



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



In the matter of:	)	
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	)	ISCR Case No. 10-02082
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel

For Applicant: Rochelle J. Schneider, Esquire

November 9, 2011

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on October 20, 2009. (Government Exhibit 1.) On October 15, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing the security concerns under Guideline H (Drug Involvement), Guideline E (Personal Conduct), and Guideline G (Alcohol Consumption). 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.

Applicant submitted an Answer to the SOR on November 4, 2010, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on January 6, 2011. I received the case assignment on January 10, 2011. DOHA issued notices of hearing on January 18 and February 23, 2011. The hearing was held as scheduled on March 23 and March 25, 2011. The Government offered Government Exhibits 1 through 4, which were received without objection. Applicant testified on his

own behalf, and called two additional witnesses. Applicant requested that the record remain open until May 3, 2011, for receipt of additional documents. His counsel submitted Applicant Exhibit A in a timely fashion, which was received without objection. Applicant's counsel also submitted a written closing statement, which has been marked as Applicant Exhibit B for identification purposes. DOHA received the final transcript (Tr) of the hearing on April 4, 2011. The record closed on May 3, 2011. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 48 and married. He is employed by a defense contractor, and seeks to obtain a security clearance in connection with his employment in the defense industry. Applicant admitted allegations 1.b., 1.c., 1.d., 1.e., 1.g., 1.h., 1.i., 1.j., 1.m., 2.a., 2.b., 2.c., 2.d., 2.e., 3.a., 3.b., 3.c., and 3.d. in the SOR. Those admissions are findings of fact. He denied allegations 1.f., 1.k., and 1.l. He did not answer allegation 1.a., and is deemed to have denied it. He also submitted additional information supporting his request for a security clearance.

#### **Paragraph 1 (Guideline H - Drug Involvement)**

The Government alleges under Guideline H that the Applicant is ineligible for clearance because he has used illegal drugs.

Applicant has been employed in the defense industry since 1988. (Government Exhibit 1, Section 13.) He had previously served in the U.S. Marine Corps from 1981 to 1985. He held a security clearance while in the Marine Corps, and then from 1988 until 2007. He held program access granted by another government agency (Program Access) from 1992 until it was revoked in 2007, as further described below. (Government Exhibit 4.)

Applicant first began using marijuana in 1978, when in high school. Applicant states:

[B]etween 1979 and 1988 I used marijuana approximately 30 times and while serving in the U.S. Marine Corps and possessing a security clearance you [Applicant] use marijuana twice.<sup>1</sup> I used marijuana in mid-2005. Smoked marijuana out of frustration with my son's use of marijuana. . . Sometime after loosing [sic] my clearance in 2007, I smoked pot found in the car. . . I also smoke pot one more time months after, I'm guessing spring of 2008. (Government Exhibit 1, Section 23.) (See Government Exhibit 3.)

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<sup>1</sup>Based on testimony at the hearing, the SOR was amended to show that Applicant only used marijuana once while in the Marine Corps. (Tr at 119.)

During the hearing Applicant testified that he used marijuana three to four times a week from March to April 2007. He further testified that in about May 2008 he found more marijuana in his son's possession and used that marijuana until November 2008, when it ran out. He has not used marijuana since that time and stated that he has no intention to use marijuana in the future. (Tr at 49-50, 58-60.)

All of the marijuana Applicant used between 2005 and 2008 was confiscated from his son, and then eventually used by Applicant. He stated, "I think I was planning to keep it [marijuana] and I wasn't sure I needed it, but I was going to keep it in case I needed it." (Tr at 90-93.)

As further described below, Applicant also has an alcohol problem. He testified that he used the marijuana confiscated from his son to help him refrain from using alcohol. Applicant testified:

I was basically given the authority to get off the alcohol. I heard loosely that if you smoke marijuana and abstain from alcohol that you may have a chance of getting off the alcohol. The problem was when I smoked marijuana if I had no alcohol on my person, I didn't smell like I had been drinking, what would my wife think? So I got some relief from the alcohol and then I turned around and I've got to mask this - - I'm high now, I've got to mask this so I would drink. It was a bad situation. It just didn't work out. (Tr at 97.)

Applicant also used cocaine about five times from 1986 through 1988. He used cocaine after being granted a security clearance by the Department of Defense in 1988. (Government Exhibit 3 at 2; Tr. 79-90.) Allegation 1.f. further states that Applicant used cocaine in 2005. He denied that part of the allegation, testifying that he never used cocaine in 2005, or at any time after 1988. (Tr at 106-108.) The statements concerning Applicant's cocaine use found in Government Exhibits 1, 3, and 4, all show Applicant *only* admitting to cocaine use from 1986 through 1988. Based on all of the available evidence, I find that he did not use cocaine in 2005.

In addition to marijuana and cocaine, Applicant also used other drugs. These included LSD in about 1980, Psilocybin mushrooms between 1979 and 1981, and crystal methamphetamine about three times between 1985 and 1988. In addition, from 1986 to 1987, Applicant would use his mother-in-law's prescription painkiller. More recently, up until about 2007, Applicant would use nitrous oxide. During the same period he would use Motrin and Vicodin that had been prescribed for other family members. He stated that much of this use was in connection to his sense of personal stress and inability to sleep. (Government Exhibit 1, Section 23; Tr at 71-79, 112-113.)<sup>2</sup>

Applicant denied allegations 1.k. and 1.l., primarily because of the inclusion of cocaine use in the allegations. Under questioning, Applicant did admit that he used

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<sup>2</sup>Applicant testified that he was no longer sure the substance he used was Vicodin. However, he did admit it was a drug prescribed for someone else. (Tr at 77.)

cocaine in 1988 after being granted a security clearance, which is the gravamen of allegation 1.k. (Tr at 120-129.) As stated above, there is no evidence that Applicant used cocaine while holding Program Access. He admitted to abusing marijuana, nitrous oxide, Vicodin and prescription Motrin while having both a security clearance and Program Access. (Tr at 129-132.)

### **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that the Applicant is ineligible for clearance because he has made false statements to the Government during the clearance screening process; or engaged in conduct which shows poor judgment, unreliability or untrustworthiness. Applicant admitted all the allegations under this paragraph.

Applicant filled out an e-QIP on October 3, 2006. (Government Exhibit 2.) In that Questionnaire the Applicant was required to answer Section 24.a., which asked whether he had illegally used controlled substances within the last seven years. Applicant stated, "No." This was a false answer to a relevant question about his history of drug use, as described above. Applicant admitted that he consciously falsified his questionnaire in this area. (Tr at 133-136, 168-170.)

The same Questionnaire, at Section 24.b., asked the Applicant whether he had illegally used a controlled substance while holding a security clearance. He stated, "No." This was a false answer to a relevant question about his history of drug use, since Applicant had used illegal drugs in the Marine Corps, and also while holding an industrial security clearance and Program Access. As before, Applicant admitted that he consciously falsified his questionnaire in this area. (Tr at 133-136, 168-170.)

The Applicant was interviewed three times after filling out his 2006 questionnaire, in January, April and May 2007. It was not until the third interview that Applicant told the Government investigator about all of his drug use. (Government Exhibit 3 at 6, Government Exhibit 4 at 5-6; Tr at 136-142, 153-157.)

As stated, Applicant's Program Access was revoked by another government agency in August 2007. In their letter to Applicant the reasons are stated as follows, "Your extensive and recent drug use while holding a security clearance, your excessive alcohol abuse, as well as your personal conduct, as it relates to deliberate falsification of security documents, are inconsistent with the strict standards . . . required for individuals with access to sensitive programs." (Government Exhibit 4 at 6.) The letter states that Applicant had "answered 'no' to questions pertaining to the use of drugs and drug involvement to include while holding a security clearance on your current SF-86 and all previous SF-86's completed in January 1991, February 1996 and October 2001." (Government Exhibit 4 at 5.)

The SOR also alleges, and Applicant admits, that he used marijuana until November 2008. This was more than a year after his Program Access was revoked. In addition, the SOR alleges that the Applicant's conduct, as set forth under allegations

1.k., 1.l., and 1.m., above, also constituted actions showing questionable judgment, unreliability or untrustworthiness.

### **Paragraph 3 (Guideline G - Alcohol Consumption)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he used intoxicants to excess. Applicant admitted all the allegations under this paragraph.

Applicant admits that he used alcohol to excess between 1993 and May 2009. As stated above, Applicant used alcohol and marijuana in combination in 2007 and 2008. Applicant stated and testified that he believes himself to be an alcoholic. (Government Exhibit 3; Tr at 162-164, 172-180.) He stopped using alcohol on May 9, 2009. (Tr at 24.)

Applicant started attending Alcoholic's Anonymous (AA) approximately two months before the hearing. He was going once to twice a week at that time. Applicant had also attended five sessions with a therapist through his company's Employee Assistance Program (EAP). (Tr at 24-30.) Applicant admitted that he is still trying to figure things out with regard to his alcohol and drug use and that he could not rule out alcohol or drug abuse occurring again. (Tr at 179.)

### **Mitigation**

Two of Applicant's co-workers testified on his behalf. The first witness is also Applicant's sponsor in AA. He recommends Applicant for a position of trust and discussed at length the strengths of AA and how he feels the Applicant fits into that program. The witness had not read the SOR in this case and had only limited knowledge of the allegations until the hearing. (Tr at 182-210.)

The second witness has known Applicant at work for 25 years, since 1986. He has also been Applicant's functional supervisor in the past. He stated, "I have never had cause to doubt that he will be honest and forthcoming with me." (Tr at 229.) He also recommended Applicant for a position of trust. Based on his position as a functional supervisor, the witness did not enquire of the Applicant about the specifics of the case and he had only limited knowledge of the allegations until the hearing. (Tr at 211-237.)

### **Policies**

Security clearance decisions are not made in a vacuum. 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 as appropriate 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 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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 ultimate burden of persuasion as 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized by the President in Section 7 of Executive Order 10865, "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *a/so* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Paragraph 1 (Guideline H - Drug Involvement)

The security concern relating to the guideline 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. Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any drug abuse;
- (g) any illegal drug use after being granted a security clearance; and
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant used marijuana with varying frequency until November 2008. He used marijuana during the period he had a security clearance and Program Access. In addition, he admits using cocaine as well as other people's prescription drugs, though his cocaine use ended in 1988, and his other drug abuse ended in 2007. Applicant states that he has not abused any drugs since 2008 and will not use them in the future. However, as discussed above, he appears to have little insight into the reasons for his abuse, and has just begun attending a support group and obtaining counseling. At this time, I cannot find that he has clearly and convincingly committed to discontinuing drug use.

I have considered all of the mitigating conditions under AG ¶ 26 and especially considered the following:

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

Applicant offered no evidence that would support mitigation under AG ¶¶ 26(c) or (d). He submits that his drug use was primarily done in conjunction with his alcohol abuse. He states several times that he used marijuana in 2005, 2007 and 2008 in a failed attempt to stop drinking to excess. However, in 2005 and 2007 in particular, he knew that marijuana use was incompatible with holding a security clearance.

The evidence is clear that the Applicant's abuse of marijuana, as well as cocaine and other drugs, were the voluntary actions of a mature and intelligent person. He has just begun therapy and attendance at AA. He states that he does not intend to use illegal drugs in the future and does not have the desire to do so. However, he also admits that he can not rule out such acts. Based on the facts of this case, his statements do not carry much weight. Enough time has not passed for me to say with any degree of confidence that he will not use marijuana in the future. Paragraph 1 is found against Applicant.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information.

I have considered the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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; and

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



Applicant knowingly and purposely falsified his security clearance application on October 3, 2006, and misled the Government on several occasions concerning the true extent of his drug use in subsequent interviews. His multiple instances of drug abuse while holding a security clearance, misconduct leading to revocation of his Program Access, and subsequent continued drug abuse created substantial vulnerability to exploitation, manipulation, or duress. It was only after several interviews that he was fully forthcoming with the Government. Accordingly, AG ¶ 17(a) “the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts,” does not apply.

I have reviewed the other mitigating conditions and find none of them apply to the facts of this case. In particular, I have examined the span of time, five years, since the falsification. However, when viewed with the other allegations in this paragraph, particularly continuing to use marijuana after his Program Access was revoked, there is insufficient evidence that Applicant currently shows good judgment or is reliable.

Applicant had an obligation to be completely forthcoming with the Government, he failed. He is a highly intelligent person who knew exactly what he was doing. Paragraph 2 is found against Applicant.

### **Paragraph 3 (Guideline G - Alcohol Consumption)**

The security concern relating to the guideline for Alcohol Consumption is set out in AG ¶ 21:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual’s reliability and trustworthiness.

Applicant admitted that he used alcohol, usually to excess, from 1993 until May 2009. He stated that he has not had anything to drink since that date.

There is one disqualifying condition that applies to this case. AG ¶ 22(c) states a concern is, “habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent.”

AG ¶ 23(a) states that it can be mitigating when, “so much time has passed, or the behavior was so infrequent, or it 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.” In addition, AG ¶ 23(b) states that is mitigating where, “the individual acknowledges his or her alcoholism or issues of alcohol abuse, provides evidence of actions taken to overcome this problem, and has established a pattern of abstinence (if alcohol dependent) or responsible use (if an alcohol abuser).” Finally, AG ¶ 23(c) states that it can be mitigating where, “the individual is a current employee who is participating in a counseling or treatment program, has no history of previous treatment and relapse, and is making satisfactory progress.”

Applicant's alcohol abuse ended two years ago. However, he has only begun attending AA and his company's EAP counseling program. In addition, as set forth above, Applicant's insight into his alcoholism is very poor. There is no statement from his EAP counselor setting forth his treatment goals or success. His sponsor spoke enthusiastically about Applicant's future using the tenets of AA, but had to admit that he did not have complete knowledge of the allegations in the SOR. It is Applicant's burden to show that his long-standing and serious alcohol abuse was a thing of the past. He did not do so. Paragraph 3 is found against the Applicant.

### **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 relevant circumstances. 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. 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. My findings under Paragraphs 1, 2 and 3, above, are also relevant to this discussion. Applicant is a hard-working, respected, professional who has engaged in marijuana use, other drug abuse, and been an alcohol abuser for many years. In my opinion, at this point in time, his statement that he will not use alcohol or drugs again in the future can be given little weight. In addition, he falsified material information in several interviews and on a Government Questionnaire. In viewing all the facts of this case, I find that the Applicant has not mitigated the security significance of his prior conduct. As set forth above, I find that there have not been permanent behavioral changes under AG ¶ 2(a)(6). In addition, I find that there is still potential for pressure, coercion, exploitation, or duress (AG ¶2(a)(8)), and that there is likelihood of recurrence (AG ¶2(a)(9)).

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude the Applicant has not mitigated the security concerns arising from his drug involvement, personal conduct, and alcohol abuse as expressed in Paragraphs 1, 2, and 3 of the Government's Statement of Reasons.

## **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 THE APPLICANT
Subparagraphs 1.a through 1.m:	Against the Applicant
Paragraph 2, Guideline E:	AGAINST THE APPLICANT
Subparagraphs 2.a. through 2.e:	Against the Applicant
Paragraph 3, Guideline G:	AGAINST THE APPLICANT
Subparagraphs 3.a. through 3.d.:	Against the 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.

WILFORD H. ROSS  
Administrative Judge