



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



In the matter of: )  
)  
) ISCR Case No. 08-04769  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 22, 2009

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on January 30, 2007 (Gov X 4). On December 24, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guidelines H (Drug Involvement), and Guideline E (Personal Conduct). (Gov X 1) 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 January 13, 2009. He admitted all the allegations, and elected to have the matter decided on the written record in lieu of a hearing (Gov X 3). Department Counsel submitted the Government's written case on January 30, 2009. Applicant received a complete file of relevant material (FORM), and was provided the opportunity to file objections and submit material to refute, extenuate,

or mitigate the security concerns by March 17, 2009. He did not provide additional information. The case was assigned to me on April 14, 2009. Based upon a review of the case file and the pleadings, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant admitted the factual allegations under Guidelines H and E. I thoroughly and carefully reviewed the case file and the pleadings. I make the following findings of fact.

Applicant is 57 years old and at the time he submitted his e-QIP was serving as the President and Chief Operating Officer of a native Corporation. He had served as President for about seven years. He left his position voluntarily because of disagreements with members of the Board of Director's (Gov. X 5 at 7). He is married and has children but the number of children is not listed in the file. He has not had formal education since high school (Gov. X 4 and 5).

Applicant admitted in an affidavit to security investigators and in response to Interrogatories that he used marijuana in a social setting with friends in a remote village on a regular basis about two or three times a week from 1970 until 2004. He never purchased the marijuana but used it as supplied by others. He stopped using the drug in 2004 because it was not worth it anymore and it impacted the cohesion of his family. His family is now living a better lifestyle. He never was dependent on the drug nor had he ever received counseling or treatment for his marijuana use. He never was in legal trouble over his use of marijuana. He does not intend to use marijuana in the future unless his personal circumstances change to allow it (Gov X 5 and 6).

Applicant admitted that he used marijuana after being granted a security clearance on or about December 15, 2000. Applicant signed his most recent request for security clearance (e-QIP) on January 30, 2007. He responded "NO" to questions 24a and 24b which asked if he had used illegal drugs since he was 16 or in the last seven years, and if he used illegal drugs while possessing a security clearance. He also answered "NO" to question 26 asking if the government had ever investigated him for a security clearance. Since he admitted to using marijuana after being granted a security clearance, he must have been investigated for a security clearance. In a previous security clearance application dated January 20, 2001, he also answered "NO" to question 27 on that request which asked if he had used illegal drugs since age 16 or in the last seven years. He had been using marijuana since 1970 and still using marijuana at the time he answered this questions. In response to questions from security investigators, Applicant stated he did not think it necessary to include his marijuana use on the January 30, 2007 application since it was only marijuana and he stopped using in 2004. He stated he did not understand the question correctly. He admitted to falsifying the answers to these questions when responding to the allegations in the SOR.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised Administrative Guidelines. 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.

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.

## **Analysis**

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

The 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. Drugs are mood and behavior altering substances, and include those listed in the Controlled Substances Act of 1970. Marijuana is listed in the Act. Drug abuse is the illegal use of a drug or the use of a legal drug in a manner that deviates from approved medical direction. (AG ¶ 24)

Applicant admitted to using marijuana two to three times a week in a social setting for almost 35 years, from 1970 until 2004. His drug use raises Drug Involvement Disqualifying Conditions (DI DC) AG ¶ 25(a) (any drug use); DI DC AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution); and DI DC AG ¶ 25(g) (any illegal drug use after being granted a security clearance). He had to possess the marijuana to use it. He used marijuana until 2004 and was granted a security clearance in 2000.

I have considered the Drug Involvement Mitigating Conditions (DI MC) and find none apply. Applicant admitted using marijuana for an extended period of time. Even though he stopped using marijuana in 2004, it is recent when compared to 35 years of regular marijuana use. His use of marijuana is therefore recent and frequent. DI MC AG ¶ 26(a) (the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) does not apply. Applicant notes that he has not used marijuana since 2004. He states he does not intend to use marijuana in the future unless his personal circumstances change to allow it. This is not a clear intent to stop using marijuana. There is no indication of the changed circumstances that may permit him to use marijuana in the future. In addition, this stated intent is only recent as opposed to his many years of drug use. DI MC AG ¶ 26(b) (a demonstrated intent not to abuse 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; (4) a signed statement of intent with automatic revocation of clearance for any violation) does not apply because he failed to provide evidence to support the mitigating condition. Applicant repeatedly and regularly used marijuana weekly over four years while holding a security clearance. He failed to provide any mitigating evidence for his use of an illegal drug while holding a security clearance. He has not presented sufficient information to overcome the security concern for his extended use of marijuana. Guideline H is decided against Applicant

### **Guideline E, Personal Conduct**

A security concern is raised because conduct involving questionable judgment, untrustworthiness, unreliability, 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 ¶ 15) Personal conduct is always a security concern because it asks the central question does the person's past conduct justify confidence the person can be entrusted to properly safeguard classified information. The security

clearance system depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified information is in the best interest of the United States Government. Applicant's false answers concerning his use of marijuana and his use while holding a security clearance raises a security concern under Personal Conduct Disqualifying Condition (PC DC) AG ¶ 16(a) (the deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history, or similar form used to conduct investigations, to determine security eligibility or trustworthiness).

Applicant admitted that he deliberately failed to answer drug related questions correctly and accurately on both his January 20, 2001, and January 30, 2007, security clearance applications. While there is a security concern for an omission, concealment, or falsification of a material fact in any written document or oral statement to the government when applying for a security clearance, every omission, concealment, or inaccurate statement is not a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully. Applicant admits he knowingly and willfully provided false information on his security clearance application in response to questions concerning both drug use and drug use while holding a security clearance. An individual completing a security clearance applicant would not admit to extended marijuana use. It is evident that a clear reason for denying access to classified formation is long term extensive drug use, particularly if the individual is already cleared for access to classified information. I find against Applicant as to Personal Conduct.

### **“Whole Person” Analysis**

Under the whole person concept, the Administrative Judge must evaluate an applicant's security eligibility by considering the totality of the applicant's conduct and all the circumstances. An 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 a security clearance must be an overall commons sense judgment based upon careful consideration of the guidelines and the whole person concept.

Applicant has not established that he is trustworthy, reliable, and exercises good judgment. To the contrary, he used marijuana frequently for almost 35 years and then

provided false information about his use on his security clearance applications. Even though he stated he stopped using marijuana about four years ago, that is a short time compared to his 35 year of use. He also left the door open to resume using marijuana if his personal circumstances permit his use. Applicant repeatedly used marijuana while already being trusted with access to classified information. He provided no evidence to convince ne he should be trusted again. The record evidence leaves me with questions about Applicant's eligibility and suitability for a security clearance. 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 H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant
Subparagraph 3.b:	Against Applicant
Subparagraph 3.c:	Against Applicant
Subparagraph 3.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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge