



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



In the matter of:	)	
	)	
[NAME REDACTED]	)	ISCR Case No. 11-06977
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

04/29/2013

**Decision**

MALONE, Matthew E., Administrative Judge:

Applicant failed to mitigate the security concerns raised by his use of illegal drugs and alcohol. His request for a security clearance is denied.

**Statement of the Case**

On November 15, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (eQIP) to obtain a security clearance required for his job with a defense contractor. After reviewing the completed background investigation, which included his response to adjudicators' interrogatories on July 6, 2012, Department of Defense (DOD) adjudicators were unable to find that it is clearly consistent with the national interest for Applicant to have access to classified information.<sup>1</sup>

---

<sup>1</sup> Required by Executive Order 10865, as amended, and by DOD Directive 5220.6 (Directive), as amended.

On November 14, 2012, DOD issued to Applicant a Statement of Reasons (SOR) alleging facts that raise security concerns addressed in the Adjudicative Guidelines (AG) at Guideline G (Alcohol Consumption) and Guideline H (Drug Involvement).<sup>2</sup> Applicant timely responded to the SOR and requested a decision without a hearing. On March 1, 2013, Department Counsel issued a File of Relevant Material (FORM)<sup>3</sup> in support of the SOR. After receiving the FORM, Applicant had 30 days to file a response to the FORM. The record closed after Applicant failed to submit any additional information within the time allowed. The case was assigned to me on April 23, 2013.

### **Findings of Fact**

Under Guideline H, the Government alleged that Applicant used marijuana “on at least a daily basis” between August 2001 and June 2010, and that he used marijuana with varying frequency between November 2011 and February 2012 (SOR 1.a); that he used cocaine five times between September 2003 and July 2008 (SOR 1.b); that he used psilocybin mushrooms five times between 2003 and 2009 (SOR 1.c); and that he may continue occasional recreational drug use if he does not receive a security clearance (SOR 1.d). Under Guideline G, the Government alleged that Applicant has, at times, consumed alcohol to excess and to the point of intoxication, since 2000 (SOR 2.a); and that on April 6, 2008, he was charged with driving under the influence (DUI) (SOR 2.b). (FORM, Item 1)

Applicant admitted all of the SOR allegations (FORM, Item 4). In addition to the facts established by Applicant’s admissions, I make the following findings of fact.

Applicant is 29 years old and employed as an electrical engineer by a defense contractor since August 2010. He completed undergraduate and graduate programs between August 2003 through May 2010, receiving bachelor’s and master’s degrees in electrical engineering. (Form, Item 5)

Applicant began using marijuana in August 2001. He used it at least daily until June 2010. In his eQIP, he estimated he used marijuana “thousands of times” during that period. Applicant resumed using marijuana, albeit less frequently, in November 2010, but stopped again after he was interviewed for his clearance in December 2010 because he was concerned it may keep him from getting a clearance. In November 2011, he resumed using marijuana when it was presented to him in a social setting, and because he had not heard anything further about his clearance. In response to adjudicators’ interrogatories in July 2012, Applicant stated that his abstinence from future drug use depended on whether or not he received a security clearance. On November 29, 2010, Applicant was denied an interim security clearance based on information about his drug use. (FORM, Items 5 - 7)

---

<sup>2</sup> See Directive, Enclosure 2. See also 32 C.F.R. § 154, Appendix H (2006).

<sup>3</sup> See Directive, Enclosure 3, Section E3.1.7. The FORM included seven documents (Items 1 - 7) proffered in support of the Government’s case.

In his eQIP, and in his December 2010 interview, Applicant disclosed his use of other drugs between 2003 and 2009, and that he was arrested for DUI in April 2008. The only drug he has used since 2009 is marijuana. As to his DUI, Applicant's driver's license was suspended for six months and he was ordered to complete a 12-month alcohol counseling class.

Applicant began drinking alcohol in about August 2000, when he was 16 years old. He drank between three and ten drinks three or four times weekly until about April 2009. Since then, Applicant still has at least four drinks twice weekly and goes out drinking at least every other weekend. He usually becomes intoxicated when he drinks. He had consumed more than ten drinks when he was arrested for DUI. (FORM, Items 5 and 6)

### **Policies**

Each security clearance decision must be a fair, impartial, and commonsense determination based on examination of all available relevant and material information,<sup>4</sup> and consideration of the pertinent criteria and adjudication policy in the adjudicative guidelines. Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the new guidelines. Commonly referred to as the "whole-person" concept, those factors are:

- (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.

