



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



In the matter of: )  
)  
) ISCR Case No. 11-03271  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: Elizabeth L. Newman, Esq.

04/23/2013

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 3, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline E, personal conduct. The action was taken under Executive Order (EO) 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) implemented by the DOD on September 1, 2006.

Applicant answered the SOR on January 25, 2013, and requested a hearing before an administrative judge. The case was assigned to another administrative judge on March 18, 2013, and reassigned to me on March 26, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 27, 2013, scheduling the hearing for April 10, 2013. The hearing was convened as scheduled.

Government Exhibits (GE) 1 and 2 were admitted in evidence without objection. Applicant testified and called a witness, but he did not submit any documentary evidence. DOHA received the hearing transcript (Tr.) on April 19, 2013.

### **Findings of Fact**

Applicant is a 30-year-old employee of a defense contractor. He has worked for his current employer since October 2010. He has a master's degree. He is single with no children.<sup>1</sup>

After Applicant graduated from college in 2004, he worked as an intern at a school in a foreign country. He celebrated his 22<sup>nd</sup> birthday with a night of drinking. He had a hangover the next day when he went to work at the school. The headmaster did not approve of Applicant appearing at the school in his state. He gave Applicant the choice of resigning or being fired. Applicant chose to resign.<sup>2</sup>

Applicant smoked marijuana while he was in college and thereafter. He estimated that he smoked marijuana about once or twice a week for a total of 80 to 100 times between 2004 and 2007. He has not used marijuana since January 2007.<sup>3</sup>

Applicant applied for a security clearance through another government agency in 2008. He did not list on his questionnaire that he left employment at the school under unfavorable circumstances. He also understated his marijuana use. He stated that he used marijuana about 30 to 50 times. Applicant admits that he intentionally provided false information on the questionnaire.<sup>4</sup>

In April 2008, Applicant was interviewed in conjunction with a polygraph for his security clearance with the other government agency. He again intentionally provided false information about the circumstances surrounding the end of his job in the foreign country and about the amount of times he used marijuana. It was only after being confronted with the results of the polygraph that he was truthful about both subjects.<sup>5</sup>

Applicant was interviewed and polygraphed for the other government agency again in 2009. He provided truthful responses during the 2009 interview.<sup>6</sup>

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<sup>1</sup> Tr. at 17-18; GE 1.

<sup>2</sup> Tr. at 18-22; Applicant's response to SOR; GE 1, 2.

<sup>3</sup> Tr. at 23; Applicant's response to SOR; GE 2.

<sup>4</sup> Tr. at 22-28; Applicant's response to SOR; GE 2.

<sup>5</sup> Tr. at 26-27, 33-37; Applicant's response to SOR; GE 2.

<sup>6</sup> Tr. at 28-29.

Applicant submitted a Questionnaire for National Security Positions (SF 86) on March 11, 2010. He fully listed his marijuana use from 2004 to January 2007, and he estimated that he smoked marijuana 80 to 100 times. He listed potentially derogatory financial information, and he listed a \$400 speeding violation in December 2006. Section 13C asked if Applicant had quit a job after being told he would be fired in the last seven years. Applicant answered that he had, and he reported in 2004, he “was asked to resign from [his] position as intern” at the foreign school. He did not provide specific information as to why he was asked to resign.<sup>7</sup>

Section 24 of the SF 86 asked about Applicant’s alcohol use. Applicant answered “No” to Section 24a of the SF 86, which asked:

In the last 7 years, has your use of alcohol had a negative impact on your work performance, your professional or personal relationships, your finances, or resulted in intervention by law enforcement/public safety personnel?<sup>8</sup>

Applicant denied intentionally providing false information on the SF 86. He stated that he interpreted the question as asking whether he had any chronic alcohol abuse or alcoholism issues, which he did not. He admitted that, in retrospect, he should have provided a positive response to the question. He was interviewed for his background investigation on April 28, 2010. The interviewer asked him about resigning from the school after being told he would be fired. He fully discussed his alcohol consumption and his reporting to the school for work while hung over.<sup>9</sup> After considering all the evidence, including the other adverse information Applicant provided on the SF 86 and Applicant’s knowledge that a part of the U.S. Government was aware of the circumstances surrounding his leaving the school, Applicant’s explanation was credible. I find that he did not intentionally provide false information on the SF 86.

Applicant regrets his dishonesty in 2008. He knows that he must provide complete and truthful responses to all security questions and inquiries. He has not used illegal drugs in more than six years, and there has been no recurrence of any alcohol-related incidents.<sup>10</sup>

Applicant’s witness is a retired military officer. He has known Applicant since 2007 and worked with him on a daily basis until 2011. He praised Applicant’s character and job performance. Applicant told the witness about his marijuana use, how his job at the foreign school ended, and about his false statements in 2008. The witness believes

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<sup>7</sup> Tr. at 29-32, 37-40; GE 1.

<sup>8</sup> GE 1.

<sup>9</sup> Tr. at 29-32, 40-44; Applicant’s response to SOR; GE 1, 2.

<sup>10</sup> Tr. at 32, 37; GE 1.

Applicant has matured and learned from the experience, and such behavior will not be repeated.<sup>11</sup>

## Policies

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 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, administrative judges apply the guidelines 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."

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." The applicant has the ultimate burden of persuasion to obtain 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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).

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<sup>11</sup> Tr. at 46-57.

## Analysis

### Guideline E, Personal Conduct

The security concern for personal conduct is set out in AG ¶ 15, 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative.

Applicant intentionally provided false information on his 2008 security questionnaire and during his 2008 interview. AG ¶¶ 16(a) and 16(b) are applicable.

Applicant did not intentionally provide false information on the 2010 SF 86. SOR ¶ 1.a is concluded for Applicant.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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;

(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 did not correct his falsifications before being confronted with the facts. They did not result from improper advice. AG ¶¶ 17(a) and 17(b) are not applicable.

Applicant's actions were serious. They constituted federal crimes and significantly compromised the process. Refusal to provide full, frank, and truthful answers in connection with a personnel security determination will normally result in an unfavorable clearance action. (AG ¶ 15(b)) However, it has been five years since Applicant's falsifications. I found him to be credible and forthcoming at the hearing. I believe he has matured and knows he was wrong to be dishonest, and I am convinced such conduct will not be repeated. AG ¶¶ 17(c), 17(d), and 17(e) are applicable.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant was 25 years old when he intentionally provided false information on his questionnaire and during his interview. Those actions would normally result in the denial of his security clearance. However, he has matured in the last five years. I am satisfied that such behavior will not recur.

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated personal conduct security concerns.

### **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:	For Applicant
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Subparagraphs 1.a-1.c:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge