



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 07-16621
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Nichole L. Noel, Esquire, Department Counsel  
For Applicant: *Pro se*

May 30, 2008

**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

On 30 January 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E and H.<sup>1</sup> Applicant answered the SOR 11 February 2008, and requested a hearing. DOHA assigned the case to me 9 April 2008, and I convened a hearing 7 May 2008. DOHA received the transcript (Tr.) 15 May 2008.

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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. He is a 33-year-old sheet metal foreman employed by a defense contractor since August 2008. He has not previously held a clearance.

When Applicant first applied for an industrial clearance in May 2006 (G.E. 1), he deliberately concealed his past marijuana use by answering “no” to question 24 (illegal drug use, last seven years). In fact, he had used marijuana 3-4 times per year from 2000 to summer 2005. Although he acknowledged buying small amounts of marijuana a “handful” of times, he is only sure of one occasion, but included occasions when it was just given to him (G.E. 2) In addition, he had previously used marijuana 3-4 times per year from 1988 to 1992. Applicant initially claimed that he omitted his drug use history because he considered it inconsequential, but later admitted that he worried he would not get his clearance, or only complicate things unnecessarily, if he disclosed it.

In February 2007, Applicant was interviewed by a government investigator. Asked by the investigator when he began using marijuana, Applicant stated 2000. Applicant stated he thought he was only discussing the last seven years (paralleling the clearance application, but acknowledged that the investigator did not limit the question to the last seven years.

Applicant stopped using marijuana in summer 2005, because he feared that he might be caught during random drug screening performed by his employer. He states an intent to not use marijuana 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,<sup>3</sup> and Applicant did not mitigate the security concerns. Applicant used marijuana casually for four years beginning in 1992, stopped using it for eight years, then used for more than four years beginning in 2000. This use was neither distant in time nor infrequent.<sup>4</sup> His abstinence from drug use—approximately three years—is inadequate to demonstrate an intent to refrain from drug use in the future given that he had abstained for eight years before resuming use in 2000.<sup>5</sup> I cannot conclude Applicant is unlikely to use illegal 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 from the government.<sup>6</sup> He did so knowing that his illegal drug use was a security concern to the government, and believing that his clearance was at risk if he told the truth.

Further, none of the Guideline E mitigating conditions apply. The concealed information was relevant to a clearance decision. Applicant made no prompt, forthright

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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. . . purchase. . . ;

<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;

<sup>5</sup>¶26.(b). a demonstrated intent not to abuse any drugs in the future, such as; . . . (3) an appropriate period of abstinence;

<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. . . ; (b) deliberately providing false or misleading information regarding facts to an . . . investigator . . . ;

disclosure of his drug history. Indeed, he misrepresented the full extent of that use in his February 2007 subject interview.

Applicant's failure to disclose his illegal drug use 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 H and E against Applicant.

### **Formal Findings**

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph a: Against Applicant  
Subparagraph b: Against Applicant

Paragraph 2. Guideline E: AGAINST APPLICANT

Subparagraph a: Against Applicant  
Subparagraph b: Against Applicant

### **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