The presence or absence of a disqualifying or mitigating condition is not determinative of a conclusion for or against an applicant. However, specific applicable guidelines should be followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. A security clearance decision is intended only to resolve whether it is clearly consistent with the national interest<sup>5</sup> for an applicant to either receive or continue to have access to classified information. Department Counsel must produce sufficient reliable information on which DOD based its preliminary decision to deny or revoke a security clearance for an applicant. Additionally, Department Counsel must prove

---

<sup>4</sup> Directive. 6.3.

<sup>5</sup> See *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

controverted facts alleged in the SOR.<sup>6</sup> If the Department Counsel meets its burden, it then falls to the applicant to refute, extenuate, or mitigate the case for disqualification.<sup>7</sup>

Because no one is entitled to a security clearance, an applicant bears a heavy burden of persuasion to establish that it is clearly consistent with the national interest for the applicant to have access to protected information.<sup>8</sup> A person who has access to such information enters into a fiduciary relationship with the Government based on trust and confidence. Thus, there is a compelling need to ensure each applicant possesses the requisite judgment, reliability, and trustworthiness of one who will protect the nation's interests as his or her own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an applicant's suitability for access to classified information in favor of the Government.<sup>9</sup>

## Analysis

### Drug Involvement

Applicant has used illegal drugs, including marijuana, cocaine, and hallucinogenic mushrooms, since 2001. Since 2009, he has used only marijuana, most recently in February 2012. He indicated in July 2012 that he would likely continue to use illegal drugs if he does not receive a security clearance. His conduct raises the security concern expressed at AG ¶ 24, as follows:

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.

---

<sup>6</sup> Directive, E3.1.14.

<sup>7</sup> Directive, E3.1.15.

<sup>8</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>9</sup> See *Egan*; AG ¶ 2(b).

More specifically, available information requires application of the disqualifying conditions at AG ¶ 25(a) (*any drug abuse (see above definition)*); and AG ¶ 25(h) (*expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use*).

Applicant did not present any information that would require consideration of the mitigating factors listed at AG ¶ 26. He failed to mitigate the security concerns raised by his drug involvement.

### **Alcohol Consumption**

Applicant has abused alcohol since he was 16 years old. Despite being charged with DUI after consuming more than 10 drinks in August 2008, and attending a court-ordered alcohol counseling class for 12 months, he still drinks frequently and to excess. His conduct raises a security concern, articulated at AG ¶ 21 as follows:

Excessive alcohol consumption often leads to the exercise of questionable judgment or the failure to control impulses, and can raise questions about an individual's reliability and trustworthiness.

More specifically, available information requires application of the disqualifying conditions at AG ¶ 22(a) (*alcohol-related incidents away from work, such as driving while under the influence, fighting, child or spouse abuse, disturbing the peace, or other incidents of concern, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*); and AG ¶ 22(c) (*habitual or binge consumption of alcohol to the point of impaired judgment, regardless of whether the individual is diagnosed as an alcohol abuser or alcohol dependent*).

In response to the Government's information, Applicant did not present any information that would require consideration of the mitigating factors listed at AG ¶ 23. He failed to mitigate the security concerns raised by his alcohol consumption.

### **Whole-Person Concept**

I have evaluated the facts presented and have applied the appropriate adjudicative factors under Guidelines G and H. I have also reviewed the record before me in the context of the whole-person factors listed in AG ¶ 2(a). Applicant is 29 years old, has two electrical engineering degrees, and has worked for a defense contractor since 2010. These are solid accomplishments. However, this record also shows that Applicant has an ongoing substance abuse problem that sustains reasonable doubts about his ability or willingness to safeguard classified information. Because protection of the national interest is the primary concern in these matters, those doubts must be resolved against the Applicant.

## **Formal Findings**

Formal findings 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
Subparagraphs 1.a - 1.d:	Against Applicant
Paragraph 2, Guideline G:	AGAINST APPLICANT
Subparagraphs 2.a - 2.b:	Against Applicant

## **Conclusion**

It is not clearly consistent with the national interest for Applicant to have access to classified information. Applicant's request for a security clearance is denied.

---

MATTHEW E. MALONE  
Administrative Judge