



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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[NAME REDACTED] ) ISCR Case No. 10-03008  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: Marc G. Laverdiere, Esquire, Department Counsel  
For Applicant: *Pro se*

May 20, 2011

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant’s brief involvement with illegal drugs during college is mitigated, as are two violations of his school’s policy against underage use of alcohol. However, Applicant deliberately falsified his security clearance application when asked about his drug and alcohol use. He did so because he was concerned that he would not get his clearance or his job. Based on a review of the pleadings and exhibits, Applicant’s request for eligibility for a security clearance is denied.

On December 23, 2009, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance required in connection with his work for a defense contractor. After reviewing the results of the ensuing background investigation, adjudicators for the Defense Office of Hearings and Appeals (DOHA) issued to Applicant interrogatories<sup>1</sup> to clarify or augment information in the background investigation. After reviewing the results of the background investigation

<sup>1</sup> Authorized by DoD Directive 5220.6 (Directive), Section E3.1.2.2.

and Applicant's responses to the interrogatories, DOHA adjudicators were unable to make a preliminary affirmative finding<sup>2</sup> that it is clearly consistent with the national interest to allow Applicant access to classified information. On January 19, 2011, DOHA issued to Applicant a Statement of Reasons (SOR) alleging facts which, if established, raise security concerns addressed in the adjudicative guidelines<sup>3</sup> (AG) under Guideline E (personal conduct).

On February 11, 2011, Applicant responded to the SOR through a notarized statement and requested a decision without a hearing. On or about March 9, 2011, Department Counsel issued a File of Relevant Material (FORM)<sup>4</sup> in support of the Government's preliminary decision. Applicant received the FORM on March 22, 2011, and timely submitted a notarized response, which has been included in the record without objection. The case was assigned to me on May 5, 2011.

### Findings of Fact

Under Guideline E, the Government alleged that in November 2006, Applicant was arrested and charged with possession of drugs, a charge that was dismissed (SOR 1.a); that in January 2008, he was placed on six months of housing probation violating his college's alcohol policy (SOR 1.b); that in May 2008, he was charged with another violation of his college's alcohol policy and directed to complete an alcohol education class (SOR 1.c); that he deliberately falsified his eQIP, when he omitted his November 2006 drug arrest by answering "no" to the question at Section 22.e (*Have you EVER been charged with any offense(s) related to alcohol or drugs?*) (SOR 1.d); that he deliberately falsified his SF 86, when he omitted his use of marijuana between 2005 and 2006 (SOR 1.f), and his use of cocaine in 2005 (SOR 1.g).<sup>5</sup> The SOR also cross-referenced his 2006 drug arrest (SOR 1.h) by answering "no" to the question at Section 23.a (*In the last 7 years, have you illegally used any controlled substance, for example, cocaine,..THC (marijuana, hashish,...)*). In response to the SOR (FORM, Item 4), Applicant admitted with explanation all of these allegations. In addition to the facts established through his admissions, I have made the following findings of relevant fact.

Applicant is 24 years old and has worked for a defense contractor since June 2009 as an associate design engineer. This is a position that requires him to have a

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<sup>2</sup> Required by Executive Order 10865, as amended, and by DoD Directive 5220.6 (Directive), as amended.

<sup>3</sup> The adjudicative guidelines were implemented by the Department of Defense on September 1, 2006. These guidelines were published in the Federal Register and codified through 32 C.F.R. § 154, Appendix H (2006). Pending official revision of the Directive, they take precedence over the guidelines listed in Enclosure 2 to the Directive.

<sup>4</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included seven documents (Items 1 -7) proffered in support of the Government's case.

<sup>5</sup> One of the typographical errors in the FORM is that SOR 1.e cross-referenced Applicant's use of drugs "as set forth in subparagraphs 2.a and 2.b." The record requires amendment of SOR 1.e to cross-reference SOR 1.f and 1.g, which actually allege the drug use Applicant omitted from his eQIP. Additionally, SOR 1.h cross-references the allegation at SOR 1.a for no apparent reason.

security clearance. Applicant attended college from September 2005 until he graduated in May 2009. While in college he was twice cited for violating the school's policy regarding alcohol. In January 2008, he was cited for having alcohol in his dormitory room. In May 2008, he was cited for underage consumption of alcohol and was ordered to complete an alcohol education program. (FORM, Item 6)

On November 3, 2006, Applicant drove his friends to a movie. When he parked his car illegally, a police officer approached. The officer noticed in plain sight a pipe, known as a "bowl," commonly used to smoke marijuana or hashish. After a consensual search of the car, Applicant was arrested for drug possession (FORM, Item 7), because the officer determined that the pipe had trace amounts of marijuana. In March 2007, the charge was dismissed because the pipe had not been tested for illegal substances, and because one of the passengers in his car admitted the pipe was his and not Applicant's. (FORM, Items 6 and 7)

Applicant used marijuana in 2005 and 2006, but decided to stop after his 2006 arrest and out of concern for his school performance. At most, he used marijuana two or three times a month, and his last use was in November 2006. In 2005, he also snorted one line of cocaine out of curiosity and in response to peer pressure. Applicant has not used illegal drugs since 2006 and does not intend any future use. (Id.)

When Applicant submitted his security clearance application in December 2009, he intentionally omitted his 2006 arrest by answering "no" to eQIP question 22.e. He did so, in part, because he thought the charge had been expunged. He also admitted that he was concerned that he would not get his job or his clearance if he disclosed his arrest. (FORM, Items 5 and 6; Response to FORM)

Applicant also deliberately did not disclose his use of marijuana and cocaine as required in response to SF 86 question 23.a. Again, he withheld this information because he was concerned about the consequences for his job and his clearance. (Id.)

## **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>6</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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

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<sup>6</sup> Directive. 6.3.

for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of continuation or recurrence.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under AG ¶ 15, Guideline E (personal conduct).

A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>7</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the Government's case. Because no one has a "right" to a security clearance, an applicant bears a heavy burden of persuasion.<sup>8</sup>

A person who has access to classified information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>9</sup>

## **Analysis**

### **Personal Conduct**

The Government established that three years ago, Applicant twice violated school rules about alcohol use during his junior year of college; that four years ago he was arrested for an unsubstantiated drug offense; and that five years ago he experimented with marijuana and cocaine during his freshman and sophomore years in college. More importantly, however, the Government established that Applicant deliberately withheld information about his drug use and the fact that he was arrested. Such conduct raises security concerns expressed at AG ¶ 15, as follows:

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<sup>7</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; Adjudicative Guidelines, ¶ 2(b).

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.

More specifically, Applicant's deliberate falsifications, as alleged in SOR 1.d and 1.e, require application of the disqualifying condition at 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*). The remaining allegations have been proven as fact, but the gravamen of this case centers on Applicant's willingness to protect his own interests at the expense of the Government's interest in being able to make an informed assessment of Applicant's suitability for a clearance.

By contrast, the information about which Applicant lied in his eQIP is mitigated through the passage of time, its infrequent occurrence, and the probability that it will not recur. However, Applicant has not mitigated the actual false statements in his eQIP. He did not try to correct his falsifications before investigators confronted him with the results of their record checks. Also, he did not establish that he was advised by anyone in authority to withhold the information at issue. Finally, making false statements to any agency of the United States concerning a matter within its jurisdiction is a violation of Federal criminal law. More important, it is a fundamental breach of a basic tenet of the Government's personnel security programs. Thus, it cannot be considered minor.

Based on the foregoing, the mitigating conditions at 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(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*); and AG ¶ 17(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*) do not apply. On balance, Applicant has not mitigated the security concerns about his personal conduct.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guideline E. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 24 years old and presumed to be a mature, responsible adult. His drug involvement ended at least four years ago. His two alcohol-related disciplinary infractions occurred three years ago, and

there is no indication of continued alcohol problems. Applicant's decision to stop using drugs well before he graduated from college because he was concerned about his school work reflects good judgment and maturity. However, his decision to lie about his drug involvement undermines confidence in his judgment and trustworthiness, and creates doubt about his suitability for access to classified information. A fair and commonsense assessment<sup>10</sup> of all available information shows Applicant has not mitigated the security concerns raised by the Government's information. Because protection of the national interest is the primary concern here, such doubts must be resolved against the individual.

### **Formal Findings**

Formal findings 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.c, 1.f - 1.h:	For Applicant
Subparagraphs 1.d - 1.e:	Against Applicant

### **Conclusion**

In light of all of the foregoing, it is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

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MATTHEW E. MALONE  
Administrative Judge

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<sup>10</sup> See footnote 6, *supra*.