



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



In the matter of: )  
)  
) ISCR Case No. 11-03926  
)  
Applicant for Security Clearance )

**Appearances**

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

05/06/2013

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**Decision**

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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 August 31, 2012, the Department of Defense issued 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.

On September 28, 2012, Applicant answered the SOR and elected to have his case decided on the written record. On February 6, 2013, Department Counsel submitted the Government's file of relevant material (FORM). The FORM was mailed to Applicant and it was received on February 22, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on April 23, 2013.

### **Findings of Fact**

Applicant admitted all of the SOR allegations with comments. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 56 years old. He is a high school graduate. He married in 1984 and has two grown children. He has worked for a federal contractor since 2003. He submitted his most recent security clearance application (SCA) on October 28, 2010.

In September 1985, Applicant submitted a SCA, wherein he admitted a 1983 disorderly conduct charge. In January 1986 Applicant submitted a sworn statement admitting to having been arrested and charged with possession of a controlled dangerous substance in 1976. He also discussed two other arrests. In this statement, he admitted to using marijuana in 1972 and continuing to use it until January 1986. He admitted to using cocaine on one occasion. He admitted to using amphetamines to stay awake on long drives and when he was working long hours at his job. He affirmatively stated, "I intend to use marijuana in the future at about the same rate as I am now using it as it is no danger to me or the security of my country."<sup>1</sup> Applicant indicated he purchased marijuana about once a week and used it frequently during 1986.<sup>2</sup>

On October 5, 1994, Applicant submitted a National Agency Questionnaire. He disclosed he had used marijuana in high school. He failed to disclose any other illegal drug use. He stated: "I used marijuana in high school years (pre-1974) when among other classmates. Never used again, no future intentions."<sup>3</sup>

Applicant was granted a DOD confidential clearance in September 1985, while working at a federal government facility from August 1985 to May 1992.

In June 1995 Applicant provided a signed sworn statement. In it he admitted that he used marijuana from 1972 to 1984 on weekends. From 1984 to 1987, his marijuana

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<sup>1</sup> Item 4.

<sup>2</sup> Item 4.

<sup>3</sup> Item 7.

use continued, but was sporadic.<sup>4</sup> In 1987, his marijuana use increased to two to three times per week until 1991. Since 1991, he used marijuana twice, the last time being in December 1993. In his sworn statement, he said: "I have no intentions to use marijuana in the future, as I have no need to use this drug. It is possible that under the right circumstances, it could happen, however, I seriously doubt that it would as I no longer associate with drug users and have not since 1991."<sup>5</sup> Applicant admitted that from 1974 to 1984 he purchased marijuana monthly, used cocaine approximately 20 times between 1976 and 1983, and occasionally contributed money towards its purchase.

Applicant also admitted in his June 1995 sworn statement that he was not truthful in his 1986 sworn statement because he denied purchasing and selling marijuana, and he minimized his drug use. He also admitted he did not disclose the full extent of his marijuana use nor his cocaine use on his 1994 National Agency Questionnaire because he feared he would lose his job.<sup>6</sup>

Applicant signed a sworn statement on September 6, 1995. In it he admitted he had used marijuana once or twice a week since December 1993 and stated his last use of marijuana was in late August 1995. He also stated: "In the future, I will keep my use of marijuana to this level and I will avoid all other illegal drugs."<sup>7</sup>

On July 29, 1996, a DOHA Administrative Judge denied Applicant's security clearance due to his illegal drug use and his falsifications. The decision notes that Applicant admitted he continued to use marijuana until March 1996.<sup>8</sup>

In April 1999, Applicant completed an SCA. He disclosed that he had used marijuana from June 1974 to December 1997. He estimated he used it about 2,000 times. He denied he used marijuana while holding a security clearance.<sup>9</sup>

In his February 2000 response to DOHA interrogatories, Applicant admitted he falsified his employment application to the federal contractor in 1994 by denying all illegal drug use.<sup>10</sup>

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<sup>4</sup> Item 8.

<sup>5</sup> Item 8 at 2.

<sup>6</sup> Item 8.

<sup>7</sup> Item 9.

<sup>8</sup> Items 10, 11

<sup>9</sup> Item 12.

<sup>10</sup> Item 14.

Applicant admitted on his October 10, 2010, SCA that he used marijuana approximately 20 times between December 2003 and December 2009. He also disclosed that he had been granted a secret security clearance in August 2002.<sup>11</sup>

Applicant was interviewed on November 16, 2010. In his interview, he confirmed he used marijuana from December 2003 to December 2009. He also stated he had never purchased or sold illegal drugs and that no legal action had been taken against him for his drug use. Applicant told the investigator regarding his future drug use that he intended to continue using marijuana with friends if it is offered to him. He would not refuse marijuana if offered to him and he would only use it in moderation. Applicant also told the investigator that he continues to associate with friends who use illegal drugs and he has never had a positive drug test.<sup>12</sup>

Applicant's April 2012 response to DOHA interrogatories adopted, with some minor corrections, the November 2010 OPM report of interview. He also stated in his response: "Marijuana is the only illegal drug I have used in the past."<sup>13</sup>

In Applicant's answer to the SOR, he states that since his family relocated to a new state in 1994-1995 there was significantly less frequency of visits from individuals where marijuana was a common social event. He stated it has been more than 35 years since he sold any illegal drug and the past circumstances involved him purchasing marijuana and splitting it with the people with whom he associated. He stated that while holding a confidential security clearance and a secret security clearance, he never compromised national security or disclosed classified information to any unauthorized person.<sup>14</sup>

Applicant clarified his statement as to potential future use of marijuana. He stated: "Whereas what is not included is that if/when in certain social events, and a trusted source would offer, for example a marijuana cigarette, I might take a puff and pass it on." Applicant further clarified that he could also refuse the offer stating: "I have illegal drug testing at my job." He stated he would refuse the marijuana if he felt that the marijuana had other substances in it.<sup>15</sup>

The record includes several instances where Applicant stated in the past that he did not intend to use illegal drugs in the future, but subsequently used it.

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<sup>11</sup> Item 17.

<sup>12</sup> Item 18.

<sup>13</sup> Item 18. Some of Applicant's false statements and drug uses have not been alleged and are not considered for disqualifying purposes, but may be considered when analyzing the whole person.

<sup>14</sup> Item 2.

<sup>15</sup> Item 2.

## 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 AGs 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.

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. (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.

I have considered the disqualifying conditions under AG ¶ 25 and concluded 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;
- (g) any illegal drug use after being granted a security clearance; and
- (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant has used illegal drugs from 1972 to at least 2009. During some of that time he held a confidential clearance and from 2002 a secret security clearance. At different times, Applicant has made statements about his future intent to use marijuana and not to use drugs. In his most recent statement to a Government investigator, he indicated he would not refuse marijuana if it was being passed around by a trusted friend. Applicant has possessed, purchased, and sold illegal drugs. I find the above disqualifying conditions apply.

I have considered all of the mitigating conditions under AG ¶ 26. The following two 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; 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 are used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant has a long history of marijuana use with virtually no commitment to stop using it. He has used it while holding a confidential clearance and a secret security clearance with no regard for the seriousness of his actions. There is no evidence that he will refrain from using marijuana in the future. None of the mitigating conditions apply.

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

AG ¶ 15 expresses the security concern about 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 concluded the following has 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.

(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.

In his 1986 sworn statement, Applicant deliberately provided false information about his illegal drug use. He minimized his actual use and denied purchasing marijuana. He lied again in 1995 when he provided a sworn statement that he last used marijuana in 1991, when in fact he had continued to use marijuana at a later time. Applicant falsified his response in DOHA interrogatories when he stated his only illegal

drug use involved marijuana, when in fact he had used cocaine and amphetamines in the past. 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.

None of the above mitigating conditions apply. Applicant has a long history of providing false information in sworn statements and to Government investigators. His statements and clarifications are not credible. His pattern of falsification is a serious security concern.

### **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.



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 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 is 56 years old. He has used marijuana with varying degrees since high school. Under the right set of circumstances, he may use it again in the future. He has used marijuana while holding a security clearance. He is unfazed by the seriousness of his conduct and appears to lack an appreciation for the security concerns and being able to abide by the law. His lack of commitment to cease using illegal drugs even while holding a security clearance is disturbing. He has a long history of providing inconsistent and false information about his drug use in sworn documents and to Government investigators. Applicant was denied a security clearance in 1996 because of his drug involvement and personal conduct. It is obvious, he did not learn from the experience. 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
Subparagraph 1.a-1.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.d:	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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge