



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 08-01973
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

January 12, 2011  
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**Decision**  
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LYNCH, Noreen A., Administrative Judge:

On August 2, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DoD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), implemented in September 2006.

Applicant timely answered the SOR and requested an administrative determination. Department Counsel submitted a File of Relevant Material (FORM), dated October 21, 2010.<sup>1</sup> Applicant received the FORM on November 4, 2010, but did not submit a response to the FORM. On December 21, 2010, the Director, DOHA, forwarded the case for assignment to an administrative judge. I received the case

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<sup>1</sup>The Government submitted fourteen items in support of its case.

assignment on December 23, 2010. Based on a review of the case file, submissions, and exhibits, I find Applicant failed to meet his burden regarding the security concerns raised. Security clearance is denied.

### **Findings of Fact**

In his answer to the SOR, Applicant admitted the factual allegations under Guideline H (Drug Involvement), and Guideline E (Personal Conduct). I find the following additional findings of fact.

Applicant is a 32-year-old employee of a defense contractor. He graduated from high school in 1996 and received his undergraduate degree in May 2000. Applicant is single. He has held a security clearance since April 2001. He has worked for his current employer since August 2003. (Item 6)

Applicant admits that he used marijuana on several occasions from 1995 to 2002. He also acknowledged that he used ecstasy about four times from about 1997 until April 2009. (Item 3) He acknowledged that he consumed marijuana in a brownie in September 2009. He explained that he had no prior knowledge of the illegal drug in the brownie. He admitted that he consumed absinthe in September 2009, but that he did not “entirely understand” the illegality of the spirit. (Item 3)<sup>2</sup>

Applicant completed security clearance applications (SCA) on July 12, 2000, September 4, 2002, and May 9, 2007. (Items 4, 5 and 6). He did not disclose his use of marijuana and ecstasy on these applications. In addition, on January 26, 2007, he signed a company drug policy statement, where he acknowledged illegal drugs as a basis for ineligibility or removal of a security clearance. (Item 11)

Applicant answered DOHA interrogatories in 2009, and acknowledged his use of ecstasy in college on two occasions. He admitted use of marijuana in 1997 and 1998. He reported his last use of any narcotics, dangerous drugs, psychoactive or controlled substances, to include marijuana or hashish, as April 19, 2009. (Item 7)

On August 25, 2009, Applicant self-reported his recent use of ecstasy (April 2009) to his company security office. When questioned as to why he decided to disclose the illegal drug use at this point in his career, he stated, “I just figured why not, it has been 10 years since I tried it.” In his 2010 answer to the SOR, Applicant admitted to not complying with the rules of Guideline H (Drug Involvement), but stated he had no intention of leaking classified information or putting himself in a position of possible risk. He did not deny that he failed to disclose his use of illegal drugs on three separate SCA’s, but he hoped that “coming clean of all vices voluntarily shall be evidence that he is willing to comply and follow the rules.”

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<sup>2</sup>The Government moved to strike this allegation (1.d) in its Argument to FORM.

When Applicant was interviewed in January 2010 by an OPM investigator, he acknowledged the use of marijuana. (Item 8) He elaborated that he was curious and wanted to experiment with the illegal drug by using a pipe. He smoked marijuana in social settings with his friends. He reported that he did not enjoy the drugs, but used them due to social pressure. (Item 8) He continued using marijuana and ecstasy until 2009 with the same friends.

Applicant stated that he realized his behavior was immature. He also admitted that he knew that using any illegal drugs while holding a security clearance would result in revocation of such a clearance. He noted that his priorities and goals have been changing over the past few years. He stated that he has been in social situations where illegal drugs were readily available, but he has not used any of the drugs. He hoped to buy a home and limited his social contacts with the drug-using friends. He does not intend to use illegal drugs again. He regretted his actions. He stated that he now understands security regulations regarding drug use. He intends to follow the rules.

Applicant has never incurred financial difficulties as a result of illegal drug use. He does not believe he was dependent on any drugs. He noted that in 2007, he voluntarily sought counseling due to anxiety over a failed relationship. Applicant stressed that the counseling was not due to alcohol or drug use.

### **Policies**

When evaluating an applicant's suitability for a security clearance, an 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. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." An 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.

The United States Government (Government) must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts

admitted by applicant or proven by Department Counsel. . . .”<sup>3</sup> The burden of proof is something less than a preponderance of evidence.<sup>4</sup> The ultimate burden of persuasion is on the applicant.<sup>5</sup>

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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.”<sup>6</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>7</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>8</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **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.

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<sup>3</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>4</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>7</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>8</sup> *Id.*

include: (a) Drugs are defined as mood and behavior altering substances, and

(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;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

(a) any drug abuse (see above definition);

(b) testing positive for illegal drug use;

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

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

(e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;

(f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;

(g) any illegal drug use after being granted a security clearance; and,

(h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant admitted his use of illegal drugs (marijuana and ecstasy) on an undetermined number of times from approximately 1995 to 2009. He used these drugs while holding a security clearance initially obtained in 2001. These admissions in his

response to DOHA interrogatories and in his answer to the SOR establish a case under this guideline.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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; and,

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,

(d) 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.

Applicant's last use of marijuana occurred in September 2009, more than one year ago. Considering his history of illegal drug use, there is doubt about his ability to abstain from future use. Applicant asserted that social pressure was responsible for his early use, but in 2009, he was approximately 30 years old. Given he used drugs for more than ten years, an abstinence of one year is not sufficient passage of time for rehabilitation. Applicant expressed regret for his behavior and an intention not to use drugs again, but he still has contact with some of the same friends with whom he used illegal drugs. Applicant has not mitigated the security concerns under drug involvement.

### **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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. Under AG ¶ 16(a), a disqualifying condition exists when there is “deliberate omission, concealment, or falsification of relevant facts from any personnel questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security eligibility or trustworthiness, or award fiduciary responsibilities.” Under AG ¶ 16(b) a disqualifying condition exists when “deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.”

Applicant intentionally falsified his SCA's on three separate occasions while holding a security clearance. His last SCA was signed in May 2007. Applicant signed his company drug policy statement in 2007 acknowledging that use of illegal drugs could be a basis for removal and loss of a security clearance. He did not disclose his use of any illegal drugs until his responses to DOHA interrogatories in 2009.

After considering the mitigating conditions outlined in AG ¶ 17, I conclude that none of them apply. Applicant did not make prompt or good-faith efforts to correct his falsification or concealment. He provided no information that indicates he was ill-advised. The intentional omissions occurred as late as 2007, and are too recent and serious to be mitigated by the passage of time. I have serious doubts about his good judgment and reliability. He has not provided information in this record to show that he has met his burden of proof for his personal conduct.

### **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 an 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 commonsense judgment based upon careful

consideration of the guidelines and the whole-person concept. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, as well as the “whole-person” factors. Applicant is 32 years old. He has a history of behavior that involves dishonesty. He has not shown successful rehabilitation or demonstrated true insight into his behavior. Although Applicant expresses regret for his behavior, his last offense occurred just over a year ago. I have doubts about his reliability and judgment based on the information in the record.

After weighing the disqualifying and mitigating conditions under Guidelines H and E, and evaluating the evidence in the context of the whole-person, I conclude Applicant has not mitigated the security concerns based on his drug involvement, and his falsifications on his SCA’s. Accordingly, I conclude that he has not carried his burden of showing that it is clearly consistent with the national interest to grant him eligibility for access to classified information. Clearance is denied.

### **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
Subparagraphs 1.a through 1.c:	Against Applicant
Subparagraph 1.d:	WITHDRAWN
Subparagraph 1.e:	Against Applicant
Paragraph 2., Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.d:	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 a security clearance. Clearance is denied.

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NOREEN A. LYNCH.  
Administrative Judge



