



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



In the matter of:	)	
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SSN: -----	)	ISCR Case No. 08-02118
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Ray T. Blank, Jr., Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

January 28, 2009

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**Decision**  
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MALONE, Matthew E., Administrative Judge:

Based upon a review of the pleadings, the government’s exhibits (Gx.), Applicant’s exhibits (Ax.), and Applicant’s testimony, his request for a security clearance is granted.

On September 18, 2007, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for his job with a defense contractor, where he works as software engineer. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) sent interrogatories to Applicant to obtain clarification of and/or additional information about adverse information in his background.<sup>1</sup> After reviewing the results of the background investigation, including Applicant’s response to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative

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<sup>1</sup> Authorized by DoD Directive 5220.6, Section E3.1.2.2.

finding<sup>2</sup> that it is clearly consistent with the national interest to continue Applicant's access to classified information. On August 12, 2008, DOHA sent Applicant a Statement of Reasons (SOR) alleging facts which raise security concerns addressed in the Revised Adjudicative Guidelines (AG)<sup>3</sup> under Guideline E (personal conduct) and Guideline H (illegal drug involvement).

Applicant timely responded to the SOR and requested a hearing. The case was assigned to me on October 1, 2008, and I convened the hearing on October 23, 2008. The government presented two exhibits (Gx. 1 and 2). Applicant testified and presented three witnesses. He also submitted 12 exhibits (Ax. A - L). DOHA received the transcript of hearing (Tr.) on or about November 3, 2008.

### **Findings of Fact**

The government alleged in the SOR that Applicant used marijuana between 2003 and at least January 2007 (SOR ¶ 1.a); that he has purchased marijuana (SOR ¶ 1.b); that he used cocaine between 2006 and at least February 2007 (SOR ¶ 1.c); and that he intentionally falsified his answer to e-QIP question 24 (Your Use of Illegal Drugs and Drug Activity), wherein he stated that he used cocaine three times in August 2006, but failed to disclose his most recent alleged use in February 2007 (SOR ¶ 2.a). Applicant admitted with explanation the allegations in SOR ¶¶ 1.a, 1.b and 1.c, but denied with explanation the allegation in SOR ¶ 2.a. In addition to the facts entered through Applicant's admissions, I have made the following findings of relevant fact.

Applicant is 26 years old and employed since September 2007 as a software engineer for a defense contractor. Applicant attended a well-known university from August 2000 until May 2007, when he graduated with a B.S. degree in software engineering. (Gx. 1) His college career spanned seven years because his major was a five year program, his minor required courses that sometimes were unavailable to him because of his major, and because he took one semester off to work. Applicant graduated with a 3.2 GPA. (Tr. 57, 65 - 67)

Applicant used marijuana at least one hundred times between about October 2003 and January 2007. His last use occurred while he was home on break and driving around with his brother. (Gx. 1; Gx. 2; Tr. 71 - 72) While the frequency of his marijuana use varied, over time it averaged between one and two times each month. Applicant also purchased small amounts of marijuana for personal use. He estimates he purchased about one-eighth of an ounce of marijuana between 20 and 25 times between 2003 and 2007. (Gx. 1; Gx. 2) Applicant also used cocaine three times between 2006 and 2007. His last use occurred in February 2007. (Gx. 1; Gx. 2; Tr. 58)

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<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>3</sup> Adjudication of this case is controlled by the Revised Adjudicative Guidelines, approved by the President on December 29, 2005, which were implemented by the Department of Defense on September 1, 2006. Pending official revision of the Directive, the Revised Adjudicative Guidelines supercede the guidelines listed in Enclosure 2 to the Directive.

Applicant used primarily while at school, although he and his brother and at least one friend used drugs during Applicant's visits home in 2007.

Applicant stopped using drugs in 2007 because he was graduating from college and would be entering the workforce. He began contacting potential employers and interviewing for jobs around April 2007. As part of the hiring process for a potential Department of the Navy position, Applicant underwent drug screening in June 2007. All tests were negative. (Ax. E) When he was hired for his current position in September 2007, he was not subjected to drug screening but declared his drug usage in his e-QIP. In October 2008, in preparation for his hearing, Applicant obtained two urinalysis tests that showed he had no illegal drugs in his bloodstream. (Ax. C and D) He has also submitted a notarized statement of his intent to abstain from illegal drugs in the future and acknowledging that his clearance will be automatically revoked should he use drugs. (Ax. I) Finally, Applicant obtained his own psychological evaluation that showed Applicant has not been and is not now dependent on illegal drugs. (Ax. J)

Applicant was interviewed about his drug use in December 2007 by a government investigator. In addition to providing details about his use of marijuana, he confirmed he had used cocaine three times as stated in his e-QIP. He also disclosed that his first use of cocaine was in October 2006 and that his last use of cocaine was in February 2007. In his e-QIP, he stated all of his cocaine use was in August 2006. There was no discussion during the interview about the discrepancy between Applicant's e-QIP and his statement to the investigator. (Gx. 2)

Applicant was a good student in high school (Ax. L) as well as in college. He was active in a variety of community and academic organizations. He is an excellent employee, having received very high marks on his first annual performance appraisal. (Ax. G) His co-workers and supervisors speak in glowing terms about his work performance and his personal integrity. (Ax. A; Ax. B; Ax. H; Ax. K) They are aware that Applicant "experimented" with drugs in college but do not appear to have detailed knowledge about the extent of his drug use. Their recommendations of him are based on their knowledge of his current lifestyle and job performance. (Tr. 21 - 46)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the Revised Adjudicative Guidelines (AG). Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole person" concept, those factors are:

- (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

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<sup>4</sup> Directive. 6.3.

