



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-09025
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esquire, Department Counsel  
For Applicant: *Pro se*

04/30/2012

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant failed to disclose his citation for marijuana possession until over two years after it occurred and his probation had expired. Under these circumstances, I conclude that Applicant has failed to mitigate the security concerns. Clearance is denied.

**Statement of the Case**

On November 9, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under 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 (AG) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on January 10, 2012, admitting the allegation and requesting a hearing. The case was assigned to me on February 7, 2012. On February 22, 2012, a notice of hearing was issued scheduling the case for March 13, 2012. The hearing was conducted as scheduled. I received six Government exhibits (GE 1-6), and the testimony of Applicant, and a character witness. The transcript was received on March 20, 2011.

### **Findings of Fact**

Applicant is a 36-year-old married man with one child, age two. Applicant finished high school in 1994, and has earned a few years of college credit. (Tr. 24) Currently, he works in the field of information technology sales and consulting. Among other things, he sells information support services to corporate clients including defense contractors and subcontractors. (Tr. 25) Applicant has worked for his current employer since 2003. (Tr. 33) Applicant also assists his wife, part-time, with her consulting business. He has held a clearance since 2008.

In August 2008, Applicant while at an outdoor concert with his future wife, was issued a citation for possession of marijuana. He contends that he left the seating area to see if he could “‘bum’ a cigarette from someone.” (GE 2 at 3) He then ran into a group of friends. Applicant then asked for a cigarette, and one of the people handed him a pack of cigarettes. When Applicant opened the pack, he noticed that, in addition to cigarettes, it contained “a couple of marijuana cigarettes.” Applicant further contends that at that exact moment, a police officer observed the marijuana cigarettes nestled in the pack with the nicotine cigarettes, and issued him a citation for possession of marijuana.

Applicant appeared in court ten days later. He pleaded no contest to the charge. (Tr. 39) The court placed him on probation for one year, ordered him to complete 15 hours of drug counseling, and undergo random drug screenings. Applicant successfully completed the drug counseling program and was released early from probation in June 2009. (Tr. 41; GE 2 at 5)

Applicant has neither been cited nor arrested since the 2008 episode. He smoked marijuana casually for approximately nine years between 1996 and 2005.

Applicant did not report the marijuana possession citation to his employer until two years after he received it. He did not report it because he was “scared and embarrassed.” (Tr. 27) Also, he was worried about his reputation at work. (Tr. 29) He ultimately reported two years later after a “light went off,” and he decided to come to terms with his “mistake.” (Tr. 30)

Applicant is highly respected at work. His employer has “always and continue[s] to consider him reliable and trustworthy. His employer’s decision was not altered by the revelation that he was late in reporting the 2008 citation. (GE 6)

## **Policies**

In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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. 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 applicant or proven by Department Counsel. . . ." The applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

## **Analysis**

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

Under this guideline, "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." (AG ¶ 15) Although Applicant did not report his marijuana citation to his employer, his omission did not occur as part of the investigatory process. Moreover, he ultimately reported it, albeit two years late, without being confronted about it. Neither 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," nor AG ¶ 16(b), "deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative," apply.

Applicant's testimony was contrite, and his employer continues to think highly of him, despite his delayed reporting of the marijuana citation. Moreover, nearly four years have passed since the police issued the citation, and two years have passed since Applicant reported the incident.

However, I continue to have reservations about Applicant's security clearance-worthiness. His testimony that he coincidentally ran into some friends at a concert, and one friend gave him a pack of cigarettes that coincidentally contained a marijuana cigarette that a police officer observed at the exact moment Applicant took the pack is simply not credible, particularly in light of his history of marijuana use.

An applicant's candor and honesty are the preeminent factors to be considered in a security clearance evaluation. (see DoD Directive 5220.6, Enc. 1, § 6.2) Consequently, the negative security inference generated by Applicant's lack of honesty in describing the circumstances surrounding his citation for marijuana possession outweighs any mitigation generated by his voluntary decision to report the possession of marijuana citation before being confronted about it. AG 16(e)<sup>1</sup> applies without mitigation.

### **Whole-Person Concept**

Under the whole-person concept, 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.

I conducted an evaluation of the whole-person factors in my analysis of the personal conduct guideline, and it does not warrant a favorable conclusion.

### **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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

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<sup>1</sup> 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 . . .

## **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.

MARC E. CURRY  
Administrative Judge