



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-01351
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Francisco Mendez, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 29, 2008

**Decision**

ANTHONY, Joan Caton, Administrative Judge:

After a thorough review of the pleadings, testimony, and exhibits, I conclude that Applicant failed to rebut or mitigate the Government's security concerns under Guideline E, Personal Conduct, and Guideline H, Drug Involvement. His eligibility for a security clearance is denied.

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) Questionnaire on August 10, 2007. On May 22, 2008, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline E, Personal Conduct, and Guideline H, Drug Involvement. 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.

In an undated document, Applicant answered the SOR in writing and elected to have a hearing before an administrative judge. The case was assigned to me on July 18, 2008. I convened a hearing on August 4, 2008, to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The Government called no witnesses and introduced three exhibits, which were marked Ex. 1 through 3 and admitted to the record without objection. Applicant testified on his own behalf and called no witnesses. He did not introduce exhibits.

At the conclusion of the hearing, I left the record open for one week, until close of business August 11, 2008, so that Applicant could provide additional information for the record. Applicant did not file any additional information, and I closed the record on August 12, 2008. DOHA received the transcript (Tr.) of the hearing on August 12, 2008.

### **Procedural Matters**

Applicant was apprised of the 15-day notice provision specified in Enclosure 3, ¶ E3.1.8. He voluntarily and knowingly elected to waive the 15-day notice provision in order to appear earlier for his hearing. He stated he understood the effect of the waiver should he be the unsuccessful party in this matter and elect to file an appeal. (Tr. 10-12.)

### **Findings of Fact**

The SOR contains three allegations of disqualifying conduct under AG E, Personal Conduct (SOR ¶¶ 1.a. through 1.c.) and one allegation under AG H, Drug Involvement (SOR ¶ 2.a.). In his Answer to the SOR, Applicant admitted the three allegations under AG E and the one allegation under AG H. In his Answer, he provided additional information. Applicant's admissions are admitted as findings of fact. (Answer to SOR; Ex. 1; Ex. 3.)

Applicant was born in July 1989, and, on the date of his hearing, he was 19 years old. He has completed one year of university studies and plans to major in Management Information Systems. He is unmarried and resides with his parents when he is not pursuing his university studies. (Ex. 1; Tr. 5-6, 22-23.)

While he was a high school student and before leaving to attend a university in another state, Applicant was employed as a laptop administrator by a federal contractor. Applicant's father was also employed by the federal contractor and was Applicant's supervisor. Applicant stated his father wanted him to work for the federal contractor so he could gain experience in computer technology. Applicant began his employment with the federal contractor in May 2006, when he was sixteen years old. (Ex. 1; Tr. 24-25, 38.)

Applicant used marijuana once when he was fifteen years old and in the 10<sup>th</sup> grade in high school. He used marijuana for the second time when he was sixteen years old and in the 11<sup>th</sup> grade of high school. Between the ages of 16 and 18, Applicant

used marijuana about every three or four months. His last use of marijuana occurred in September 2007, when he was a college freshman. Applicant claims he has not used marijuana since September 2007. (Ex. 2; Ex. 3; Tr. 46-56.)

Applicant's parents were both in the military, and the family moved often. Applicant stated that when he was 16, 17, and 18, he felt like an outcast. He explained his drug use in part by stating that he tried very hard to fit in with other young people his age. (Tr. 52-54.)

At his father's suggestion, Applicant completed an e-QIP application for a security clearance sometime in the summer of 2005, when he was still 15 years old.<sup>1</sup> He signed the application electronically and printed it, but he did not file it with a security officer. He testified he kept it in a file he had at home. (Tr. 29-30, 50-51, 58-59.)

Question 24a on the e-QIP reads:

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?

Question 24b on the e-QIP reads:

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 and immediately affecting the public safety?

Question 24c reads:

In the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer, shipping, receiving, or sale of any narcotic, depressant, stimulant, hallucinogen, or cannabis for your own intended profit or that of another?

By the time he completed the e-QIP in the summer of 2005, Applicant had used marijuana. However, he interpreted Question 24a to apply only to individuals who were 16 years of age or older. Since he was not yet 16, he responded "no" to Question 24a, thereby denying any illegal drug use. He also answered "no" to Questions 24b and 24c. The record does not reflect that Applicant held a security clearance when he used marijuana. At his hearing, Applicant denied purchasing marijuana or contributing to its purchase. (Tr. 31, 34-35.)

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<sup>1</sup> Applicant turned 16 in the third week of July 2005.

Applicant completed and certified another e-QIP in August 2007. He again answered “no” to Questions 24a, 24b, and 24c. He did not update his response to Question 24a to reflect his behavior with drugs since 2005. He testified that he answered “no” on his 2007 e-QIP because he was using his 2005 e-QIP for reference and, without being aware of the nature of the questions, simply repeated his 2005 responses. (Tr. 26-32.)

In September 2007, Applicant again used marijuana. He did not admit any of his marijuana use until interviewed by an authorized investigator in November 2007. Applicant stated he did not intend to use illegal drugs in the future. He said he used illegal drugs in the past because he was influenced by peer pressure. He stated that since September 2007, he was spending time on sports activities and his studies and was avoiding venues where drugs were used. (Ex. 3; Tr. 32-34, 39-41, 554-56.)

