



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| SSN:                             | ) | ISCR Case No. 10-01293 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: James F. Duffy, Esq., Department Counsel  
For Applicant: *Pro se*

December 16, 2010

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated Personal Conduct security concerns, but he has not mitigated Drug Involvement concerns. Eligibility for access to classified information 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 (EO) 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 answered the SOR in an undated response that was received by DOHA on September 13, 2010, and elected to have the case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's written

case on September 22, 2010. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant received a copy of the FORM on October 4, 2010. He answered the FORM on October 20, 2010. He did not object to the admission of the items attached to the FORM, and they are admitted. Department Counsel did not object to Applicant's response, and it is admitted. The case was assigned to me on November 2, 2010.

### **Findings of Fact**

Applicant is a 30-year-old employee of a defense contractor. He is applying for a security clearance for the first time. His Questionnaire for National Security Positions (SF 86), submitted in October 2009, listed that he has worked for his current employer since August 2002, he has a bachelor's degree that was awarded in 2002, he has never been married, and he does not have children.<sup>1</sup>

Applicant smoked marijuana when he was a senior in high school. He used marijuana sporadically while he was in college. His marijuana use increased after he graduated college, and he smoked marijuana regularly from 2002 to 2009. He estimated that he smoked marijuana almost daily during this period, but he occasionally went several weeks without using marijuana. He used LSD on about six occasions between 2007 and 2009. He purchased the marijuana and LSD that he used.<sup>2</sup>

Applicant listed his marijuana and LSD use on his October 2009 SF 86. He was interviewed by an investigator from the Office of Personnel Management (OPM) in November 2009. He fully discussed his marijuana and LSD use. He told the investigator that he was considering quitting illegal drug use and getting his life more together. He stated that he still had some marijuana and he would likely smoke it, but he might not use marijuana again after he used what he had in his possession. When he responded to DOHA interrogatories in April 2010, Applicant wrote "[m]arijuana also relaxes [him] after a long day of work and helps [him] sleep at night."<sup>3</sup>

In his October 20, 2010, response to the FORM, Applicant stated that he quit his illegal drug use. He stated that it had been 4 weeks since he last used marijuana and almost 11 months since he used LSD. He stated that he realized that his recreational drug use was preventing him from setting and accomplishing goals in his professional and social life. He had no desire to resume his illegal drug use and was looking forward to a life without marijuana. He stated that he was "willing to do whatever it may take, including submitting to multiple random drug tests during a probation period, to prove [his] commitment."<sup>4</sup>

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<sup>1</sup> Item 4.

<sup>2</sup> Items 3-5.

<sup>3</sup> Items 4, 5.

<sup>4</sup> Applicant's response to FORM.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel." The applicant 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 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 EO 10865 provides that adverse 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 H, Drug Involvement

The security concern for Drug Involvement is set out in AG ¶ 24:

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 guideline notes several conditions that could raise security concerns under AG ¶ 25. Three are potentially applicable in this case:

- (a) any drug abuse;<sup>5</sup>
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant's drug possession and use are sufficient to raise AG ¶¶ 25(a) and (c) as disqualifying conditions. When Applicant was interviewed in November 2009, he indicated that he would likely continue to smoke the marijuana that he possessed until it ran out. AG ¶ 25(h) was applicable at that point. He has since stopped using illegal drugs. AG ¶ 25(h) is no longer applicable. SOR ¶ 1.c is concluded for Applicant.

Two Drug Involvement Mitigating Conditions under AG ¶ 26 are potentially applicable:

- (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; and
- (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;

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<sup>5</sup> Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant started smoking marijuana in high school and used it regularly for years. He also used LSD on several occasions. He continued to use marijuana after he submitted his SF 86, he was interviewed by OPM, he responded to DOHA interrogatories, and he responded to the SOR. He last used illegal drugs about four weeks before October 20, 2010, which would have been about September 22, 2010. There is no bright-line rule for when conduct is recent. Applicant has not used illegal drugs for about three months. His response appears to indicate that he is sincere in his desire to remain drug-free. However, his drug use was extensive, occurred over a long period, and continued after it became clear that illegal drug use is inconsistent with the holding of a security clearance. I am unable to make a determination that illegal drug use is completely in Applicant's past. His drug use continues to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 26(a) is not applicable. Applicant stated he does not intend to abuse drugs in the future. He does not receive full mitigation under AG ¶ 26(b) for the same rationale.

### **Guideline E, Personal Conduct**

The security concern for Personal Conduct is set out in 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 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

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

Applicant's illegal drug use created a vulnerability to exploitation, manipulation, and duress. AG ¶ 16(e) is applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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; and

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

Applicant has been honest about his illegal drug use throughout the processing of his application for a security clearance. He has not used illegal drugs since September 2010. His honest answers and his abstinence from illegal drug use constitute positive steps to reduce or eliminate his vulnerability to exploitation, manipulation, and duress. AG ¶ 17(e) is applicable to the Personal Conduct security concerns raised by Applicant's illegal drug use.

### **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 relevant 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 H and E 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 30 years old. He used illegal drugs for many years and continued until after he responded to the SOR. He deserves credit for abstaining from illegal drug use since September 2010 and for being truthful throughout the process. However, concerns remain about his judgment, reliability, and trustworthiness.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant

mitigated Personal Conduct security concerns, but he has not mitigated Drug Involvement 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:

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|---------------------------|-------------------|
| Paragraph 1, Guideline H: | AGAINST APPLICANT |
| Subparagraphs 1.a-1.b:    | Against Applicant |
| Subparagraph 1.c:         | For Applicant     |
| Subparagraphs 1.d-1.e:    | Against Applicant |
| Paragraph 2, Guideline E: | For APPLICANT     |
| Subparagraph 2.a:         | For 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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Edward W. Loughran  
Administrative Judge