



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



In the matter of: )  
)  
) ISCR Case No. 11-07203  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline H. Jeffreys, Esq., Department Counsel  
For Applicant: *Pro se*

01/17/2013  
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**Decision**  
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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the Government’s 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 July 25, 2012, the Department of Defense (DoD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement, and Guideline E, personal conduct. DoD acted 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 August 15, 2012, and requested a hearing. The case was assigned to me on October 15, 2012. The Defense Office of Hearings and

Appeals (DOHA) issued a notice of hearing on November 13, 2012, and the hearing was convened as scheduled on December 5, 2012. The Government offered exhibits (GE) 1 through 5, which were admitted into evidence without objection. Applicant testified and offered exhibits (AE) A and C, which were admitted into evidence without objection. The record was kept open for Applicant to submit additional evidence. He submitted AE D in a timely fashion and it was admitted without objection. DOHA received the hearing transcript (Tr.) on December 17, 2012.

### **Findings of Fact**

In Applicant's answer to the SOR, he admitted all the allegations stated in the SOR. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 41 years old. He is married and has no children. Since 2003, he has worked for a defense contractor as an information technologies specialist. He has a bachelor's degree. He has no military background. He has held a secret security clearance since 2004.<sup>1</sup>

Applicant's admitted conduct raised in the SOR includes: (1) using marijuana between 1989 and July 2010, including while holding a top security clearance; (2) being arrested in February 1997 for possession of drug paraphernalia; (See SOR ¶¶ 1.a – 1.c); and (3) providing false information about his past drug use when completing his security clearance questionnaires in January 2011 and April 2004 (See SOR ¶¶ 2.a - 2.c).

Applicant first used marijuana sporadically in 1989 while in high school. He used it on weekends and when at parties. When in college, he used marijuana at parties and at his friends' houses. He would take puffs from marijuana cigarettes or pipes. He was stopped by police for a traffic violation in February 1997. A drug dog detected the presence of marijuana in his car. A pipe with marijuana residue was found in his car. He admitted to ownership of the pipe and pleaded guilty to possession of drug paraphernalia. After he graduated from college and moved to his present location, he continued to use marijuana on a less regular basis. From 1997 until 2010, he used marijuana once every two to three years. He married in 2006 and his wife did not agree with his use of marijuana. He used it after they were married. He received his security clearance in 2004 and used marijuana on approximately five occasions after receiving his clearance. His last use was in 2010 while attending a barbeque at a friend's house. His employer uses drug screen tests upon employment, but not thereafter.<sup>2</sup>

On April 22, 2004, Applicant completed a security clearance application (SF 86). When answering a question about whether he used illegal drugs in the previous seven

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<sup>1</sup> Tr. 7, 30, 40; GE 1, 2, 3.

<sup>2</sup> Tr. 34, 35, 41, 44-46; GE 5.

years, he answered “no”. That answer was false because Applicant had used marijuana on multiple occasions. He knew the answer was false when he gave it, but he was concerned that if he told the truth about his past drug use he would not get the position. In January 2011, Applicant filled out another security clearance application for a possible upgrade of his security clearance. Once again, he was asked whether he had used illegal drugs in the previous seven years and whether he had used illegal drugs while holding a security clearance. He answered “no” to both questions. Both answers were false. Applicant knew at the time he completed the application that his answers were false. He submitted false answers because he wanted his denials to be consistent with the information he submitted on his earlier security clearance application. He finally revealed the truth about his past illegal drug use when interviewed by an investigator in February 2011. However, he was not totally honest then either. He told the investigator that he put the false information on the application because he was in a hurry to fill out the form and did not completely read the questions. During his hearing testimony, he admitted this was false and he put the false information in his application to deceive the government about his past drug history.<sup>3</sup>

Applicant provided information showing his job performance rating as a successful contributor, high contributor, and exceptional contributor throughout his career. He has received numerous cash awards for his contributions. He is well thought of by his coworkers and by the customers for whom he provides services.<sup>4</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 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

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<sup>3</sup> Tr. 17, 33, 49, 52; GE 1, 2, 5.

<sup>4</sup> AE A-D.

decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record.

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 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 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 drug involvement security concern:

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.

I have considered all of the evidence in this case and the disqualifying conditions under drug involvement AG ¶ 25 and found the following relevant:

- (a) any drug abuse;
- (c) illegal possession of drug paraphernalia; and
- (g) any illegal drug use after being granted a security clearance.

Appellant used marijuana on a number of occasions including while holding a security clearance. He has pleaded guilty to possession of drug paraphernalia. I find that all the above disqualifying conditions apply.

I have considered all of the evidence in this case and the mitigating conditions under drug involvement AG ¶ 26 and found the following relevant:

(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's short period of abstinence is insufficient to demonstrate his intent not to use illegal drugs in the future. This is particularly so since his history shows he used marijuana while holding a security clearance, which he knew was prohibited. His actions cast doubt on his current reliability, trustworthiness, and good judgment. It is too soon to tell whether his use will recur. Although he claims he no longer uses marijuana, this is not enough to show a demonstrated intent not to use marijuana in the future. Neither AG ¶¶ 26(a) nor 26(b) applies.

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

AG ¶ 15 expresses the personal conduct security concern:

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 in this case. The following disqualifying conditions are potentially applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as engaging in activities which, if known, may affect the person's personal, professional, or community standing.

I find that Applicant intentionally gave false information on his security clearance applications. His explanation for falsifying, that he was afraid of the consequences of his drug use, confirmed his deliberate action. AG ¶ 16(a) applies. Applicant's use of marijuana while holding a security clearance created a vulnerability to his personal standing. AG ¶ 16(e) applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions under AG ¶ 17 and found the following relevant:

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation or duress.

I considered all of the facts and circumstances surrounding Applicant's drug use while holding a security clearance and his false statements. Neither are minor offenses and both cast doubt on Applicant's trustworthiness, particularly because of the multiple falsifications. Nothing about Applicant's actions reduced his vulnerability to exploitation, manipulation or duress. AG ¶¶ 17(c) and (e) do not apply.

### **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 considered Applicant's work performance and his coworker support. However, I also considered that he used marijuana on multiple occasions, most recently while holding a security clearance, and that he gave false information about his past drug use on multiple occasions. Applicant failed to provide sufficient evidence to mitigate the security concerns.

Overall the record evidence leaves me with questions and doubts about 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
Subparagraphs 1.a-1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-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.

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Robert E. Coacher  
Administrative Judge