



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



In the matter of:	)	
	)	
	)	ISCR Case No.11-09243
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

06/26/2013

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> Applicant’s clearance is denied.

On 13 September 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E, Personal Conduct, and H, Drug Involvement.<sup>2</sup> Applicant timely answered, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 4 January 2013, and I convened a hearing 30 January 2013. DOHA received the transcript (Tr.) 6 February 2013.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-7, and Applicant exhibits (AE) A-C. AE C was timely received post-hearing.

<sup>2</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

## Findings of Fact

Applicant admitted the SOR allegations. He is a 33-year-old test and verification specialist employed by a defense contractor since September 2008. He seeks to retain the clearance issued to him in April 2006. He was previously granted a clearance in May 2001. He served on active duty in the U.S. military from October 1999 to August 2006.

Applicant has an extensive history of minor encounters with law enforcement officials, alcohol abuse, and drug abuse, resulting in a variety of dispositions and charges. Most of the incidents involve drug or alcohol abuse.

Between October 1999 and August 2006, while Applicant was serving on active duty, he would occasionally go to work under the influence of alcohol. In October 2001, while serving overseas Applicant was involved in an alcohol-related traffic accident resulting in personal injury and damage to private and host-nation-government property. Applicant had been drinking and was driving too fast for road conditions. His blood-alcohol level was .07 percent (GE 7). He was given an oral reprimand, assessed six points on his driving record, and had his license suspended.

In November 2003, he was awarded non-judicial punishment (NJP) for a physical altercation with another soldier. He was reprimanded, reduced in rate one pay grade, and given 30 days extra duty. This incident was not alcohol related. In May 2004, he used cocaine once. In October 2004, he was again awarded NJP for being drunk in public and being involved in a barracks fight. He was fined, reduced one pay grade, and given 14 days extra duty (GE 6). He was evaluated by the military's substance abuse program in October 2004, but not found to have a substance abuse problem.

In November 2004, he was arrested and charged with drunk in public in the local jurisdiction, fined, and ordered to pay costs. In April 2008, he was charged with reckless driving for driving 110 miles per hour in a 70 mile-per-hour zone. He was sentenced to 21 days in jail and had his license suspended for 90 days (GE 5). Applicant states that this incident occurred after the unexpected death of a family member.

In July 2008, he was arrested for felony possession of a controlled substance. He was ultimately convicted of misdemeanor possession of paraphernalia and fined (GE 3, 4). He had been given a prescription painkiller by a friend after a basketball game in July 2007, when Applicant complained of muscle pain after the game. Applicant did not take the painkiller at the time, but put it in his wallet, where it was later discovered during a routine search upon reporting to serve his jail sentence for his April 2008 speeding offense.

Applicant's military service included a year serving in a combat zone from 2003 to 2004. His unit sustained significant losses, including his commanding officer and senior non-commissioned officer. Some of the deaths he witnessed close hand. After Applicant returned from combat, he was ordered to counseling to address any potential

post-traumatic stress disorder (PTSD). Applicant went to several sessions, did not get anything out of them, and quit going (Tr. 91-92). Nevertheless, he was rated as 10 percent disabled in January 2007 because of his PTSD, among other conditions (AE C).

Applicant has acknowledged that he used drugs and alcohol to self-medicate (Tr. 39-40, 93). However, he has not sought any counseling for his PTSD since leaving the military, and there is nothing in his disability rating to formally connect his drug and alcohol abuse to his PTSD. He also did not seek any counseling for his drug or alcohol abuse.

After Applicant got out of the military, he used marijuana on a regular basis from June 2007 to May 2010, a period during which he held a security clearance. He used mostly on weekends. He also bought marijuana for his personal use during this period. He decided to stop using marijuana in May 2010, because, although he had been married since June 2006, he and his wife had bought a house in February 2009, and were expecting their first child in February 2011. He began to decrease his alcohol consumption at the same time, although he acknowledges being intoxicated on New Year's Eve 2013, when he drank six beers (Tr. 70). He also did not want to lose his job or jeopardize any future employment opportunities (GE 2). He has since learned that he and his wife are expecting their second child (Answer).

