



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-06652
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel Crowley, Esq., Department Counsel  
For Applicant: *Pro se*

February 25, 2011

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

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

On September 27, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E and J. 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 adjudicative guidelines (AG) effective within the Department of Defense on September 1, 2006.

In an undated response to the SOR, Applicant requested a hearing before an administrative judge. The case was assigned to me on December 23, 2010. DOHA issued a Notice of Hearing on January 3, 2011. I convened the hearing as scheduled on January 25, 2011. The Government offered Exhibits (GE) 1 through 6. Applicant did not

object and they were admitted. Applicant and one witness testified on her behalf. She offered Exhibits (AE) A and B, which were admitted without objections. DOHA received the hearing transcript (Tr.) on January 31, 2011.

### **Findings of Fact**

Applicant admitted the SOR allegations in ¶¶ 1.a through 1.e, with explanations, and denied the remaining allegations. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 27 years old. She is a single mother with two children, ages six and three years old. She graduated from high school in 2001. She earned a bachelor's degree in 2005. She began attending graduate school in 2008, to earn a dual master's degree. She has completed approximately half of the course requirements.<sup>1</sup>

Applicant was granted a Secret security clearance in approximately 2007. Upon the request of her employer, she was sponsored for a Top Secret security clearance with access to Sensitive Compartmented Information. It was during the course of her Top Secret background investigation that the government agency became aware of the issues that are the subject of this case.

On March 5, 2007, Applicant completed a security clearance application (SCA). Section 22 requested she provide information regarding her employment, including if she had been fired, terminated, left by mutual agreement, or under any other unfavorable circumstances. Applicant answered "no." Section 24 requested she provide information about past use of illegal drugs or drug activity, including if she had used illegal drugs since the age of 16 or in the last seven years, whichever was shorter. Applicant answered "no." During a security interview by another government agency in April 2007, Applicant stated she never used, possessed, or transported illegal drugs in her lifetime. She admitted at her hearing that she made the statement and she said it because she wanted to keep her job.<sup>2</sup>

Pursuant to the direction of a United States government agency, Applicant was required to submit to a polygraph examination in July 2007. During the examination, Applicant admitted she used marijuana while in college on numerous occasions from 2001 to 2005. She used it approximately eight times in July and August 2006, and on New Year's Eve 2006.<sup>3</sup>

During the July 2007 polygraph, Applicant also disclosed that on two occasions her live-in boyfriend stored marijuana at her house and she passed the marijuana to her boyfriend's cousin twice between March and May 2007. At her hearing, Applicant stated

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<sup>1</sup> Tr. 26-28.

<sup>2</sup> Tr. 43-44.

<sup>3</sup> Tr. 44.

that both times her boyfriend stored marijuana in their home she was unaware it was present. She stated her boyfriend called her on the telephone and told her his cousin would be coming over to the house and she was to give him a bag. She stated she looked in the bag and saw it was marijuana. She told him not to store marijuana in the house. She also stated that at times she used marijuana with her boyfriend in their home, but the children were not present. She stated that her boyfriend was a frequent marijuana user and used it in their home, but not when the children were present.<sup>4</sup> In her sworn affidavit dated January 30, 2009, she stated:

In approximately August or September 2006, my ex-boyfriend, [X], left a couple small bags (exact amount unknown) of marijuana at my house for [X's] cousin, [Y] (last name unrecalled) to pick up. When [Y] arrived at my home, I was the only one present. I only directed [Y] (last name unrecalled) to the location in [the] house to retrieve [the] marijuana. There was no exchange of money and I did not actually handle the marijuana.<sup>5</sup>

I find Applicant's testimony was not credible and she knowingly passed marijuana that was stored in her home on two occasions to her boyfriend's cousin.

Applicant admitted that she believed if she admitted her past drug use on her SCA or during her interview it would impact her job. She was focused on her job and concerned about it and providing for her children. She admitted she had no excuse and she made a mistake.<sup>6</sup>

Applicant was terminated from her employment in 2002 or 2003 because her employer told her she could not be trusted. Applicant explained that the reason she did not disclose that she was terminated from her job was because she forgot about the incident. She stated she did not intentionally fail to disclose the information, rather she simply forgot about it, and it was a mistake. She stated she was pregnant at the time and was experiencing stress and worked in a stressful environment. She stated she did disclose the information at her first polygraph in July 2007.<sup>7</sup>

In February 2008, Applicant was notified that another government agency disapproved her access to classified information due to her drug involvement and personal conduct. The reasons included Applicant's lack of candor during security processing.<sup>8</sup>

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<sup>4</sup> Tr. 30-42.

<sup>5</sup> GE 2, 6.

<sup>6</sup> Tr. 42-43.

<sup>7</sup> Tr. 22-23, 29-30, 47.

<sup>8</sup> GE 2.

On Applicant's SCA dated October 8, 2008, under Section 24, Applicant listed her marijuana use during the past seven years from "09/2001 (Estimated) to 01/2007" and "approximately 10" times.<sup>9</sup>

In Applicant's sworn affidavit dated January 30, 2009, she denied using marijuana at all during 2004, 2005, and most of 2006. At her hearing, Applicant stated she experimented with marijuana in high school in 1997 or 1998. She used it once a month in college from 2001 to 2005, and used it three to four times in 2006. She disputed she told the polygrapher in 2007 that she used marijuana on New Year's Eve 2006, but rather she believes she passively ingested it because she was around people who were smoking marijuana that night. She stated she was pregnant at the time and would not have smoked marijuana that evening. She also stated that she did not use it in 2004, because she was pregnant and her social circle changed. Applicant's statements are inconsistent and not credible.<sup>10</sup>

On Applicant's October 8, 2008 SCA she did not disclose that she was terminated from a job. She did not know why she failed to disclose this information. She believed it was because she was in a rush to complete the SCA and she missed it.<sup>11</sup>

I find Applicant intentionally and deliberately failed to disclose on her March 2007 SCA that she was terminated from a job and information about her past illegal drug use. I find she also intentionally and deliberately failed to disclose her job termination on her October 2008 SCA. I find she falsified material facts during an April 2007 security interview with a government agency in that she stated she never used, possessed, or transported illegal drugs in her lifetime. I find her January 30, 2009 affidavit is inconsistent with other statements she made about her marijuana use. I find she was deliberately trying to minimize her drug involvement and she deliberately provided false information. I find she deliberately provided misleading and inconsistent statement about her awareness and involvement in passing marijuana to her boyfriend's cousin.

Applicant no longer associates with her ex-boyfriend, except on a limited basis when dealing with their children. She considers herself a trustworthy person and she is trying to rectify her past. She does not plan to ever use illegal drugs again. She is aware that she made a mistake when she failed to disclose her marijuana use and employment termination on the SCA. However, she believes she fully disclosed all of the information during her polygraph.

Applicant's character witness provided testimony on her behalf. She has known Applicant for ten years. She has dated Applicant's father for over a decade. She believes Applicant is a trustworthy person, who has turned her life around. She and

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<sup>9</sup> GE 3, 6.

<sup>10</sup> Tr. 24, 45-48.

<sup>11</sup> Tr. 53-56.

Applicant babysit each other's children, so she trusts her. She has never heard or seen her do anything untrustworthy.<sup>12</sup>

Applicant provided character letters that I have considered. The letters indicated that Applicant is considered a hardworking, goal-oriented, sweet, dedicated person. She is a good mother and takes good care of her children physically and financially. She surrounds herself with positive people and good role models. She is trustworthy.<sup>13</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are used 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, 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 and has the ultimate burden of persuasion to obtain 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

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<sup>12</sup> Tr. 56-60; AE B.

<sup>13</sup> AE A.

the possible risk the applicant may deliberately or inadvertently fail to safeguard 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.” 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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative;

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging activities which, if known, may affect the person's personal, professional, or community standing; and

(g) association with persons involved in criminal activity.

Applicant deliberately failed to disclose relevant facts on her March 5, 2007 and October 8, 2008 SCA, during her security interview, and in affidavit presented to an investigator for the Department of Defense. Applicant was terminated from employment

because her employer could not trust her. Applicant was aware her live-in boyfriend had marijuana in her home in 2006 and 2007, and she passed it to her boyfriend's cousin on two occasions. I find the above disqualifying conditions apply to Applicant's personal conduct and false statements.

