



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



In the matter of: )  
)  
) ISCR Case No. 10-09016  
)  
Applicant for Security Clearance )

**Appearances**

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

02/23/2012

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On September 8, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct. 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 effective within the Department of Defense for SORs issued after September 1, 2006.

In an undated answer to the SOR, Applicant elected to have his case decided on the written record. On December 27, 2011, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant, and it was received on January 9, 2012. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant provided additional information to which Department Counsel had no objection. The case was assigned to me on February 14, 2012.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all allegations except ¶ 2.b. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 25 years old. He is not married and has no children. He worked for a federal contractor as an intern during the summers of 2002, 2004, 2006, and 2008. He began working for the same federal contractor full time in January 2010. He was granted a confidential security clearance in September 2002 and a secret security clearance in April 2006.

Applicant graduated from high school in 2004. He attended two community colleges and attended a university from August 2004 to December 2008. He attended another university beginning in August 2009 to at least May 18, 2010, the date he submitted his security clearance application. He has not received a degree.

Applicant admitted that he used marijuana 20 to 30 times between 2003 and 2006. He admitted he used the prescription drug Adderall that was not prescribed to him, approximately 15 times between 2004 and 2008. He admitted he used the prescription drug Valium that was not prescribed to him about 15 times from 2006 to 2008. Both drugs are controlled substances. He used these drugs subsequent to being granted a confidential security clearance in September 2002 and a secret security clearance in April 2006.

Applicant was interviewed by a government investigator on June 7, 2010, and again on July 23, 2010. He stated that he used the prescription drugs because of peer and school pressures. The drugs helped him to stay alert when studying and taking tests. He used marijuana because it helped him relax. He told the investigator that his drug use was an isolated time period in his life, and he has not used drugs since 2008 and does not intend to use drugs in the future.<sup>1</sup>

During Applicant's July 23, 2010 interview with a government investigator he said that he was unaware that his security clearance was still in effect after he served his summer internships and during the periods he returned to school. He stated that had he known that he had a security clearance during that entire time he would never have

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<sup>1</sup> Item 6.

used the drugs while attending school. He admitted that he used drugs illegally to help him get him through school. He was sorry for his actions.

Applicant told the government investigator that he never purchased drugs. He stated that he has never had a positive drug test. It is unknown whether Applicant is regularly tested for drugs through his employer. He stated his parents are aware of his past drug use. He used the drugs with college friends at social gatherings. It is unknown if he still associates with these friends.<sup>2</sup>

On August 25, 2005, at 2: 39 a.m., Applicant was approached in his vehicle by a campus police officer. The police officer noted that Applicant was unconscious in his vehicle with the engine running. The police officer knocked on the door and window of Applicant's vehicle for two to three minutes before Applicant awoke. The police officer detected alcohol immediately and noted Applicant's eyes were watery and his speech was slurred. He asked Applicant how many alcoholic beverages he had consumed. Applicant stated probably 8 or 9 beers. The police officer issued a citation for minor under 21 with liquor and filed a report with the above information. After Applicant successfully completed a diversion program, the court dismissed the charge.<sup>3</sup>

In Applicant's June 7, 2010 interview with a government investigator he provided information about the August 2005 incident. He stated that he was driving at approximately 7:00 p.m. and he was stopped by the campus police. He told the government investigator that he was advised by the police officer that he was speeding. Applicant's version is that the police officer asked him if he had been drinking alcohol and he admitted he had been drinking and that he had left a party where he consumed two drinks. Applicant stated he agreed to take a breathalyzer that showed he had consumed alcohol. The breathalyzer result is unknown. He stated he was given a citation for underage drinking and was released.<sup>4</sup>

In Applicant's answer to the SOR, he admitted to being pulled over by the police and cited for being a minor in possession of alcohol, but again denied he was passed out in his vehicle while the engine was running.<sup>5</sup>

In Applicant's response to the FORM, he admitted the facts as stated in the police report. He stated:

During my investigation and completion of my security paperwork, I had not recalled this situation at all. It was not until I was provided with the police report of the incident, where finally I recalled what happened.

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<sup>2</sup> Item 6.

<sup>3</sup> Item 8.

<sup>4</sup> Item 6.

<sup>5</sup> Item 4.

Reviewing the police report, I can say that it is 100% accurate and I admit in this letter that it did happen. If I was able to re-submit my SOR, I would admit to section 2.b.<sup>6</sup>

## **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 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, 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." 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and 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. Decisions include, by necessity, consideration of the possible risk that an applicant may deliberately or inadvertently fail to 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.

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<sup>6</sup> Response to FORM.

Section 7 of Executive Order 10865 provides that 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**

AG ¶ 24 expresses the security concern pertaining 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. 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 drug involvement AG ¶ 25 and conclude the following have been raised:

- (a) any drug abuse;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) any illegal drug use after being granted a security clearance.

Applicant possessed and used marijuana approximately 20 to 30 times from 2003 to 2006, while holding a security clearance. He used two different prescription drugs that were not prescribed to him approximately 15 times each from 2004 to 2008. He held a security clearance during that time. I find the above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 26. The following three are potentially applicable:

- (a) the behavior happened so long ago, was so infrequent or happened under circumstances that it is unlikely to recur or does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

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

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended.

Applicant used marijuana to relax. He used it socially with his college friends. He stated he does not intend to use marijuana in the future. I have insufficient evidence to determine whether Applicant continues to associate with his friends who use marijuana and whether they continue to use it. Although he stated he no longer uses marijuana, other than his written statement, I have no other evidence to substantiate his claim. Applicant indicated that he used prescription drugs that were not prescribed to him to help him with stress associated with school and to cope. Applicant listed on his security clearance application that he is still attending college. It is unclear if he will succumb to using non-prescribed drugs to help him again cope with school. I have insufficient evidence to show what he does now to handle stressful situations.

Applicant was granted a confidential and later a secret security clearance while working as an intern. He explained that he was not aware that the security clearance was still in effect when he returned to school. He stated that had he known that his security clearance was still in effect he would not have used the drugs. His explanation may be plausible. However, this statement does not reflect an appreciation that his actions were illegal regardless of the fact that he held a security clearance. Some of his misconduct may be attributed to his youth, but based on the information provided I cannot conclude that he has matured and gained a clear understanding of his responsibilities as an adult. I find his actions did not happen under unique circumstances, such that they are unlikely to recur. His actions cast doubt on his trustworthiness and good judgment. I do not have sufficient information to conclude he has disassociated himself from drug-using associates or has changed his environment where drugs are used. There is no evidence the prescription drugs were prescribed to him. Therefore, I find AG ¶¶ 26(a), 26(b), and 26(c) do not apply.

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

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

I considered the disqualifying conditions under AG ¶ 16 that could raise a security concern and conclude the following have been raised:

- (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 deliberately provided false and misleading information to a government investigator about his citation for a minor under 21 with liquor. He continued to deny the information on his answer to the SOR. He later admitted the information after he reviewed the police report. Applicant's use of illegal drugs and misuse of prescription drugs creates a vulnerability to exploitation, manipulation, or duress, as it is the type of information, if known, could affect his personal and professional standing. I find the above disqualifying conditions apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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's use of illegal drugs and misuse of prescription drugs has been addressed under the drug involvement guideline. He failed to provide sufficient mitigating information as explained above about his conduct. I find AG ¶17(c) does not apply because his offenses were ongoing and not minor. Based on the record evidence, I am also unable to conclude that his conduct is unlikely to recur. His actions continue to cast doubts on his judgment and trustworthiness. AG ¶ 17(d) does not apply.

Applicant explained in his response to the FORM that he did not recall the incident where he was passed out in his vehicle and that is why he did not disclose it to the government investigator. His statement is not credible. He was made aware of the specific facts when he received the SOR, yet he again denied that he was unconscious in the vehicle when the police found him. He failed to explain why he again denied his actions in his answer to the SOR when he was on notice regarding the specific incident. He later admitted he was passed out in his vehicle after consuming 8 or 9 beers. He did not make a prompt or good-faith effort to correct his falsification. Rather, he repeated it in his answer. His conduct is not minor and casts doubt on his reliability, trustworthiness and judgment. It was not until he was confronted with the police report that he finally admitted his actions. Applicant did not meet his burden of persuasion to conclude his actions were not intentional. I find AG ¶¶ 17(a) and 17(d) do not apply.

### **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 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 illegally used marijuana and prescription drugs while holding a confidential and secret security clearance. He failed to provide sufficient information to substantiate his



assertion that he has abstained from illegal drug use since 2008 and will not use drugs in the future. Applicant's past drug use may be the result of youthful indiscretion, but it is unclear if he understands that regardless of his security clearance status, his actions were illegal. Applicant more recently provided false information surrounding a citation he received for being a minor in possession of alcohol. It was not until he reviewed the police report that he admitted his actions. His explanation for his falsification was not credible. Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under Guideline H, Drug Involvement, and Guideline E, Personal Conduct.

### **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.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	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.

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Carol G. Ricciardello  
Administrative Judge