



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 11-01911  
 )  
Applicant for Security Clearance )

**Appearances**

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

For Applicant: *Pro se*

December 12, 2012

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigation Processing (e-QIP) on August 11, 2010. (Government Exhibit 4.) On November 16, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H (Drug Involvement), and E (Personal Conduct) concerning the Applicant. 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 for SORs issued after September 1, 2006.

Applicant submitted an Answer to the SOR on December 5, 2011, and requested a decision be made without a hearing. (Government Exhibit 3.) Department Counsel submitted a File of Relevant Material (FORM) to Applicant on October 2, 2012. Applicant received the FORM on October 9, 2012, and was given 30 days to submit any additional information. Applicant elected not to submit any additional information. The

case was assigned to me on November 28, 2012. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 27, and single. He received an Honorable Discharge after serving in the US Navy from 2003 to 2007. He is employed by a defense contractor and seeks to obtain a security clearance in connection with his employment. Applicant admitted all of the allegations in the SOR. Those admissions are findings of fact. Applicant's admissions, including those made in response to DOHA interrogatories,<sup>1</sup> are incorporated into the following findings of fact.

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

The Government alleges in this paragraph that Applicant is ineligible for clearance because he used illegal drugs.

Applicant used marijuana from August 2007 through September 2010. During that time he was employed by a defense contractor and held a Top Secret security clearance. During an interview on October 18, 2010, Applicant stated to an interviewer from the Office of Personnel Management (OPM) that he used marijuana on a monthly basis during that three year period. (Government Exhibit 5 at 4.)

In an interrogatory dated October 20, 2011, Applicant indicated that he has been drug free since September 2010. He further stated that he stopped using illegal drugs because it was, "Not part of who I wanted to be as a person." (Government Exhibit 6 at 2.)

Applicant submitted a written statement of intent not to use illegal drugs in the future, dated November 22, 2011. He states, "I will not associate with users of drugs, come in contact with or use any illegal substances in the future." He further states, "I understand that [it] is not consistent with National Security Interests to be involved with Illegal Drugs in any form, and understand that any future violations will result in the immediate revocation of my security clearance." (Government Exhibit 7.)

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

The Government alleges in this paragraph that Applicant is ineligible for clearance because he falsified material facts during the clearance screening process; and that the conduct, set forth under Paragraph 1, above, shows poor judgment, unreliability and untrustworthiness under this Paragraph.<sup>2</sup>

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<sup>1</sup>Government Exhibits 5 and 6.

<sup>2</sup>Paragraph 2 of the original SOR contains three subparagraphs, 2.a, 2.b, and 2.d. Subparagraph 2.d is renumbered as 2.c.

Applicant filled out an e-QIP on August 11, 2010. (Government Exhibit 4.) Section 23.a. of the questionnaire asked Applicant whether, in the last seven years, he had illegally used any controlled substance, including marijuana. Section 23.b. of the questionnaire went on to ask Applicant, "Have you EVER illegally used a controlled substance while possessing a security clearance; while employed as a law enforcement officer, prosecutor, or courtroom official; or while in a position directly and immediately affecting the public safety?" Applicant answered, "Yes," to both questions and further stated that he used marijuana on an "experimental" basis, after his Naval service ended, between August and October 2007.

The answers to these two questions were false. As shown above, Applicant's use of marijuana extended for three years, not three months, and cannot be viewed as experimental.

When Applicant was interviewed two months later, on October 18, 2010, by the OPM investigator he was asked why he provided incorrect information on his security questionnaire. "Subject responded that he did not know how to list the correct information and knew he would be discussing his use with a special agent as part of the clearance process." The report goes on to state, "When asked if he had reported this [marijuana] use to his facility security officer, subject stated that he has not reported illegal drug use because he was scared to. He stated he is very scared of losing [sic] his job but wanted to be honest about his drug use." (Government Exhibit 5 at 4-5.)

Applicant provided no evidence concerning the quality of his professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## **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. 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 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. 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, “Any 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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 *also* 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; and

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

Applicant used marijuana on at least a monthly basis from August 2007 through September 2010. Applicant states that he has not abused any drugs since 2010 and will not use them in the future. However, he submitted no corroborating evidence from anyone on this point. In addition, he had no excuse whatsoever for his years-long use of marijuana while holding a security clearance.

I have examined 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). The evidence is clear that the Applicant's abuse of marijuana was the voluntary action of a mature person. He states that he has been drug free for two years as of the time the record closed, and he submitted a signed statement of intent not to use drugs in the future. Assuming he is truthful, Applicant has met the bare-bones requirements of these Mitigating Conditions. However, given the lack of any corroborating information, and the situation described in Paragraph 2, below, I cannot 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. 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 have examined 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.

Applicant knowingly and purposely falsified his security clearance application on August 11, 2010. He admitted this falsification when interviewed by OPM two months later. Accordingly, AG ¶ 17(a) "the individual made prompt, good-faith efforts to correct the omission, concealment or falsification before being confronted with the facts," may apply. However, there is one puzzling aspect to this situation. Applicant states that he "was unsure how to answer the question fully and truthfully at the time." (Government Exhibit 3.) The questions are not confusing. Certainly when interviewed Applicant knew that he had made a false statement earlier. More telling is the fact that Applicant also stated that he had not informed his employer's facility security officer of his drug use because he was scared of losing his job. As stated earlier, Applicant elected not to submit any additional information, and the Government does not know whether his employer is still ignorant of this aspect of Applicant's past. Once again, assuming he is truthful, Applicant has submitted barely enough information to justify a security clearance. However, the national interest demands more than "just enough" evidence.

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, just about two years, since the falsification. There is insufficient evidence that Applicant currently shows good judgment or is reliable. Paragraph 2 is found against 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 applicant's conduct and all the 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. Applicant was a drug user while holding a security clearance, who falsified a questionnaire specifically about his drug use. Admittedly, this is a close case. However, under AG ¶ 2(a)(3), Applicant's conduct is recent. Based on the state of the record, I cannot find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is the potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)), and that there is a likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me with questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his drug use, and personal conduct at this time

On balance, it is concluded that Applicant has not successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports a finding against Applicant as to the factual and conclusory allegations expressed in Paragraphs 1 and 2 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 APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant

Paragraph 2, Guideline E:

AGAINST APPLICANT

Subparagraph 2.a:

Against Applicant

Subparagraph 2.b:

Against Applicant

Subparagraph 2.c:

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.

WILFORD H. ROSS  
Administrative Judge