



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 11-06591  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Phillip J. Katauskas, Esquire, Department Counsel  
For Applicant: *Pro se*

04/09/2012

**Decision**

MASON, Paul J., Administrative Judge:

Applicant’s 11-year-history of drug use and his deliberate attempts to conceal some, most, or all of his drug history on several occasions has not been mitigated. Eligibility for access to classified information is denied.

**Statement of the Case**

On November 3, 2011, DOHA issued a Statement of Reasons (SOR) detailing security concerns under drug involvement (Guideline H). 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) implemented by the Department of Defense on September 1, 2006.

Applicant submitted his notarized answer to the SOR on December 1, 2011. DOHA issued a notice of hearing on January 17, 2012, for a hearing on February 8, 2012. The hearing was held as scheduled. At the hearing, four exhibits (GE 1 through GE 4) were admitted in evidence without objection in support of the Government's case. Applicant testified. Two exhibits, character references and recognition certificates, were entered in the record in Applicant's behalf. DOHA received the transcript (Tr.) on February 13, 2012. The record closed on February 13, 2012.

### **Findings of Fact**

On March 28, 2006, Applicant was interviewed about his illegal drug use by an investigator from the Office of Personnel Management (OPM). He completed and certified his Electronic Questionnaire for Investigations Processing (e-QIP)(GE 1) on March 2, 2011. He was interviewed a second time on March 29, 2011. Summaries of his March 2006 and March 2011 interviews appear in Applicant's interrogatory answers dated August 11, 2011. (GE 4) In response to question No. 3 of GE 4 asking whether the summaries were correct, and question No. 4 recommending changes or modifications be made, Applicant indicated that the interview summary was not correct and provided corrections. In response to question No. 6 of GE 4, asking whether the interview summaries were correct with the changes and modifications, and whether the summaries could be used at a hearing to determine Applicant's security suitability, Applicant indicated "yes."

The SOR alleges security concerns under the drug involvement and personal conduct guidelines. Applicant admitted the four allegations under the drug involvement guideline. He admitted using marijuana from 1995 to 2008, and contributing to the purchase of marijuana. He admitted using marijuana after he was granted a secret security clearance in 1997, and an interim top secret clearance in July 2005. He was not certain how to answer SOR ¶ 2(a), but he admitted SOR ¶ 2(b). Regarding SOR ¶ 2.c, he denied he intentionally falsified his responses on the July 2005 security clearance application (SCA), explaining that he did not know why he incorrectly answered question No. 27. He claimed he misinterpreted question No. 28, explaining that he has never been in a public safety position while holding a security clearance.

Applicant is 36 years old and single. He received his bachelor's degree in December 1998. He has been employed as a software engineer since October 2007. Before he began his current employment, he was employed as a software engineer with two other defense contractors. He has held a security clearance since August 1997. (Answer to SOR)

When he was a senior in college in May 1997, Applicant filled out an security clearance application (SCA) three days after he was hired by a defense contractor. (GE 3) In response to the question 27, requiring information about drug use, Applicant indicated "yes" that he had used marijuana once in June 1994. He completed a second SCA in July

2005. He responded “no” to question #27, requiring disclosure of drug use since age 16 or in the last 7 years. He also answered “no” to question #28, requiring information about using drugs while holding a security clearance. (GE 2)

In his interview with an OPM investigator in March 2006, Applicant indicated he had used marijuana from 1995 to approximately February 2004. (GE 4) His frequency of use in the period was about 15 times a month. He contributed to the purchase of marijuana with friends. After considering that continued drug use could jeopardize his job, life, and career, he stopped drug use. Drug use never had an impact on his personality or ability to keep friends. His marijuana use never negatively impacted his job performance. (*Id.*)

Applicant was interviewed on March 29, 2011. He admitted smoking marijuana until he was 30 years old. He admitted using the drug while possessing a security clearance, but he never smoked at work nor was he under the influence of marijuana while at work. He stopped smoking because he was older and wanted to be more responsible. He stated that he never purchased the drug. (*Id.*)

At the hearing on February 8, 2012, Applicant explained he first began using marijuana in college. Around the time he received his first security clearance, he used marijuana about ten times. He recalled his heaviest use was after college when he was using the drug once or twice a day for about five or six years. He estimated the heaviest drug use occurred between 1999 to 2004, with reduced marijuana use of once or twice a week until January 2008. (Tr. 22-24) When pressed on the date when he stopped, he opined he may have used the drug one more time in May 2008 or a little thereafter. (Tr. 39)

Applicant had no explanation for using marijuana while holding a security clearance. He knew he was violating the law, but did not think of himself as a criminal because he never tried to sell the drug or do anything illegal with the drug. (Tr. 35) He only engaged in personal drug use. (Tr. 21-22, 35) Regarding his incorrect answers to the drug question in his 1997 SCA, he explained that he was very scared and did not know what to do. (Tr. 37) Regarding his incorrect answers appearing in the 2005 SCA, he did not know why he answered “no” to question 27 (drug use question). As he indicated in his answer to the SOR, he misinterpreted question No. 28 to apply to public safety officials using drugs while holding a security clearance. (Tr. 30-32)

### **Character Evidence**

Applicant provided seven character endorsements from former or current persons in his chain of command. The test director of a past project indicated in May 2004 that because of his diligence and proficiency, Applicant was a valuable contributor to a project's success. In another character reference dated April 2003, a member of Applicant's command commended Applicant's contributions to a project resulting in improved war

fighting capability. Another command official and chief test engineer officially cited Applicant for his important work in creating a high quality weapon system. In February 2001, Applicant received recognition for his job accomplishments and professionalism. (*Id.*) Applicant's current director of engineering praised Applicant's professional ethics and work habits. Applicant's coworker since March 2009 has never seen him under the influence of drugs. (*Id.*)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the AG. Each guideline lists potentially disqualifying conditions and mitigating conditions, which are required to be considered to the extent they apply in evaluating an applicant's eligibility for access to classified information.

The administrative judge's ultimate goal is to reach a fair and impartial decision that is based on common sense. The decision should also include a careful, thorough evaluation of a number of variables known as the whole-person concept that brings together all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision. 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 about the potential, rather than actual, risk of compromise of classified information.

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 for obtaining a favorable security decision.

## **Analysis**

### **Drug Involvement**

Paragraph 24 of the AG sets forth the security concern attached 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, 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.

The guideline notes several disqualifying conditions that could raise security concerns. The disqualifying conditions that are applicable are: AG ¶ 25(a) (*any drug abuse*); AG ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia*); and AG ¶ 25(g) (*any illegal drug use after being granted a security clearance*).

AG ¶¶ 25(a), 25(c), and 25(g) apply to this case because Applicant used marijuana from 1995 to 2008. When the drug was not given to him, he contributed money toward purchase of the drug. The most troublesome aspect of Applicant's marijuana use is that he used the drug after he had been granted a secret security clearance in 1997. He continued to use the drug after being granted an interim top secret clearance in 2005. During a 14-year-period of his security investigation, he provided inconsistent accounts of his drug use on two security application forms and two interviews.

The two relevant mitigating conditions under the drug involvement guideline are: AG ¶ 26(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 AG ¶ 26(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, and (4) a signed statement of intent with automatic revocation of clearance for any violation*).

AG ¶ 26(a) may apply when the drug use was not recent. There is no automatic litmus test that determines recency. According to ISCR Case No. 02-2442 at 6 (App. Bd. Aug. 4, 2004), the Appeal board found that recency should be based on "the totality of the record within the parameters set by the directive." Where a significant period of time has passed since the adverse conduct, then a determination must be made that shows "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation." (ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997))

Applicant claims he stopped using marijuana by May 2008 or a short time thereafter.

However, in his interview summary dated March 2011, he claimed he used marijuana until he was 30 years old. The calendar year would have been 2005, not 2008, on Applicant's 30<sup>th</sup> birthday. In his March 2011 statement, Applicant contended he never purchased marijuana. He admitted purchasing the drug in his answer to the SOR. At the hearing, Applicant testified he stopped using marijuana because he had matured. He made this same claim in earlier OPM interviews while he was actively using marijuana. Applicant's marijuana use lasted from 1997 to 2008, and involved heavy use for about five years ending in 2004. He provided no independent evidence demonstrating that he ended his drug in May 2008. The observations of Applicant's coworker are not probative because they appear to be based on Applicant's conduct at work. Applicant has not met his burden under AG ¶ 26(a) that his drug will not recur.

Applicant failed to meet the elements of AG ¶ 26(b) in establishing an intent to forego drug use in the future. He did not establish that he severed his ties with drug users or that he changed or avoided the environment where drugs are used. He did not produce a signed statement of intent to abstain from any drug use with automatic revocation for any violation.

## **Personal Conduct**

The security concern for personal conduct is set forth in AG ¶ 15:

AG ¶ 15. 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 contains three disqualifying conditions that may be applicable: 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*); AG ¶ 16(b) (*deliberately providing false or misleading information concerning relevant facts to a . . . an investigator*); and, AG ¶ 16(c) (*credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the may not properly safeguard classified information*).

Applicant's purchase and use of marijuana while holding a security clearance for 11 years represent rule violations of the government policy against drug use and supports a whole-person assessment of poor judgment, untrustworthiness, and a lack of candor that has not been mitigated by Applicant's character evidence.

Based on the pattern of inaccurate disclosures of his drug history over an 11-year period, I find that Applicant deliberately omitted material information about his drug use from 1995 to May 2008. When he listed on his May 1997 SCA a one-time use in June 1994, that was false. When he answered "no" on his July 2005 SCA to the drug use question and the drug use while holding a security clearance question, those responses were false. AG ¶ 16(a) applies.

Applicant deliberately provided false information about his marijuana use in two interviews. Though he was actively using marijuana at the time of his March 2006 interview, he untruthfully claimed he stopped using marijuana in February 2004. In his March 2011 interview, he claimed that he stopped smoking marijuana at age 30, which would have been in 2005, not 2008. Unlike his March 2006 interview, he claimed in the March 2011 interview that the marijuana was always supplied by others. AG ¶ 16(b) applies.

There are two conditions under AG ¶ 17 that may mitigate Applicant's poor judgment under AG ¶¶ 16(a), 16(b) and 16(c); AG ¶ 17(a) (*the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts*); and, AG ¶ 17(c) (*the offense was 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*). AG ¶ 17(a) does not apply because Applicant did not provide accurate information about his drug use until confronted with the facts. AG ¶ 17(d) does not apply because Applicant did not furnish evidence demonstrating positive changes in his lifestyle that reduce the chances of illegal drug use recurring in his future.

### **Whole-Person Concept**

In evaluating Applicant's security clearance worthiness, I have examined the evidence under the disqualifying and mitigating conditions of the financial guideline. I have also weighed the circumstances within the context of nine variables known as the whole-person concept. In evaluating the relevance of an individual's conduct, the administrative judge should consider the following factors:

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 the participation was 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.

The ultimate decision of whether the granting or continuing eligibility for a security clearance is clearly consistent with the interests of national security must be a judgment based on common sense after a careful review of the guidelines, which are to be evaluated in the context of the whole-person concept. (AG ¶ 2(c))

Applicant is 36 years old and has been employed as a software engineer since 1997. The character endorsements of seven former and current coworkers and supervisors demonstrate that his job performance is highly respected. He received a certificate in 2001 recognizing his job accomplishments and professionalism.

The disqualifying evidence compels a finding against the granting of Applicant's security clearance. First, he used marijuana consistently for 11 years while employed for defense contractors. Second, he used marijuana while holding a secret security clearance and interim top secret clearance. (1997-2008) He claims he terminated marijuana use in May 2008 because he matured. Significantly, that same explanation can be found in his two interviews in March 2006 and March 2011, when he deliberately provided inconsistent or misleading information about the history, scope, and circumstances of his marijuana use. Based on a review of the record as a whole, Applicant's character evidence does not mitigate his drug involvement and personal conduct.

### **Formal Findings**

Paragraph 1 (Guideline F): Subparagraphs 1.a-1.d:	AGAINST APPLICANT Against Applicant
Paragraph 2 (Guideline E): Subparagraphs 2.a-2.c:	AGAINST APPLICANT Against Applicant



## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant access to classified information. Eligibility for access to classified information is denied.

Paul J. Mason  
Administrative Judge