



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



In the matter of: )  
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) ISCR Case No. 10-00577  
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Applicant for Security Clearance )

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

June 30, 2011

**Decision**

MASON, Paul J., Administrative Judge:

Applicant illegally used marijuana between 1998 and May 2009. He deliberately omitted a major part of his marijuana use from his completed security form in January 2005. He continued to use marijuana after being granted special access and after the special access was revoked. Applicant's evidence in mitigation does not overcome the adverse evidence under both guidelines. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant completed and certified an Electronic Questionnaire for Investigations Processing (e-QIP, Item 5) on August 24, 2009. He was interviewed by an investigator from the Office of Personnel Management (OPM) on September 15, 2009. In his interrogatory answers submitted to the Government on August 6, 2010, Applicant indicated that the summary of the September 2009 interview did not accurately reflect the information he provided the investigator. (Item 8, question 3) He provided information for question 4 of Item 8 that corrects the statement summary. He provided

additional information under question 5 of Item 8 regarding matters discussed in the interview. That information, which appears in a one-page attachment to Item 8, will be addressed in the factual findings. With the corrections and modifications made to the statement summary, Applicant acknowledged under question 6 of Item 8 that the interview summary could be used in a security clearance hearing to determine his security suitability. (*Id.*) On September 17, 2011, DOHA issued a Statement of Reasons (SOR) detailing security concerns under drug involvement (Guideline H) and personal conduct (Guideline E). 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), implemented by the Department of Defense on September 1, 2006.

Applicant furnished his answer (Item 4) to the SOR on October 12, 2010. He requested a decision be made on the record in lieu of a hearing. A copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, was sent to Applicant on December 28, 2010. He received the FORM on January 5, 2011. In an attachment to the FORM, he was advised he could object to the information in the FORM or submit additional information in explanation or extenuation. He submitted his response to the FORM on May 31, 2011. The case file was assigned to me on June 14, 2011.

### **Findings of Fact**

The SOR alleges drug involvement and personal conduct. Applicant admitted all allegations. Applicant is 28 years old. He has been in a common law marriage since August 2007. He has no children. In December 2004, Applicant received a bachelor's degree in engineering. Having completed the degree requirements, he will be awarded a master's degree in mechanical engineering in June 2011. He has been working as a mechanical engineer since February 2005. He is now senior mechanical engineer.

### **Drug Involvement**

Applicant's use of illegal drugs is based on his September 15, 2009, interview with an OPM investigator, that is affixed to interrogatory questions that he answered and notarized on August 6, 2010. (Item 8) Applicant began using marijuana in October 1998 at the age of 16. The location of use was at parties and concerts. Applicant's frequency of marijuana use between 1998 through 2004 (high school through college) was weekly to once annually.

According to Applicant's changes to his September 2009 interview, appearing under question 4 of Item 8, he used marijuana on a monthly basis in high school, with some periods of use of the drug occurring a couple times a week. There were also periods where he did not use the drug for months. His use depended on school commitments and work. Regarding his college use, his frequency of marijuana use was

sometimes multiple times a week to several months of non-use. Only Applicant's common law wife was involved in his decision to stop using marijuana. He spoke to a few friends about his decision and not to offer or use it when he was present. (Item 8, question 4, changes to September 2009 interview)

According to the summary of Applicant's September 2009 interview, Applicant used marijuana from March 2006 to May 2009. During the period, he used the drug in a pipe or cigarette once or twice monthly at parties or social events. While he last used the drug in a bong on the beach in May 2009, his use stopped six months earlier. Also, in May 2009, he decided not to use marijuana anymore to conform with DoD policy. He rarely purchased marijuana, and sold the drug on one occasion in 2001. (*Id.*) Applicant used marijuana after being granted program access by another U.S. Government agency in 2005, and after signing a Code of Conduct letter in April 2005.<sup>1</sup> (Item 7, attachment) Applicant continued to use marijuana up to two times a month until May 2009, after his program access was revoked in May 2006. (*Id.*)

According to his September 2009 interview, he used mushrooms about 11 times between November 2001 and September 2006. He used hashish once in college. (*Id.*)

## **Personal Conduct**

Applicant completed and certified an SF 86 on January 10, 2005. In response to question 27 (Illegal Use of Drugs - Since the age of 16 or in the last 7 years, have you ever used marijuana (and other drugs). He answered "yes," and indicated he had used marijuana less than 10 times between October 1998 and April 2002. (Item 6)

Applicant was granted an interim clearance after agreeing to a Code of Conduct, and consenting to a polygraph examination to qualify for a special access program by another agency. During the examination process, Applicant voluntarily disclosed more drug use than he revealed on the January 2005 security form and in an interview with a background investigator on February 9, 2005. (Item 7, attachment) Also attached to Item 7 is a copy of the AG displaying the disqualifying and mitigating conditions for drug involvement and personal conduct. (*Id.*)

As a result of the omissions, Applicant's access to another agency's program was revoked in May 2006 for illegal drug use, using drugs after being granted program access, and failing to provide a complete account of illegal drug use during the investigation. (*Id.*)

In response to Item 8, question 5 (additional information based on matters discussed in September 2009 interview), Applicant noted he had no desire or

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<sup>1</sup> in the letter signed by Applicant, he acknowledged the Government's concern about his drug use. The letter advised that a condition of access was no illegal drug use, and that future drug involvement could mean revocation of access.

temptation to use drugs. He did not want to risk his career and family by resuming illegal drug use in the future.

In his response to the FORM dated, May 31, 2011, Applicant reiterated most of the matters he addressed in Item 8. (Response to FORM) The omissions of his complete drug history in January 2005 were due to having just graduated from school in December 2004 with very little responsibilities.

Applicant reiterated that he has used no drugs since May 2009. He severed ties with all drug using friends. His network of support for a sober lifestyle includes his wife, relatives and close friends. Applicant began therapy with a certified addictions counselor in January 2011 and joined Alcoholics Anonymous (AA) and admitted he had a substance abuse problem. (*Id.*)

In a statement dated May 26, 2011, the certified addictions counselor confirmed that she began psychotherapy with Applicant on January 12, 2011. According to the counselor, Applicant was desirous of being drug and alcohol free, and was committed to reaching that goal through AA and the 12 Steps. The counselor did not provide detail on Applicant's "transformation in his attitude and behaviors." (*Id.*)

Applicant's sponsor since February 2011 indicated by letter dated May 29, 2011, that he and Applicant attend daily AA meetings that begin at 6:30 A.M. During meetings lasting about an hour once a week, Applicant and his sponsor work the 12 Steps and study the Big Book. His sponsor stated that Applicant's abstinence during this security investigation is a good indicator that he will attain long-term sobriety. (*Id.*)

### **Character Evidence**

Applicant provided no character evidence regarding his reputation for trustworthiness, dependability, reliability, or judgment, on the job or away from the job.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be used to the extent they are deemed necessary in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a significant period of a person's life with a number of variables known as the "whole-person concept" that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. Decisions include, by necessity, consideration of 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 the potential, rather than actual, risk of compromise of classified information.

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 for obtaining a favorable security decision.

## Analysis

### Drug Involvement

Paragraph 24 of the AG sets forth the security concern attached to drug involvement:

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.

The conditions that may be disqualifying are: AG ¶ 25(a) (*any drug use*); AG ¶ 20(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*); and AG ¶ 25(g) (*any illegal drug use after being granted a security clearance*).

AG ¶¶ 25(a), (c), and (g) are applicable. Applicant illegally used marijuana periodically from 1998 to May 2009. His illegal use of the drug during the period also included possession and purchase. The most troubling aspect of his illegal drug use was that he used the drug after being granted program access by another agency in 2005. Similarly, he used the drug after signing a Code of Conduct letter explaining unequivocally the consequences of additional drug involvement. He continued (1) working for the same employer who hired him in February 2005, and he continued (2) using marijuana once or twice a month after his access was revoked from May 2006 to May 2009. The Government has established a case under the drug involvement guideline.

The three relevant mitigating conditions under the drug involvement guideline are: 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*); AG ¶ 26(b) (*a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts, (2) changing or avoiding the environment where drugs are used, (3) an appropriate period of abstinence, and a signed statement of intent with automatic revocation of clearance for any violation*); and AG ¶ 26(d)

*(satisfactory completion of a prescribed treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional).*

AG ¶ 26(a) does not apply due to recency of Applicant's drug use, the frequency of the drug use between 1998 and May 2009, his deliberate omission of a full accounting his drug use, and his illegal drug use after being granted program access by another agency of the U.S. Government.