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

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

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

(g) association with person involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

There is no evidence that Applicant made prompt, good-faith efforts to correct her falsification. Applicant failed to disclose relevant information when she first applied for a security clearance in March 2007. She was interviewed approximately a month later and again failed to disclose relevant information and provided false information during the security interview. After being granted a Secret security clearance, her employer later sponsored her for a Top Secret security clearance. She completed a new SCA on

October 8, 2008. She again intentionally failed to disclose relevant information. In an affidavit she provided to an authorized investigator for the Department of Defense on January 30, 2009, she provided misleading and false information. Her testimony at her hearing was not credible. Applicant did not make an effort to correct her omissions, falsifications or concealments about her illegal drug use or her termination from a job, until she was subjected to a polygraph. AG ¶ 17(a) does not apply.

There is no evidence Applicant was provided with improper or inadequate advice concerning the security clearance process. AG ¶ 17(b) does not apply. Applicant's falsifications are felony violations under Title 18 U.S.C. § 1001. They are not minor or infrequent. They did not happen under unique circumstances and they are recent. I find AG ¶ 17(c) does not apply. Applicant admitted she made mistakes, but she has not really acknowledged the gravity of the pattern of her falsifications. She has not obtained counseling or taken other positive steps to show her behavior is unlikely to recur or to reduce vulnerability, exploitation, duress or manipulation. AG ¶¶ 17(d) and 17(e) do not apply. Applicant stated she has minimal contact with the father of her children. I find AG ¶ 17(g) marginally applies.

### **Guideline J, Criminal Conduct**

AG ¶ 30 sets out the security concern relating to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

I have considered the disqualifying conditions under Criminal Conduct AG ¶ 31 and the following are potentially applicable:

- (a) a single serious crime or multiple lesser offense; and
- (c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted;

Applicant failed to disclose and falsified her past drug involvement and failed to disclose a job termination in two SCAs, during a security interview, and in a sworn affidavit. Her omissions and falsifications were intentional and deliberate in violation of Title 18 United States Code § 1001. I find the above disqualifying conditions apply.

I have also considered all of the mitigating conditions for criminal conduct under AG ¶ 32 and the following are potentially applicable:

- (a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;



(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life;

(c) evidence that the person did not commit the offense; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant repeatedly omitted, concealed, and falsified relevant information from her SCAs, during a security interview, and in a sworn affidavit. Her behavior occurred from March 2007 to January 2009. Her testimony at her hearing lacked candor and was not credible. Applicant did not disclose her past drug use until she was subjected to a polygraph. She has provided inconsistent statements. Her pattern of false statements and her attempt to minimize her behavior cast doubt on her reliability, trustworthiness, and good judgment. Although she appears to have a good employment record, her repeated behavior in concealing her past conduct and her repeated failure to be truthful during the security clearance process is a serious concern. I find there is insufficient evidence to conclude Applicant is successfully rehabilitated. There is no evidence she was coerced, pressured, or did not commit the offenses. 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. I have incorporated my comments under Guidelines E and J in my whole-person analysis. Some of the factors in AG ¶ 2(a)

were addressed under those guidelines, but some warrant additional comment. Applicant is a single mother of two children. She is a college graduate and is attending school to obtain a master's degree. She provided letters describing her as a good worker. Applicant failed to provide relevant information about her drug use and job termination on her March 2007 SCA. She provided false information in April 2007 when she was interviewed by an investigator. It was not until she was subjected to a polygraph that she admitted her past drug involvement. In her 2008 SCA, she again failed to disclose that she was terminated from a job. In her affidavit to an authorized investigator, she deliberately failed to accurately disclose her prior drug use and her involvement in transferring illegal drugs to her boyfriend's cousin. Applicant's repeated behavior creates serious doubts as to her reliability, good judgment, and trustworthiness. Applicant failed to meet her burden of persuasion. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the guidelines for Personal Conduct and Criminal 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 E:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Subparagraphs 1.c-1.i:	Against Applicant
Subparagraph 1.j:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 1.a:	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. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge