She stated she was unsure of how many times she used marijuana between September 2001 and November 2004, but it may have exceeded 100 times. In her first interview she listed only 20 times because she couldn't recall the exact amount. She used marijuana between 1-2 times a week until the school year ended in spring 2002. She purchased marijuana approximately ten times during this time period. She transferred schools in the fall of 2002 and continued to use marijuana about once or twice a month. After she graduated she purchased marijuana approximately three times on the streets of the city where she lived. She continued to smoke marijuana about once a month.<sup>5</sup>

Applicant stopped smoking marijuana after she failed a random drug test given by her employer in 2004. She decided her career was more important and stopped using illegal drugs. She passed the subsequent random drug tests conducted by her employer. She admitted while working as a free lance artist for her employer she would smoke marijuana at home about 30 minutes before beginning her work. At her hearing she testified that she was never "high" at work. Applicant swore to the accuracy of her April 3, 2007 statement on October 15, 2008.<sup>6</sup>

At her hearing Applicant stated that after she consulted with her present employer about her security clearance interview she was told she should have divulged the entire truth. She was also told by her mentor that she should tell the whole truth.<sup>7</sup>

In interrogatories subscribed and sworn to on March 22, 2008, Applicant answered question 3, which asked about her prior illegal drug use, that she used marijuana twice a day prior to 2004. Her last use was 2004 and she has no intention of using illegal drugs in the future. Her family and her employer are aware of her past drug use. She no longer associates with those friends with whom she used drugs. She did not have her priorities straight and now she does. She is willing to take random drug tests to show she no longer uses illegal drugs.<sup>8</sup>

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<sup>4</sup> Tr. 36-42.

<sup>5</sup> GE 2.

<sup>6</sup> Tr. 48-49; GE 2.

<sup>7</sup> Tr. 44-46.

<sup>8</sup> Tr. 31-33; GE 3.

Applicant admitted at her hearing that she did not reveal the full extent of her marijuana use on her SCA. She admitted she was only estimating her use on her SCA. She admitted that during her two interviews her memory improved as to how much she used marijuana. She finally admitted during her April 3, 2007, interview that she smoked marijuana most days throughout college. She knew how often she used marijuana during college and when she completed her SCA and when she listed she only used it 20 times.<sup>9</sup> She testified as follows: "When I filled out the application, I was worried that I would not be able to gain a clearance knowing that I had smoked marijuana more than 20 times." She further stated: "However, when I filled out the application, it wasn't to lie, you know, to lie about it. I just wasn't sure exactly what I should put down. I was very young and nervous."<sup>10</sup> I find Applicant intentionally and deliberately provided inaccurate information on her SCA and during her interview.

Applicant was questioned as to why, when she was interviewed on February 9, 2007, she did not provide the complete details about her marijuana use. She stated: "I was also very nervous at that point. I wasn't sure what I –I mean, I understand now that I should have been very truthful with them. I honestly don't have an explanation." She admitted she did not make an effort to correct her inaccuracies until she was contacted for a second interview.<sup>11</sup>

Applicant admitted that when she began the SCA process her prior employer required her to have a security clearance. She admitted she was untruthful on her SCA when she was employed by this contractor. When she began work for her current employer, she learned she did not need a clearance to actually do her job. She testified she then provided truthful information because her mentor and supervisor explained she needed to be truthful regardless of the outcome of the security clearance process. It was at this point she told the truth about her drug past.<sup>12</sup>

Applicant's supervisor testified on her behalf. Applicant has worked for her for approximately three years. Applicant has advanced to work on more challenging assignments. She believes Applicant to be honest, trustworthy, and caring. Her job performance is rated as excellent. She has never known Applicant to be dishonest.<sup>13</sup>

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<sup>9</sup> Tr. 22-25.

<sup>10</sup> Tr. 25-28.

<sup>11</sup> Tr. 28-29.

<sup>12</sup> Tr. 51-56. Department Counsel verified that Applicant was being sponsored by her employer for a security clearance.

<sup>13</sup> Tr. 61-71.

Applicant's deputy program manager testified on her behalf. She has worked for him for three years. He believes she is an honest and trustworthy person and rates her performance as "strong." She is independent and self-motivated.<sup>14</sup>

A coworker/supervisor also provided a character letter for Applicant. She considers Applicant is an outstanding employee. She stated "[h]er work ethic is beyond reproach and she has earned the complete trust and confidence of her peers and subordinates alike." She is a trusted member of the team and can be relied upon to be forthright and honest in all matters.<sup>15</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 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."

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<sup>14</sup> Tr. 71-85.

<sup>15</sup> AE A.

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 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I have specifically 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.

I have considered all of the facts and find Applicant deliberately omitted, concealed, misled, and falsified information on her 2006 SCA and during her 2007 interview with an OPM investigator. I find disqualifying conditions (a) and (b) apply.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions and especially considered the following under AG ¶ 17:

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

Applicant did not make an effort to correct the omissions and falsifications on her SCA before being confronted. Applicant continued to minimize her drug history during her first interview. I find mitigating condition (a) does not apply. Her actions can not be considered minor because she failed to divulge important information that was pertinent to her security clearance investigation and determination thereby casting doubt about her reliability, trustworthiness and good judgment. Telling the truth on a SCA, regardless of the ramifications, is at the heart of determining whether someone is trustworthy and honest. Applicant willingly lied because she believed it would negatively impact her ability to obtain a security clearance or keep her job. This is precisely the type of test that reflects whether a person can be trusted to tell the truth and safeguard our nation's secrets, especially when the consequences may be detrimental to ones personal well-being. Applicant did not pass that test. She acknowledged she was young, immature, and scared of losing her job or not being granted a security clearance. It is troubling that not until she was told by a supervisor and mentor that she should be completely truthful, did she finally do so. Although she has acknowledge her mistakes and now has a better understanding of the process, not enough time has passed to confirm that Applicant has permanently changed her behavior and will consistently adhere to the high standards required of those holding security clearances, regardless of the consequences. I find none of the remaining mitigating conditions apply.

### **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) 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 common sense 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 is a young woman with an excellent work record. I have considered the character testimony and statement provided along with her youth and immaturity at the time she was going through the security clearance process. I considered Applicant knowingly and intentionally falsified her SCA and provided untruthful information during her 2007 OPM interview. Applicant should not have to decide when she needs to tell the truth, but rather to always tell the truth. It is apparent Applicant has learned an important lesson. She deserves credit for eventually admitting the full extent of her marijuana use. However, under the circumstances of this case, it is too early to confirm that Applicant has a committed understanding to ensuring she is always truthful despite the potential negative impact it may have on her personally. Honesty and truthfulness is the cornerstone of ensuring our nation's secrets are protected. Overall, the record evidence leaves me with questions and doubts at this time 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 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.b:    | Against Applicant |



## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly in the interests of 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