



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



In the matter of: )  
)  
) ISCR Case No. 08-10100  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government, Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 7, 2009

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the government’s security concerns under Guideline E, Personal Conduct. Applicant’s eligibility for a security clearance is denied.

On July 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under 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 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 August 10, 2009, and elected to have her case decided on the written record. Department Counsel submitted the government’s file of relevant material (FORM) on September 15, 2009. The FORM was mailed to Applicant and it was received on September 21, 2009. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or

mitigation. Applicant did not object to the FORM and submitted additional material that was considered.<sup>1</sup> The case was assigned to me on December 3, 2009.

### **Findings of Fact**

Applicant denied all of the allegations in the SOR. After a thorough and careful review of the pleadings, exhibits, and statements submitted, I make the following findings of fact.

Applicant is a 38-year-old employee for a defense contractor. She has an Associate in Science degree she received in May 2000. She is married and has a stepchild and two biological children.

Applicant completed a National Agency Questionnaire (DD 398-2) on January 27, 1993. She was required to divulge if she had ever tried or used or possessed any narcotic, to include marijuana, even if it was a one time experimental use. Applicant answered "no" to the question.

Applicant completed a Personal Security Questionnaire (DD 398) on March 13, 1995. She was required to divulge if she ever tried or used or possessed any narcotic, to include marijuana, even if it was a one time experimental use. Applicant answered "no" to the question.

Applicant completed a Security Clearance Application (SF-86) on April 30, 2001. She was required to divulge any illegal drug use since the age of 16 or in the last seven years, whichever was shorter. Applicant answered "no" to the question.

On December 16, 2004, as part of a background investigation for a federal agency, Applicant took a polygraph examination. Applicant disclosed during a post-polygraph interview the following information:

Between the ages of 17 and 19 I associated with a group of friends who used and had marijuana frequently. On weekends I smoked marijuana with them. My best recollection is the total number of times was at least 50 but less than 100. Between the age of approximately 20 and the present I smoked marijuana five times, the most recent being at a Christmas party one year ago. I've read the above and it is accurate.<sup>2</sup>

Applicant signed the statement.

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<sup>1</sup> Letter from Morrow, Poppe, Watermeier & Lonowski dated October 14, 2009.

<sup>2</sup> Item 7 at 5.

On January 11, 2005, Applicant sent a letter to the federal agency requesting a second polygraph.<sup>3</sup> She stated the following:

On my behalf, I was extremely nervous during the polygraph exam and felt as if I was a criminal being interrogated not an applicant for employment. This was the first polygraph I've ever taken and I didn't know what to expect. After the exam was over I was told by the polygrapher that I had failed the drug portion of the exam. I told him I didn't understand how that could be; I answered the questions as honestly as I could. He then proceeded to question me and informed me (the) [that] he though[t] I knew I was going to lie before I even came into the office. I couldn't think straight, my mind was racing trying to recall when and where I had done drugs in the past. At one point I felt he became irritated because I wasn't giving him the answers he wanted. At that point I just wanted out of the room and away from the situation. He began to create a time-line of my life starting from the age of 17, and from there he gathered that I must have done drugs quit[e] often because the people I was around did. He informed me that if I wanted to pass the next polygraph exam I needed to find a safe number of times I used drugs, a number I could pass with. **I told him I didn't know, I thought I was safe with less tha[n] 15 times, but obviously I wasn't. (emphasis added)** I was so confused and wasn't really listening to him; I was still trying to remember when and where. **I told him that I had tried marijuana at a party about three years ago, give or take a few months.(emphasis added)** I asked if that could be [the] cause for me to fail. He told me that wasn't what I was hav[ing] a problem with. He said judging by my exam I was having problems with the amount of usage. He then wrote out a letter and stated that it contained the information we just talked about and asked me to read and sign it. I tried to read it but couldn't focus on what it said. I wrote that it was accurate. I didn't know what else to do. I felt intimidated and just wanted out of the room. I signed it and he let me leave. Not even 5 minutes later I came back into the room and asked to talk with him. He shut the door and I told him I wasn't comfortable with the letter I signed, **I stated that I couldn't remember every detail from my past but that I know I have used drugs more than 15 times. (emphasis added)** He then told me it was too late! I had already signed it and he couldn't do anything about it. I left the office and while driving home, an hour later, I called him and stated that I had been driving for awhile and was thinking about what I was doing at the age of 17. At that time in my life I was doing volunteer work through the explorer post program with the Sher[ri]ff's office and I know for a fact I wasn't using drugs. He again stated that it didn't matter now; I had already signed the letter. However, he would make a note of our conversation on the application.<sup>4</sup> (Emphasis added)

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<sup>3</sup> Item 7 at 7.

<sup>4</sup> *Id.*

On December 19, 2006, Applicant certified a Questionnaire for National Security Positions. She was required to reply to a question about her past illegal use of drugs since the age of 16 or in the past seven years whichever was shorter. She responded “no” to the question.

During an April 23, 2008, interview with an authorized investigator, Applicant denied she ever used any controlled substance, to include marijuana on any occasion and that any information reported from her previous background investigation pertaining to her using marijuana was completely false. She did not disclose that she used marijuana between 50 and 100 times between 1988 and 1999 and five times between 1997 and 2003.

As part of Applicant’s answer to the SOR, she provided a previous written statement that was undated. In the statement she adamantly denies ever using illegal drugs. She believed the polygrapher mislead her and she signed the admission statement of December 16, 2004, under duress after being “interrogated” by the polygrapher. She explained that all she wanted to do was get out of the interview room and away from the polygrapher. She could not remember exactly what was said to make her give him a number of 15 usages, but she thought she was trying to remember every time she was in a room when someone was using drugs and so she gave him that number.<sup>5</sup> Applicant did not provide any amplifying information, facts, or circumstances as how she was under duress. She repeated the same denial in the additional material she provided in response to the FORM.

Applicant was a government contractor at the time of her post-polygraph interview. It was conducted at the office location where she worked and continued to work for approximately another year and a half. She did not identify any possible incentive for the polygrapher to coerce false information from her or to summarize it falsely in the statement she signed. Applicant did not provide any evidence to support her contention that the statements she made to the polygrapher regarding her past marijuana use were false and obtained through intimidation.

Applicant did not provide any evidence to reconcile her repeated denials of drug use on government documents, with the letter she voluntarily wrote and submitted to the federal agency after her polygraph. The letter was sent approximately three and half weeks after her polygraph and post polygraph interview. In the letter she admitted she used marijuana three years ago and thought she was safe with listing she used marijuana 15 times, but because she could not remember every detail from her past she knew she used it more than 15 times.

I find Applicant intentionally, deliberately, and repeatedly falsified information about her prior drug use during an interview conducted by an authorized investigator on April 23, 2008; on a Questionnaire for National Security Position certified on December 19, 2006; on an SCA executed on April 30, 2001; on a Personnel Security

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<sup>5</sup> Answer to SOR.

Questionnaire executed on March 13, 1995; and on a National Agency Questionnaire executed on January 27, 1993.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the 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, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial and commonsense 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 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. 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 ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered:

(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.

Applicant intentionally, deliberately, and repeatedly falsified information about her prior illegal drug use on personnel security questionnaires, during an interview with an official government investigator, and for employment qualifications. I find the above disqualifying condition applies.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions and especially considered the following under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(f) the information was unsubstantiated or from a source of questionable reliability.

Applicant has repeatedly failed to be truthful about her illegal drug use on security clearance applications, during official interviews, and on questionnaires for national security positions. She believes she signed a statement admitting illegal drug use under duress. There is insufficient evidence to conclude she signed the statement under duress. However, even if Applicant were to be believed, she subsequently provided a written statement, that was unsolicited and voluntarily submitted, almost a month after her post-polygraph interview, whereby she admits past illegal drug use. Subsequent to this letter, on a Questionnaire for National Security Positions certified on December 19, 2006, Applicant denied her illegal drug use. She again denied ever using any illegal drugs during an interview with an authorized investigator on April 23, 2008. Applicant's repeated denials of ever using any illegal drugs are not credible. Her written statements are unbelievable. I find none of the above mitigating conditions apply.

### **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) 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant has repeatedly lied on personnel security questionnaires, during official interviews, and on other government applications. She believes she was under duress when she admitted illegal drug usage and denied she has ever used illegal drugs. However, she provided a written statement in 2005 to the federal agency conducting her background investigation and admitted using illegal drugs. Applicant is not credible and has a history of being untruthful.

