



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



In the matter of: )  
)  
) ISCR Case No. 10-09911  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

06/23/2014

**Decision**

CURRY, Marc E., Administrative Judge:

During a previous investigation, Applicant did not completely reveal the extent of his alcohol and illegal drug abuse history until the fifth time that he was interviewed. Although he was forthcoming about his illegal drug use during the current investigation, he continued to provide false information regarding past alcohol abuse. Applicant has failed to mitigate the personal conduct security concerns. Clearance is denied.

**Statement of the Case**

On January 2, 2014, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under 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 (AG).

Applicant answered the SOR on February 2, 2014, admitting subparagraphs 1.a, 1.b, and 1.e, and denying subparagraphs 1.c and 1.d. He requested a hearing, whereupon the case was assigned to me on April 16, 2014.

On May 8, 2014, a notice of hearing was issued scheduling the case for June 2, 2014. At the hearing, I received eight Government exhibits marked as Government Exhibits (GE) 1 through 8, in addition to ten Applicant exhibits, marked as Applicant's Exhibit (AE) A through J. Also, I considered the testimony of Applicant and three character witnesses. The transcript (Tr.) was received on June 9, 2014.

### **Findings of Fact**

Applicant is a 33-year-old married man with two children. The youngest child is a baby, and the oldest child is a teenager from a previous relationship. He and his wife have been married for two years. Applicant has a high school education and has taken some college courses.

Applicant works in the information technology field as a help desk technician on a military base. He has been working in this field for five years and is highly respected on the job. According to his supervisor, he is "the go to guy" for the company's clients, and his trustworthiness is "above reproach." (Tr. 50)

Applicant's second-level supervisor, the company's senior program manager, is similarly impressed. He characterized Applicant's work as exemplary, and described him as a disciplined manager and a dedicated family man. (Tr. 59)

During a previous security clearance investigation, over the course of four interviews between June 2008 and December of 2008, Applicant falsified facts concerning the extent of his use of illegal drugs. Specifically, in June 2008, he stated that his use of illegal drugs was limited to marijuana approximately ten times between 2001 and 2003. Also, he stated that he had never abused any prescription drugs. (GE 1 at 3)

Over successive interviews, revelations about Applicant's drug use increased. By Applicant's fifth interview, in February 2009, he decided to "come clean" about his past drug use. (Tr. 38-39) He admitted that he used marijuana 20 times spanning 1999 to 2007, rather than 10 times from 2001 to 2003, as he had stated earlier. Also, he revealed that he used ecstasy eight times between 2000 and 2007, hallucinogenic mushrooms twice between 2000 and 2003, and cocaine once in 2001. Also, he admitted that he abused a prescription drug in February or March of 2007. (GE 5 at 1 - 2)

During the earlier investigation, Applicant also initially falsified information about his alcohol involvement. Specifically, in September 2008, he stated that he never drives after drinking alcohol, and had only blacked out once from excessive alcohol consumption, whereas after deciding to "come clean" (Tr. 39) in February 2009, he

admitted driving while intoxicated approximately five times between 2000 and 2008, and blacking out three to ten times. (*Compare* GE 3 at 1-2 with GE 5 at 3)

As part of the current investigation, on November 22, 2010, Applicant completed a security clearance application. In response to Section 23, requiring him to disclose drug activity within the last seven years, he disclosed his use of marijuana, ecstasy, and hallucinogenic mushrooms, but did not disclose his inappropriate use of a prescription painkiller. (GE 7 at 33)

In Applicant's August 2013 response to interrogatories, he reported that he had never driven a car while intoxicated, and had blacked out twice from excessive alcohol consumption, instead of three to ten times as he stated in the earlier investigation. (GE 8 at 6. During cross-examination, Applicant testified that he did not report the five episodes of driving while intoxicated between 2000 and 2008 that he had reported in the earlier investigation because he was no longer "sure about it." (Tr. 45) Also during cross-examination, Applicant admitted blacking out multiple times (Tr. 41), but provided a smaller estimate during the current investigation because he "was not sure of the dates, or times, or specifically, the number," of episodes. (Tr. 30)

Applicant admits falsifying information about his drug use and his alcohol consumption during his earlier investigation. He attributes these falsifications to immaturity, and he contends that such behavior will not recur. (Response at 1) He denies falsifying any additional information about drug or alcohol use during his current information, contending that any inconsistencies were unintentional. (Response at 1)

### **Policies**

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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 to obtain a security clearance.

## Analysis

### Guideline E, Personal Conduct

The security concern under this guideline is as follows:

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.

Applicant admitted falsifying material, relevant information about his illegal drug use and his alcohol consumption during several interviews conducted as part of an earlier security clearance investigation. AG ¶ 16(b), "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative," applies.

Applicant's omission from his current security clearance application of a prescription drug that he abused, and his response to interrogatories conducted as part of a current investigation regarding his alcohol consumption raise the question 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," and AG ¶16(b), as set forth above, apply.

During the previous investigative process, Applicant did not fully disclose the extent of his illegal drug use until his fifth interview. During the current investigative process; however, Applicant's explanation of his abuse of illegal drugs has been forthcoming and consistent with information provided during the previous investigative process. I resolve subparagraph 1.a in his favor.

Applicant answered "Yes" to the question on his current security application about past drug use, and listed all of his drug use except the prescription painkiller that he abused more than six years ago. Under these circumstances, his contention that the omission was unintentional is credible. I resolve subparagraph 1.c in Applicant's favor.

Conversely, Applicant is still providing shifty, contradictory answers regarding his alcohol consumption and alcohol involvement. Under these circumstances, AG ¶ 16(b), applies without mitigation to his interview response in subparagraph 1.b, and his interrogatory responses in subparagraphs 1.d and 1.e.

## **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 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.

Applicant deserves credit for his stellar work performance. However, applicants have a duty to provide truthful, candid responses during the security clearance investigative process. Applicant's response to questions about his alcohol consumption and involvement does not meet this threshold.

## **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 E:	AGAINST APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	For Applicant
Subparagraphs 1.d-1.e:	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