Applicant's employer rated him an outstanding employee on his 2012 appraisal (Answer). Applicant's past employment references (Answer), current employment references (Answer, AE B), character references (Answer), and pastor (AE A) consider Applicant honest and trustworthy, and recommend him for his clearance. However, most of them display no knowledge of the issues raised in the SOR, and the few who appear to be aware of any adverse information in Applicant's past make only vague references to mistakes, shortcomings, or indiscretions.

### **Policies**

The adjudicative guidelines (AG) list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG ¶ 2(a). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline E (Personal Conduct) and Guideline H (Drug Involvement).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case.

Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgement, reliability, and trustworthiness of those who must protect national interests as their own. The “clearly consistent with the national interest” standard compels deciding any reasonable doubt about an Applicant’s suitability for access in favor of the Government.<sup>3</sup>

### Analysis

The Government established a case for disqualification under Guideline E, and Applicant did not mitigate the security concerns. Applicant abused alcohol occasionally from October to at least August 2006. Since October 2001, when he was 22 years old, Applicant has demonstrated an inability or unwillingness to comply with the law. He had alcohol-related incidents in October 2001, October 2004, and November 2004, used cocaine in violation of military regulations in May 2004, and was disciplined for a physical altercation in November 2003. The incidents after May 2004 occurred after he returned from his combat tour, and experienced events that led to his PTSD diagnosis in January 2007. After leaving the military in August 2006, marijuana became his drug of choice, and he use it during periods he held a security clearance. In April 2008, he was arrested and ultimately convicted for reckless driving (driving over 40 miles per hour over the posted speed limit) after learning of the untimely death of a family member.<sup>4</sup>

Distilled to its essence, Applicant’s misconduct demonstrates a consistent pattern of poor judgment over many years.<sup>5</sup> By his own assessment, Applicant abused first alcohol, then marijuana, to help him deal with the effects of his PTSD. His resort to self-medication, and his failure to seek counseling to determine whether his PTSD actually relates to his substance abuse, raise the security concern that he might not be as

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<sup>3</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>4</sup>His July 2008 arrest for felony possession of a controlled substance, and his later misdemeanor conviction for possession of paraphernalia, I find mitigated both by the passage of time—nearly five years, the circumstances both of obtaining the painkiller and the discovery of his possession, and the fact that he never used the painkiller and forgot he had it for over a year.

<sup>5</sup>¶ 16 (c) credible adverse information in several adjudicative issue 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 person may not properly safeguard protected information; (d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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 person may not properly safeguard protected information. . . ;

immune to a recurrence of drug or alcohol abuse as he might be without PTSD as an issue. Put another way, without an assessment of the role, if any, that PTSD played in his alcohol and drug abuse since May 2004, I cannot conclude that the positive changes in his life engendered by his changed family situation and evinced by his employment record, and employment and character references, are sufficient to protect him from returning to drug or alcohol abuse in the future. I resolve Guideline E against Applicant.

The Government also established a case for disqualification under Guideline H.<sup>6</sup> However, Applicant mitigated the security concerns. His one-time use of cocaine in May 2004 is both distant in time and infrequent.<sup>7</sup> His regular use of marijuana ended in May 2010. His abstinence from drug use—now nearly three years—is adequate to demonstrate an intent to refrain from drug use in the future.<sup>8</sup> I conclude Applicant is unlikely to use illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

### Formal Findings

Paragraph 1. Guideline E:	AGAINST APPLICANT
Subparagraphs a-i:	Against Applicant
Subparagraph j:	For Applicant
Paragraph 2. Guideline H:	FOR APPLICANT
Subparagraphs a-d:	For Applicant

### Conclusion

Under the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for Applicant. Clearance denied.

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JOHN GRATTAN METZ, JR  
Administrative Judge

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<sup>6</sup>¶25.(a) any drug abuse. . . ; (c) illegal drug possession, including. . . purchase. . . ; (g) any illegal drug use after being granted a security clearance;

<sup>7</sup>¶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;

<sup>8</sup>¶26.(b). a demonstrated intent not to abuse any drugs in the future, such as; . . . (3) an appropriate period of abstinence;