



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



In the matter of: )  
)  
) ISCR Case No. 09-00756  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

March 26, 2010

**Decision**

CREAN, Thomas M., Administrative Judge:

Applicant submitted his latest Electronic Questionnaire for Investigations Processing (e-QIP), on September 3, 2008 (Item 5). He previously submitted an e-QIP on August 29, 2003 (Item 6). On August 28, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement), and Guideline E (Personal Conduct) (Item 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 received the SOR on August 31, 2009 (Item 3).

Applicant answered the SOR in writing on October 13, 2009. He admitted all of the allegations, and elected to have the matter decided on the written record in lieu of a hearing (Item 4). Department Counsel submitted the government's written case on November 4, 2009. Applicant received a complete file of relevant material (FORM) on November 10, 2009, and was provided the opportunity to file objections and submit

material to refute, extenuate, or mitigate the security concerns. He did not provide additional information. The case was assigned to me on February 17, 2010. Based upon a review of the case file, eligibility for access to classified information is denied.

### **Findings of Fact**

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

Applicant is 46 years old. He is a high school graduate, married, with one child. At the time he submitted his September 3, 2008 e-QIP, he was waiting for a determination of his request for a security clearance to serve as a security officer for a defense contractor. While waiting a determination on his security clearance, he was working as an outside survey officer for the defense contractor (Item 5). Applicant had previously submitted an e-QIP on August 29, 2003 (Item 6). He was granted access to classified information on November 23, 2004 (Item 13). In April 2007, he was employed as a security officer for the defense contractor but was terminated after he accidentally discharged his weapon and failed a drug test for marijuana and cocaine (Items 12). Applicant was referred by his employer to a drug treatment clinic and was treated by a licensed social worker on at least six occasions for drug dependence. His last treatment was on June 4, 2007 (Item 10).

In response to the SOR, Applicant admits he used marijuana from at least 1996 until 2007 (Item 4). He resigned his position as a corrections officer in December 1996 after he was questioned by police about his purchase and use of marijuana. Applicant arrived at a residence while drug enforcement officers were executing a search-warrant search at the premises. The occupants told police Applicant was one of their customers. At the time, Applicant was a corrections officer for the local court system (item 7). Applicant admitted in an affidavit to security investigators that he inhaled a line of cocaine as well as cocaine sprinkled in a marijuana cigarette in January 2007. Applicant also admitted he tested positive for marijuana and cocaine in March 2007, after being tested for drugs when his weapon discharged while he was working as a security officer for the defense contractor. Applicant noted on his security clearance application that he used marijuana and cocaine six to ten times from January to March 2007 (Item 5). He stated he does not intend to use marijuana or cocaine in the future (Item 9).

Applicant answered "No" in response to questions concerning his drug use on his August 29, 2003 security clearance application. He answered no to questions 27 and 28 asking if in the last seven years or since the age of 16, he ever used a controlled substance while employed as a law enforcement official or while holding a security clearance (item 6). On his September 3, 2008, security clearance application, he noted that he used marijuana and cocaine from January 2007 until April 2007, but did not list any previous illegal drug use (Item 5).

## **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 burden of persuasion 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 from 1996 until 2007. He admitted using cocaine and marijuana six to ten times from January to March 2007. He had to possess the marijuana to use it. He was granted a security clearance in 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).

I have considered the Drug Involvement Mitigating Conditions (DI MC) and find none apply. Applicant admitted using marijuana for an extended period of time. He admitted using cocaine as recently as 2007. Even though he states he stopped using marijuana and cocaine in 2007, it is recent when compared to his over ten years of regular drug use. His use of marijuana and cocaine 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 or cocaine since 2007. He states he does not intend to use marijuana or cocaine in the future. His statement alone is not a clear intent to stop using marijuana or cocaine. There is no indication of any changed circumstances that may indicate his intent not to use illegal drugs in the future. In addition, this stated intent is too recent and is in response to interrogatories, as opposed to his long history 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 used marijuana and cocaine willingly while holding a security clearance, and while serving in a law enforcement position of trust. He failed to provide any mitigating evidence for his use while holding a security clearance. Applicant has not presented sufficient information to overcome the security concern for his use of marijuana and cocaine. 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 on his August 2003 security clearance application concerning his use of marijuana from 1996 until 2003, and his use while serving as a law enforcement official raise a security concern. His failure to list all of his drug use on the 2008 security clearance application also raises security concerns. His false answers raise concerns 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). The discharge of his weapon after using illegal drugs, his resignation as a law enforcement official after being at a residence that was a known drug distribution point, as well as illegal drug use while holding a security clearance raises PC DC AG ¶ 16(c) (credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulation, or other character issues indicating that the person may not properly safeguard protected information).

Applicant admitted that he deliberately failed to answer drug-related questions correctly and accurately on his August 29, 2003, security clearance application. 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 notes that since he was not arrested for any offense, he was confused by the question. However, the question is straightforward and directly asks if he ever used illegal drugs in the last seven year or while a law enforcement official. There is little chance for confusion. I find that Applicant deliberately failed to disclose all of his drug use and answered the question to hide his drug use. It is evident to any applicant for a security clearance that a clear reason for denying access to classified formation is long term extensive drug use, particularly if the individual used it while a law enforcement official. For this same reason, he did not list his early drug use, but only recent use, in answer to a similar question on his 2007 application. His conduct in using illegal drugs while holding a security clearance, and using drugs while carrying a weapon shows questionable judgment, untrustworthiness, and failure to follow rules and regulations. I find against Applicant as to Personal Conduct.

### **“Whole-Person” Analysis**

Under the whole-person concept, the administrative judge evaluates the applicant's conduct and all of 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) 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 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 and cocaine recently and frequently. He used illegal drugs while a law enforcement official, and while holding a security clearance. He did not provide full and complete information about his long-term drug use on his security clearance applications. Even though he stated he does not intend to use illegal drugs in the future, he did not present any information to support his intent. Applicant used marijuana and cocaine while being trusted with access to classified information. He provided no evidence to convince me 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, Applicant has not mitigated drug involvement and personal conduct security concerns.

### **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 - 1.i:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a - 2.f:	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