AG ¶ 26(b) has some application based on Applicant's severance of ties with his drug-using associates. Applicant receives additional mitigation for avoiding an environment where drugs are used. Conversely, due to Applicant's drug history of 11 years, the period of abstinence is not long enough. Lastly, the file does not contain a signed statement of intent with revocation of clearance for any violation.

AG ¶ 26(d) applies in part. While Applicant is undergoing therapy, the counselor's statement lacks sufficient detail for her sweeping conclusions. The conclusions and prognosis seem to be based on simply interviews without testing. Having weighed and balanced the record, Applicant has not met his heavy burden of persuasion under the drug involvement guideline.

## **Personal Conduct**

AG ¶ 15. 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 contains two disqualifying conditions that may be applicable: 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);* and AG ¶ 16(d) *(credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating the person may not properly safeguard protected information. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; (2) disruptive, violent, or other behavior in the workplace; (3) a pattern of dishonesty or*

*rule violations; and (4) evidence of significant misuse of government or other employer's time or resources).*

Omitting material information from an e-QIP raises security concerns under the Directive. Material information is information that the Government has a right to know in order to make an informed decision about a person's security clearance suitability. However, where a falsification or omission of material information results from oversight, haste, or negligence, it is not deliberate, and it does not meet the elements of the personal conduct guideline. Considering the evidence as a whole, I conclude that Applicant's omission was deliberate and intentional. He wanted to give the Government the impression his marijuana use was little more than experimental and stopped in 2002. He admitted in his answer to the SOR that he deliberately omitted material information about his drug use in response to question 27 of his SF 86 in January 2005. Applicant's deliberate omission of the full picture of his drug use meets the elements of AG ¶ 16(a).

Applicant's continued use of marijuana once or twice a month from March 2006 to May 2009, after being granted access to a special program in April 2005, then having that access revoked in May 2006, and his violation of the Code of Conduct letter, establish a pattern of rule violations within the meaning of AG ¶ 16(d).

There are three mitigating conditions under the personal conduct guideline that are potentially applicable to the circumstances in this case. Those conditions are: AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*); AG ¶ 17(c) (*the offense was 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*); and AG ¶ 17(d) (*the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate stressors, circumstances, or factors that caused untrustworthy, unreliable or other inappropriate behavior, and such behavior is unlikely to recur*).

AG ¶ 17(a) does not apply because Applicant did not disclose the missing drug history until confronted by the polygraph in 2005. AG ¶ 17(c) does not apply due to the large difference between the information Applicant provided in his January 2005 security form and what he actually admitted to in subsequent interviews. AG ¶ 17(d) is only partially applicable. While Applicant acknowledges his past marijuana use and is receiving counseling, Applicant's continued drug use after his clearance revocation in May 2006 precludes him from receiving full credit under the mitigating condition. The personal conduct guideline is resolved against Applicant.

### **Whole-Person Concept**

I have examined the evidence under the disqualifying and mitigating conditions in my ultimate finding against Applicant under the drug involvement and personal conduct

guidelines. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

Applicant is 28 years old. Applicant completed his bachelor's degree and master's degree. Applicant has been working for a defense contractor since February 2005. He is currently a senior mechanical engineer.

Based on his informational responses submitted during the security investigation, Applicant seems to be a mature person who has been involved in more than an experimental use of marijuana over the years. In January 2005, he exercised poor judgment by under reporting his illegal marijuana use. After being granted special access in April 2005, he illegally used marijuana. After his special access was revoked in May 2006, Appellant continued working for the employer that hired him in February 2005, and he continued to illegally use marijuana once or twice a month. Given Applicant's drug history, and his decision to continue to use marijuana, even though he knew or should have known the Government's drug policy for security clearances and special access, he chose to defy the drug laws and the Government's policy against drug use. Applicant's two-year period of abstinence and his treatment evidence is not sufficient for findings in his favor under the drug involvement and personal conduct guidelines. See AG ¶¶ 2(a)(1) through 2(a)(9).

### **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
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant



Paragraph 2 (Guideline E):                      AGAINST APPLICANT

Subparagraph 2.a:                                      Against Applicant

Subparagraph 2.b:                                      Against Applicant

Subparagraph 2.c:                                      Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge