



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



In the matter of:	)	
	)	
-----, -----	)	ISCR Case No. 10-01168
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

February 7, 2011

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant's history of drug involvement, in addition to his falsification of his security clearance application, generate security concerns that he failed to mitigate. Clearance is denied.

**Statement of the Case**

On August 17, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, Drug Involvement, and E, Personal Conduct. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; 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 for SORs issued after September 1, 2006.

Applicant answered the SOR on September 29, 2009, admitting all of the allegations except SOR subparagraph 2.I, and requesting a hearing. The case was

assigned to me on October 6, 2010. On October 12, 2010, a notice of hearing was issued, scheduling the case for October 28, 2010. The hearing was held as scheduled. At the hearing, I received four government exhibits, sixteen Applicant exhibits, and Applicant's testimony. The transcript (Tr.) was received on November 4, 2010.

### **Findings of Fact**

Applicant is a 26-year-old single man with no children. He graduated from college in May 2009, double majoring in electrical engineering and electronics technology. (AE D) Since graduating, Applicant has worked for a defense contractor in the field of logistics analysis. (AE L) His duties include "supporting a government acquisition shipbuilding program with logistic data analysis including contractual documents, technical data, customer data, customer maintenance practices, customer operation characteristics, and related reports to determine requirements." (*Id.*)

Applicant's supervisor characterizes him as "an above average employee and team member," with a "can do' attitude." (AE G) According to Applicant's company mentor, his approach to work is enthusiastic, and he has a solid perspective of his career goals. (AE F) In July 2010, Applicant was promoted to the position of assistant project manager. (AE L)

Through most of Applicant's life, he has suffered from a severe speech impediment that caused him to stutter uncontrollably. (Answer at 2) Throughout his childhood, he received counseling from multiple speech therapists to no avail. The problem worsened as Applicant reached adolescence as he increasingly became the subject of his classmates' ridicule.

After graduating from high school, Applicant "considered it a 'fresh start'" and did not want to experience the derision experienced in high school. (*Id.*) Consequently, he "chose self-medication of marijuana to try and aid [him]self with a new set of people [he] was introduced to." The marijuana seemed to help him control the anxiety that accompanied his stuttering. (*Id.*)

Beginning in 2004, Applicant used marijuana approximately twice per week. As Applicant "got closer and closer to graduating from college, [he] came to the realization that marijuana was not a legal nor healthy way to fix his speech and anxiety problem[s]." Consequently, in March 2009, he began treating with a physician, board certified in internal medicine, to address his anxiety problem. (AE A)

The physician diagnosed him with "anxiety-related stuttering in speech . . . ," and prescribed Applicant Xanax, an anti-anxiety medication. (Ex. A) This medicine has successfully controlled Applicant's anxiety, and has enabled him to minimize his stuttering. (Tr. 41) Applicant continues to see his physician to monitor his treatment regime. (*Id.*)

During the years Applicant was abusing marijuana, he was arrested three times for marijuana-related charges. In June 2006, Applicant was arrested and charged with

possession of marijuana after the police, while executing a routine traffic stop, discovered marijuana in his car. (GE 2 at 3) The state delayed prosecution and agreed to dismiss the case if Applicant completed a six-week drug diversion program. (GE 2 at 4) Applicant completed the drug diversion program and the state dropped the charge.

In June 2007, Applicant was cited for possession of marijuana and drug paraphernalia after a policeman stopped him for speeding, approached his car, and saw a bag of marijuana in the center console of the vehicle. (GE 2 at 4) Applicant was not arrested. At the court hearing, the state deferred prosecution for one year provided Applicant did not commit any additional offenses in its jurisdiction for a year. One year later, the state dropped the charges. (*Id.*)

In August 2007, Applicant was arrested and charged with possession of marijuana after police discovered marijuana in his vehicle during a routine traffic stop. (*Id.*) The court later dismissed the charge.

In October 2009, the police stopped Applicant after observing a liquor bottle in his car. As the officer reached into the back seat of Applicant's vehicle to retrieve the liquor bottle, he noticed marijuana seeds on the car's floor. (*Id.* at 5) He then arrested Applicant and charged him with possession of an open container of alcohol and possession of marijuana. The court later dismissed the charge. Applicant contends that he had not smoked marijuana since late 2008, and that the residue was left over from the period when he smoked marijuana regularly. (*Id.* at 5)

Between 2002 and 2008, Applicant has received multiple citations for traffic related offenses, including speeding and/or driving without a seatbelt, (SOR subparagraphs 2.a - 2.c, 2.e, 2.i), and driving with defective equipment (SOR subparagraphs 2.g - 2.h) In each instance, he was fined.

Applicant completed a security application on November 10, 2009. In response to **Section 22b: Police Record** (*Have you been arrested by any police officer, sheriff, marshal, or any law enforcement officer?*), Applicant answered "yes." (GE 1 at 29) He listed the arrests in 2005 and 2007, but not the 2009 arrest. Applicant contends he did not list the arrest because the court had dismissed the charge. (Tr. 74) Section 22 of the security clearance application requires applicants to list arrests, "regardless of whether the record in [the] case has been sealed, expunged, or otherwise stricken from the record, or the charge was dismissed." (GE 1 at 29)

In response to **Section 23a: Illegal Use of Drugs or Drug Activity** (*In the last 7 year, have you illegally used any controlled substance . . . ?*), Applicant answered, "yes," and listed marijuana use from May 2005 to June 2005. (*Id.* at 31) Also, he characterized the frequency of the use as rare. Applicant contends he under-reported his marijuana use because when he completed the application, he "was not able to clearly pinpoint to the time frame of his marijuana use." (Answer at 6)

Applicant is active in the community, participating in walkathons to raise money for cancer research, and working with a charity that builds homes in underprivileged

communities. He continues to avail himself of training opportunities that his employer offers. (AE P)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions.

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."

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**

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

Under this guideline, "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" (AG ¶ 24). Applicant's history of illegal drug use triggers the application of AG ¶¶ 25(a), "any drug abuse," and 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia."

The following mitigating conditions are applicable:

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 reliability, trustworthiness, or good judgment;  
and

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 were used;
- (3) an appropriate period of abstinence;
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

The record is inconclusive as to the length of time Applicant abused marijuana. Since consulting his physician about his anxiety problem and his marijuana abuse, Applicant has graduated from college, obtained a job, and earned a promotion. He continues treatment with his physician, who concluded that Applicant's anxiety, the problem that compelled Appellant to abuse marijuana, is under control. Applicant spends his spare time attending voluntary professional trainings and working in the community. These facts support Applicant's contention that he has not used marijuana since late 2008.

Conversely, the credibility of Applicant's testimony regarding when he stopped using marijuana was undermined by his falsification of his security clearance application. (see Personal Conduct section of Decision, *infra*.) Moreover, he was arrested and charged with possession of marijuana in October 2009, five months after graduating from college. In light of Applicant's failure to establish definitively when he stopped using marijuana, I cannot conclude there has been an appropriate period of abstinence. AG ¶ 26(b)(3) is inapplicable. Similarly, AG ¶ 26(a), is inapplicable.

Although the favorable evidence is insufficient to establish that Applicant has been marijuana-free for as long as he contends, it is sufficient to infer that he currently is not using marijuana, and is no longer immersed in the marijuana-abusing culture. AG ¶¶ 26(b)(1) and 26(b)(2) apply.

### **Personal Conduct**

Under this guideline, "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." (AG ¶ 15) Also, "of special interest is any failure to provide truthful and candid answers during the security clearance process . . . ." (*Id.*)

Applicant's multiple traffic-related citations trigger the application of AG ¶ 16(d)(3), "a pattern of dishonesty or rule violations." Applicant's omission of an arrest from his security clearance application and his minimization of the frequency and length

of his marijuana abuse raises the issue of whether 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,” applies.

Applicant has not received a traffic citation for more than a year. This passage of time combined with his maturity, demonstrated by his solid work ethic and civic volunteerism, lead me to conclude that AG ¶¶ 17(c), “the offense is so minor, or so much time has passed . . . that it is unlikely to recur and does not cast doubt on the individual’s reliability, trustworthiness, or good judgment,” and 17(e), “the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress,” apply.

Applicant’s testimony regarding the erroneous information he provided on his security clearance application was not credible. I conclude that he falsified his security clearance application. AG ¶ 16(a) applies without mitigation to his security clearance omissions.

### **Whole-Person Concept**

Under the whole-person concept, 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.

The seriousness of Applicant’s past marijuana use is mitigated somewhat by his immaturity during the years he was abusing it, and his misguided attempts, as documented by his physician, to self-medicate his anxiety problem with it. There is also compelling evidence of rehabilitation. However, Applicant falsified his security clearance application by intentionally omitting an arrest, and intentionally providing inaccurate information about the extent and frequency of his marijuana use. Under these circumstances, I cannot conclude when he stopped using marijuana, and cannot assess whether enough time has elapsed to mitigate the security concerns. Upon considering this case in the context of the whole-person concept, I conclude Applicant has failed to carry the burden.

## 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.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a - 2.c:	For Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f :	Against Applicant
Subparagraphs 2.g - 2.i:	For Applicant
Subparagraph 2.j - 2.m:	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.

MARC E. CURRY  
Administrative Judge