Applicant told his parents about his illegal drug use in the spring of 2008. He said he would provide a copy of his 2005 e-QIP for the record, but he failed to do so. (Tr. 50-52, 57.)

### **Policies**

When evaluating an Applicant’s suitability for a security clearance, an 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, the administrative judge applies these guidelines 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.

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 explains why personal conduct is a security concern:

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.

When Appellant answered “no” to Question 24a on the e-QIP that he signed and certified in August 2007, he had been using marijuana, an illegal drug, for about four years. Approximately one month after completing and certifying his e-QIP, Applicant used marijuana again. In his interview with an authorized investigator in November 2007, he admitted his drug use. In his answer to the SOR, Applicant admitted falsifying material facts in his answer to Question 24a. This information raises security concerns under AG ¶ 16(a) and AG ¶ 16(e)(1).

AG ¶ 16(a) reads: “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.” AG ¶ 16(e)(1) reads: “personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation,

manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing."

I have carefully reviewed all the applicable Guideline E mitigating conditions, and I have especially reviewed AG ¶ 17(a) and AG ¶ 17(e). AG 17(a) reads: "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts." AG 17(e) reads: "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress." Applicant falsified his answer to Question 24a on the e-QIP he signed and certified on August 10, 2007. He did not make a prompt good-faith attempt to correct the falsification. The falsification was brought to his attention in his security interview in November 2007. While Applicant claims he has stopped using marijuana, increased his sports activities, and sharpened his focus on his university studies, it is not clear that these recent actions, while positive, will reduce or eliminate his vulnerability to exploitation, manipulation, or duress. I conclude that AG ¶17(a) does not apply to the facts of Applicant's case. I also conclude that AG 17(e) applies only in part.

### **Guideline H, Drug Involvement**

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness because it may impair judgment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. AG ¶ 24(a), defines drugs as "mood and behavior altering substances." The definition of drugs includes "(1) drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances." AG ¶ 24(b) defines drug abuse as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

The relevant Guideline H security concern in this case is referenced at AG ¶ 25(a) of the Drug Involvement guideline. The record shows that Applicant's admitted illegal marijuana use began in about 2004, when he was 15 years old and continued until 2007, when he was 18 years old. He used illegal drugs while employed by a federal contractor and after applying for a security clearance. This conduct casts doubt on his reliability, trustworthiness, and good judgment. It also raises security concerns about his ability or willingness to comply with laws, rules, and regulations. I conclude that Applicant's illegal drug use raises security concerns under Guideline H.

Several Guideline H mitigating conditions might apply to the facts of Applicant's case. If Applicant's drug use happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur or does not cast doubt on his current reliability, trustworthiness, or good judgment, then AG ¶ 26(a) might be applicable in mitigation. If Applicant demonstrated an intent not to abuse any drugs in the future by disassociation from drug-using associates and contacts, changing or avoiding the environment where drugs were used, abstaining from drug use for an

appropriate period, or signing a statement of intent with the automatic revocation of his security clearance for any violation, then AG ¶ 26(b) might be applicable.

The record shows that Applicant's drug use is recent: it began when he was in high school and continued into his first year as a university student. While Applicant stated he had not used marijuana since September 2007, he failed to provide evidence corroborating his statement that his abstinence would continue. Applicant stated he had changed his behavior and activities after his last use of marijuana in September 2007 and his subsequent decision to abstain from illegal drugs. However, these decisions are recent and of insufficient duration to demonstrate a positive and permanent change in behavior. I conclude that AG ¶¶ 26(a) and 26(b) do not apply in mitigation to the security concerns raised by the facts in Applicant's case.

### **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) 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. Applicant is a young and immature person. He admitted marijuana use that began when he was a teen-ager and continued while he was a college student. He was concerned about being accepted by his peers, and he attributed his drug use to peer pressure. His explanation for his failure to delineate his drug use on the e-QIP he executed and certified in August 2007 was not credible. Applicant failed to demonstrate that his illegal conduct was unlikely to recur.

Overall, the record evidence leaves me with questions about Applicant's eligibility and suitability for a security clearance. In all adjudications, the protection of our national security is the paramount concern. Security clearance decisions are not intended to assign guilt or to impose further punishment for past transgressions. Rather, the objective of the security clearance process is the fair-minded, common sense

assessment of a person’s trustworthiness and fitness for access to classified information. Indeed, the “whole person” concept recognizes we should view a person by the totality of his acts and omissions, including all disqualifying and mitigating conduct. Having done so, and giving full consideration to the nature of Applicant’s conduct, I find he does not merit a security clearance. In reaching my decision, I have considered the evidence as a whole, including the appropriate factors and guidelines in the Directive. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his drug involvement 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 E:	AGAINST APPLICANT
Subparagraphs 1.a. through 1.c:	Against Applicant
Paragraph 2, Guideline H:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

### **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.

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Joan Caton Anthony  
Administrative Judge