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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 15 (Guideline E - Personal Conduct) and AG ¶ 24 (Guideline H - Illegal Drugs).

A security clearance decision is intended to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. The government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the government must be able to prove controverted facts alleged in the SOR. If the government meets its burden, it then falls to the applicant to refute, extenuate or mitigate the government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>6</sup>

A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. Thus, the government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her 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>7</sup>

## Analysis

### Personal Conduct.

A security concern may exist when, as stated in AG ¶ 15, available information reflects

[c]onduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions

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<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>6</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>7</sup> See *Egan*; Revised Adjudicative Guidelines, ¶ 2(b).

about an individual's reliability, trustworthiness and ability to protect classified information.

Here, it was alleged in SOR ¶ 2.a that Applicant was trying to mislead the government about his drug use when he listed his last use of cocaine as having occurred in August 2006 when it actually occurred in February 2007. Because Applicant denied this allegation, the government bore the burden of “presenting witnesses and other evidence to establish facts that have been controverted.” (Directive, Enclosure 3, Section E3.1.14) As stated in the disqualifying condition at AG ¶ 16(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;*) in order for his answer to be disqualifying, it must be shown Applicant knowingly provided false information about relevant information in his background in an attempt to mislead the government about that information. Applicant’s e-QIP statement about his cocaine use, viewed together with his disclosure of his extensive marijuana use and purchases, shows that he did not intend to deceive the government about his drug use. It would make little sense for him to try to deceive the government about infrequent use of one illegal drug when he disclosed in the same document that he used another illegal drug on a frequent and extensive basis.

The government has not contested Applicant’s statement in the e-QIP that he used cocaine three times. Further, it is not contested that his use of both marijuana and cocaine ended at the same time. Thus, the scope of his use is not in question. Nor was he confronted by the investigator with other information about his cocaine use. Applicant’s e-QIP statement about the dates of his cocaine use was an estimate that he clarified without apparent prompting during his interview. The fact his e-QIP answer did not show cocaine use more recent than August 2006 does not appear to have hindered the government’s assessment of his drug involvement. In sum, all of the information bearing on Applicant’s truthfulness and candor about his background shows he did not intend to provide a false answer in his e-QIP as alleged. Accordingly, the security concern alleged in SOR ¶ 2 is resolved for the Applicant.

### **Drug Involvement.**

The government presented sufficient information to support the allegations in SOR ¶¶ 1.a, 1.b and 1.c that Applicant used marijuana extensively from 2003 until 2007, that he purchased marijuana for his personal use on several occasions during that period, and that he used cocaine three times between August 2006 and February 2007. Accordingly, the government’s information raises a security concern addressed in AG ¶ 24 as follows:

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.

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

(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.

More specifically, available information requires application of the disqualifying conditions listed at AG ¶ 25(a) (*any drug abuse (see definition [at AG ¶ 25(a)])*) and AG ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*). By contrast, available information requires application of the mitigating conditions listed at AG ¶ 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*) and AG ¶ 26(b) (*a demonstrated intent not to abuse any drugs in the future, such as: (1) dissociation 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*). As of the hearing, Applicant had not used any illegal drug for about 20 months. His personal and professional circumstances have changed so that he does not associate with his college friends who used drugs and he does not live near the college and hometown where he used drugs. Applicant stopped using drugs before he left school and, by all accounts, lives a mature, sober and responsible lifestyle. While I do not agree that his drug use was “experimental” as he has argued, his use was confined to the context of his college lifestyle from which he has moved on.

I have considered all of the information bearing on the allegations under this guideline, including positive information about his current circumstances, his stated intent to not use drugs in the future under pain of immediate revocation, the negative drug test results and the favorable clinical evaluation of his drug history. I conclude Applicant has mitigated the security concerns raised by the government’s information about his drug involvement.

### **Whole Person Concept.**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines E and H. I have also reviewed the record before me in the context of the whole person factors listed in AG ¶ 2(a). Applicant used illegal drugs willingly and extensively for a period of about four years until he was 24 years old. He did so almost exclusively within the context of his college career, which was longer

than most for a variety of legitimate reasons. His drug involvement ended of his own volition before he left school as he knew such conduct would be incompatible with starting a software engineering career. As required of all applicants, he has been candid about his drug involvement and I found his demeanor at hearing to be sincere and credible. The positive information about his current circumstances supports a conclusion that he fully appreciates the security significance of his past conduct and that he is unlikely to use drugs in the future. A fair and commonsense evaluation of this record shows that the security concerns about Applicant's suitability for access to classified information have been satisfied.

### **Formal Findings**

Formal findings 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:	FOR APPLICANT
Subparagraph 1.a - 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

### **Conclusion**

In light of all available information, it is clearly consistent with the national interest for Applicant to have access to classified information. Request for a security clearance is granted.

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MATTHEW E. MALONE  
Administrative Judge