



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 10-10977  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Eric H. Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

03/12/2012

**Decision**

WHITE, David M., Administrative Judge:

Applicant falsely failed to disclose the extent of his drug abuse on his security clearance application. Although he established that he is unlikely to abuse drugs in the future, he did not mitigate concerns raised by this concealment. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF 86) on June 13, 2007.<sup>1</sup> He was granted a secret clearance in June 2008. He submitted another SF 86 seeking a top secret clearance on August 10, 2010.<sup>2</sup> On August 20, 2011, 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).<sup>3</sup> The action was taken under Executive Order 10865, *Safeguarding Classified*

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<sup>1</sup>Item 4.

<sup>2</sup>Item 3.

<sup>3</sup>Item 1.

*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 promulgated by the President on December 29, 2005, and effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on September 16, 2011, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>4</sup> Department Counsel submitted the Government's written case on November 26, 2011. A complete copy of the File of Relevant Material (FORM)<sup>5</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on December 19, 2011, and returned it to DOHA. He provided his written response to the FORM (FR) and additional evidence on January 18, 2011, within the 30-day period, and expressed no objection to my consideration of the evidence submitted by Department Counsel in the FORM. I received the case assignment on February 14, 2011.

### **Findings of Fact**

Applicant is a 30-year-old employee of a defense contractor, where he started working as a communications systems engineer in March 2005. He earned a bachelor's degree in 2004. He is engaged to be married in June 2012, and has no children. He has no military service, and has held a secret security clearance since June 2008.<sup>6</sup>

In his response to the SOR, Applicant admitted the truth of the factual allegations in SOR ¶¶ 1.a through 1.e and 2.a, with amplifying comments explaining those admissions. He denied SOR ¶ 2.b.<sup>7</sup> Applicant's admissions, including those made in response to DOHA interrogatories,<sup>8</sup> are incorporated into the following findings of fact. All record evidence of Applicant's drug use comes from his various statements describing that conduct that he made in connection with his two security clearance applications.

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<sup>4</sup>Item 2.

<sup>5</sup>The Government submitted five Items in support of the SOR allegations.

<sup>6</sup>Item 3.

<sup>7</sup>Item 2.

<sup>8</sup>Item 5.

In his June 2007 SF 86, Applicant acknowledged having used illegal drugs during the last seven years. In answer to the question asking him to list the dates and number of times for each illegal drug used, he reported only that he had used marijuana three times between January 2000 and January 2003. He did not list any other drug abuse.<sup>9</sup>

On February 20, 2008, for reasons that are not explained in the record, an Industrial Security Representative at Applicant's company wrote Applicant an email asking him to tell her what drugs he used, the number of times used, and the dates of usage. Her inquiry was not whether he had used additional drugs, but was phrased in a way that clearly implied her knowledge that he had. He responded that he used psychedelic mushrooms once around June 2001, used nitrous oxide about five times from June 2000 to September 2006, used crack once in January 2006, and used cocaine five times from January 2003 to January 2008. She then thanked him for the information and said that she would add it to his security paperwork.<sup>10</sup> As noted above, he was then granted a secret clearance in June 2008.

On August 10, 2010, Applicant submitted another SF 86 seeking eligibility for a top secret clearance. He again acknowledged that he had used illegal drugs during the preceding seven years. He disclosed that he had used cocaine, "roughly 5 times," from January 2003 to January 2008. He also said that he had used nitrous oxide, "roughly 5 times," from June 2000 to September 2006, and used crack one time in January 2006. The dates of cocaine and nitrous oxide use were "estimated." He did not list his marijuana or psychedelic mushroom use since that had occurred more than seven years before he signed this application. In response to question 23b, which asked if he had, "EVER illegally used a controlled substance while possessing a security clearance, Applicant answered, "No."<sup>11</sup>

Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) on September 10, 2010. He confirmed to the investigator that he and a friend bought and used crack one time in January 2006. He did not use it again because he was no longer curious about it. He said that the following dates were estimates. Between June 2000 and September 2006, he used nitrous oxide in a group setting with friends no more than five times. He said that he stopped using nitrous oxide because he had no desire to use it again. Between January 2003 and January 2008, he used cocaine in a group setting with friends no more than five times. He said that he stopped using it because he earned his security clearance at his current employer and signed an employment agreement that he would not use any controlled substance while maintaining a security clearance. He confirmed that his employer was not aware of all of his drug use, and that he had no other use or purchase of drugs in the past seven years other than those described above. He said that he had no intention of abusing drugs in the future because he values his job and wants to be responsible. On June 17, 2011,

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<sup>9</sup>Item 4 at 41-42.

<sup>10</sup>Item 2 Appendix A.

<sup>11</sup>Item 3 at 54-55; FR at 4.

Applicant affirmed under oath that his foregoing statements accurately reflected what he told the OPM investigator.<sup>12</sup>

In his response to the SOR, signed on September 16, 2011, Applicant admitted that he used marijuana three times between 2000 and 2003, used cocaine five times between 2003 and 2008, used nitrous oxide five times between 2000 and 2006, and used crack cocaine once in 2006. He further admitted that he used cocaine after being granted an interim security clearance in 2008. He denied any drug abuse since 2008, and stated his intent not to abuse drugs in the future with automatic revocation of clearance for any violation. He also denied deliberately failing to disclose his abuse of drugs other than marijuana on his 2007 SF 86, while admitting that his initial submission of that form listed only the marijuana use. He said that all of his drug use was recreational with friends in a party setting. He further stated:

As I grew older and began to take on more responsibility in both my professional and social aspects of my life, my attitude towards drugs changed. When my secret clearance was granted in 2008 I made a pact with myself to never abuse drugs ever again. I violated my own pact in August of 2008. This devastated me and I feel embarrassed by this. This letdown has left a lasting impact on me and I have not used drugs since that day and I can say with certainty that I will never abuse another drug for the rest of my life. That phase of my life has come to an end.<sup>13</sup>

In his response to the FORM, Applicant provided further information about his drug use and explanations concerning his earlier disclosures about it. He confirmed that his last drug use was in August 2008, and described his preceding drug use as sporadic and infrequent. He said:

For someone to use drugs as infrequently as I did, it may be baffling as to why I would, at times, slip and use drugs even after being gainfully employed with a security clearance. There is one common factor for each instance of drug use: all instances of drug use occurred in a party atmosphere. Since 2008, the frequency of which [sic] I attended parties has declined and I can honestly say that I no longer attend parties where drug use is evident. Over time, my group of friends and I have disassociated ourselves from individuals who use drugs and to the best of my knowledge, my friends have also been drug-free for the past few years as they too start to take on more responsibility in their professional lives with job promotions and personal lives with home ownership, marriage and children.<sup>14</sup>

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<sup>12</sup>Item 5.

<sup>13</sup>Item 2.

<sup>14</sup>FR at 2.

He said that it was not his intent to list marijuana as the only drug used from 2000 to 2003 on his original SF 86 as he “submitted the application prematurely,” and when it was brought to his attention in February 2008 he readily submitted a list of additional illegal drugs used to be added to his application.<sup>15</sup> He explained that he did not intentionally omit his August 2008 cocaine use from his second SF 86 or his OPM interview in 2010 because he mistakenly recalled that incident as having occurred in August 2007.<sup>16</sup>

Applicant is engaged to be married later this year. His fiancée is a psychologist pursuing a Ph.D. and practicing as a licensed therapist. She has prior work experience in a program treating substance abuse disorders, and has known him since November 2010. She has no tolerance for drug abuse, and is confident that he has not used drugs since she has known him and will not repeat his past substance abuse in the future. They have qualified to purchase a home together. Applicant recently started a master’s degree program in engineering and began living with his learning-disabled brother to help his adjustment to living away from their mother.<sup>17</sup>

On January 17, 2012, Applicant told his supervisor that he has, “some history of recreational drug use as late as August 2008.” His supervisor feels that this disclosure indicates that the information could not be used against him because it is now known by the person who controls his work future. He described Applicant as, “a mature, trustworthy person who we are happy to have as a valued employee.”<sup>18</sup>

Applicant provided his Performance Assessment and Development Review documents with overall assessments as a “High Contributor” in 2009 and 2010, and a “Successful Contributor” in 2011. His latest report described him as a “competent performer and valued team player, who meets the objectives and expectations of the position.”<sup>19</sup> I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## **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 (DCs) and mitigating conditions (MCs), which are to be used in evaluating an applicant’s eligibility for access to classified information.

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<sup>15</sup>FR at 3.

<sup>16</sup>FR at 4.

<sup>17</sup>AR; FR Appendices B through E.

<sup>18</sup>FR Appendix E.

<sup>19</sup>AR Appendix B; FR Appendix A.

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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny 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."

A person applying for access to classified information seeks to enter 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 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.

## **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.

(a) 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;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The DCs raised by the evidence in this case include:

(a) any drug abuse (see above definition); and

(g) any illegal drug use after being granted a security clearance.

Applicant admittedly used marijuana, cocaine, nitrous oxide, and crack cocaine on at least 14 different occasions between 2000 and 2008. He also described entering a written agreement with his employer that he would not use drugs while maintaining a security clearance, and making a pact with himself to stop abusing drugs after receiving his final clearance in June 2008. He found it possibly “baffling as to why I would, at times, slip and use drugs even after being gainfully employed with a security clearance.” This most reasonably implies multiple violations of the written agreement while holding an interim or final clearance. He described violating his pact with himself in August 2008 as a devastating let down that left a lasting impact on him. These facts support application of the foregoing DCs, and shift the burden to Applicant to prove mitigation of resulting security concerns.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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;

(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; and,

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

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

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's experimentation with marijuana, crack cocaine, and nitrous oxide occurred on a few occasions during parties, all of which were more than five years ago. He no longer attends parties involving illegal drug use and presented compelling evidence that drug abuse is unlikely to recur. Some mitigation under AG ¶ 26(a) was accordingly established. However, his cocaine abuse after being granted a security clearance, and pledging to his employer and to himself that he would not further abuse drugs, casts some doubt on his current reliability, trustworthiness, and good judgment.

Applicant no longer engages in recreational activities where peer pressure to use drugs might exist, and the evidence indicates that he has been abstinent since August 2008. He also submitted a statement of intent to never abuse drugs in the future with automatic revocation for any violation. These facts establish additional mitigation under AG ¶ 26(b).

The drug abuse in this case did not involve prescription drugs, so AG ¶ 26(c) has no application to this decision. Applicant has not participated in any drug treatment program, and was never diagnosed with drug dependence or abuse, or recommended for treatment. No favorable prognosis by a duly qualified medical professional was provided, so AG ¶ 26(d) does 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The potentially disqualifying conditions established by the evidence in this case are:



(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

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress. . . .<sup>20</sup>

In June 2007, Applicant falsified his history of drug abuse by listing marijuana use on three occasions between 2000 and 2003, but omitting his abuse of nitrous oxide, crack cocaine, and cocaine from 2000 on. He continued abusing cocaine for more than a year thereafter. His detailed descriptions to the OPM investigator of the circumstances under which these other incidents of drug abuse took place are inconsistent with inadvertent failure to recall that they occurred. He signed the SF 86 attesting to it being complete and accurate. No details corroborating "premature" submission were provided. Security concerns under AG ¶ 16(a) are fully supported by his false omissions concerning his abuse of nitrous oxide, crack, and cocaine on the SF 86.

Security concerns under AG ¶ 16(e) are also established. Applicant knew that his drug abuse would raise security concerns, and admittedly concealed the extent of it from his employer as late as his OPM interview in September 2010. He did not reveal that he had, "some history of recreational drug use as late as August 2008," to his direct supervisor until just prior to his FORM response in mid-January 2012.

AG ¶ 17 describes conditions that could mitigate security concerns under the Personal Conduct guideline. The MCs with potential application in this case are:

(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

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<sup>20</sup>Although fully supported by the evidence in the record, the SOR did not allege Applicant's violation of his written agreement with his employer not to abuse drugs, so AG ¶ 16(f) is not at issue. The SOR also failed to allege Applicant's false denial of drug abuse while possessing a security clearance on his August 2010 SF 86, so its applicability under AG ¶ 16(a) is not considered disqualifying.

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

Contrary to Applicant's explanation, he did not make a prompt or good-faith effort to correct his June 2007 SF 86 omission of his cocaine and inhalant abuse before being confronted and directly asked to do so by security personnel from his company in February 2008. He presented convincing evidence of positive steps taken to ensure that his drug abuse is unlikely to recur, but his attempted deception concerning his efforts to conceal its extent are recent and ongoing. This casts continuing doubt on Applicant's veracity and acceptance of the important role that trustworthiness plays in the personnel security process. At the very last minute, he revealed "some history of recreational drug use" to his supervisor, but that partial disclosure did not fully eliminate his apparent vulnerability to manipulation or duress, as demonstrated by its earlier concealment. Accordingly, Applicant failed to demonstrate mitigation under any of the Personal Conduct guideline MCs.

### **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 pertinent facts and circumstances. Applicant is an accountable adult, who is responsible for his voluntary choices and deceitful conduct that underlie the security concerns expressed in the SOR. His admitted drug abuse covered an extended period of time, including after he was granted a security clearance and made commitments to his employer and himself that he would stop doing so. However, I find that his evident commitment to his fiancée to be responsible, and her anti-drug influence, support my conclusion that he is unlikely to abuse drugs in the future.

Applicant's falsification of his prior drug history on his original SF 86 goes to the heart of the security clearance process, however, and was made in order to conceal what he knew to be potentially disqualifying information. He only disclosed his abuse of drugs, other than marijuana experimentation in college years earlier, when asked directly about it by his company's security department in February 2008. He disclosed cocaine use through January 2008 at that point, but again used cocaine at least once in August 2008, in what he describes as a devastating letdown that left a lasting impact on him. On his August 2010 SF 86, he disclosed only his cocaine abuse through January 2008, and denied having ever used drugs while holding a security clearance. Accordingly, I must conclude that his susceptibility to falsifying material information to avoid potential adverse consequences, pressure, coercion, or duress remains undiminished.

Overall, the record evidence leaves me with a substantial doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his personal conduct.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 1.a through 1.e:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a and 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.

DAVID M. WHITE  
Administrative Judge