



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



In the matter of: )  
)  
) ISCR Case No. 11-10505  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie Mendez, Esquire, Department Counsel  
For Applicant: *Pro se*

05/21/2012

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant was young and immature when he experimented with illegal drugs and manufactured fake driver’s licenses. Since 2010, he has demonstrated a sincere desire to remain abstinent and become a mature adult. His candid and forthcoming responses during the security clearance process, his disassociation from drug-using friends, and his seeking psychiatric treatment demonstrate his intent to not abuse drugs in the future. Clearance granted.

**Statement of the Case**

Applicant submitted an SCA on June 21, 2011. On December 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct).<sup>1</sup> Applicant answered the SOR on January 12, 2012,

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<sup>1</sup> DOHA acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (Directive) (January 2, 1992), as amended; and the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), implemented by the DOD on September 1, 2006.

and requested a hearing before an administrative judge. The case was assigned to me on April 3, 2012.

DOHA issued a notice of hearing on April 18, 2012, convening a hearing for May 1, 2012. At the hearing, the Government offered exhibits (GE) 1 and 2 that were admitted without objection. Applicant testified and submitted no exhibits. DOHA received the hearing transcript (Tr.) on May 9, 2012.

### **Findings of Fact**

Applicant admitted all of the factual allegations in the SOR. He denied, however, that his behavior violated the AGs. His admissions are incorporated as findings of fact. After a thorough review of the evidence, and having observed Applicant's demeanor and considered his testimony, I make the following additional findings of fact.

Applicant is a 26-year-old computer technician who has worked for a government contractor since May 2010. He was awarded a bachelor's degree in graphic design in 2008. He has never been married, and he has no children.

Applicant disclosed in his June 2011 SCA all the concerns alleged in the SOR. He started illegally using marijuana during his junior year in high school. From June 2003 until December 2004, he used marijuana approximately five times per month while socializing with friends. While in college his marijuana use increased to about twice a week. During his junior year in college his use increased to five times a week. During his senior year in college, he only used marijuana once. And, from May 2008 until July 2010, he used marijuana approximately 20 times. Applicant also purchased marijuana to meet his needs. His last use of marijuana was in July 2010, at a party in the house of one of his friends from work. (Tr. 37) However, his last time in an environment where illegal drugs were used was around May 2011. (Tr. 39)

Applicant used Adderall, without a prescription, from November 2004, until March 2011. He obtained Adderall mostly from his girlfriends and used it to help him concentrate for his college exams, school projects, and at work. He estimated that from November 2004 until May 2008, he used Adderall between eight to fifteen times per year. He did not use Adderall from May 2008 until February 2011. In February 2011, he started to use Adderall two to three times a week to cope with his job requirements. In March 2011, Applicant realized that because of his job, he would have to stop using Adderall, or obtain a prescription for the drug. He visited a psychiatrist, was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD), and he was prescribed Adderall. As of his hearing date, he was under his psychiatrist's care for ADHD, and he had a prescription for Adderall.

Applicant also illegally used the following drugs: cocaine (once in April 2007, with roommates who used cocaine frequently; and in December 2010, at a New Year's Eve party); nitrous oxide (he used it approximately 20 times between his senior year in high

school and his freshman year in college); ecstasy (three to four times during college); and hydrocodone (several times at college parties).

Between January 2005 and April 2007, Applicant manufactured fake driver's licenses. He was under the drinking age and wanted to attend bars and consume alcoholic beverages, but he did not want to pay for a fake driver's license. He researched how to make fake driver's licenses, purchased all the necessary equipment, and established his own business. He claimed he did not sell them to his friends, but he sold fake driver's licenses to others for \$100. Applicant stopped making fake driver's licenses when he turned 21. As of his hearing date, he had not manufactured fake driver's licenses in five years. He claimed that he destroyed or disposed of all his fabrication equipment. He disclosed his behavior in the SCA to eliminate any possible vulnerability to exploitation. He also claimed that he no longer associates with anyone involved in manufacturing fake driver's licenses.

Applicant believes he has corrected his past drug-related behavior, and that he is a changed person. He considers his past experimental use of illegal drugs to be misguided, juvenile, and extremely foolish. He disclosed his drug-related behavior in his SCA because he wanted to "place everything out on the table when [he] began [his] security clearance process." (Answer) He was aware that his illicit drug use was wrong, and stated that he absolutely had no intention, nor desire, to ever use illegal drugs again. Applicant has entered the working world, and he has learned what it means to be a responsible, law-abiding member of society. He wishes to continue his career path working on government contracts. He has a strong desire to work in the field of information security, and he has found out that the only possible way to advance in that career is to first obtain a security clearance. He promised not to use illegal drugs in the future because he does not want to jeopardize his career.

Applicant testified that he has lost contact with most of his illegal drug-using friends from college, including his fraternity brothers. Some of them moved away, and he now frequents different circles. He has occasional Facebook contact with a couple of his college friends, but no face-to-face contact. He now avoids contact with people who use illegal drugs, and he does not frequent places where the use of drugs is likely. Applicant candidly discussed his past and present illegal marijuana use with a government investigator during his July 2011 interview. He also was candid and forthcoming during his hearing. He has not participated in substance abuse counseling. He presented no documentary evidence of a recent diagnosis or prognosis related to his illegal drug use.

### **Policies**

Eligibility for access to classified information may be granted "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended. The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security, emphasizing

that “no one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

The AG list disqualifying and mitigating conditions for evaluating a person’s suitability for access to classified information. Any one disqualifying or mitigating condition is not, by itself, conclusive. However, the AG should be followed where a case can be measured against them, as they represent policy guidance governing access to classified information. Each decision must reflect a fair, impartial, and commonsense consideration of the whole person and the factors listed in AG ¶ 2(a). All available, reliable information about the person, past and present, favorable and unfavorable, must be considered.

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 the applicant to rebut, explain, extenuate, or mitigate the facts. The applicant bears the heavy burden of demonstrating that it is clearly consistent with the national interest to grant or continue his or her security clearance.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Thus, the Government has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability, and trustworthiness of those who must protect national interest as their own. The “clearly consistent with the national interest” standard compels resolution of any reasonable doubt about an applicant’s suitability for access in favor of the Government. “[S]ecurity clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531; AG ¶ 2(b). Clearance decisions are not a determination of the loyalty of the applicant concerned. They are merely an indication that the applicant has or has not met the strict guidelines the Government has established for issuing a clearance.

## **Analysis**

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

AG ¶ 15 explains why personal conduct is a security concern stating:

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.

Between January 2005 and April 2007, Applicant manufactured and sold fake driver’s licenses for his and his underage friends to attend bars and to consume alcohol,

in violation of the law. His actions show questionable judgment and an unwillingness to comply with the law.

Applicant's behavior triggers the applicability of the following disqualifying conditions under AG ¶ 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; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant disclosed his manufacturing and sale of fake driver's licenses in his June 2011 SCA. He candidly discussed this, and his past illegal drug use, during his July 2011 interview with a government investigator. He also was candid and forthcoming during his hearing. Applicant credibly testified that he stopped manufacturing, selling, and associating with anyone manufacturing fake driver's licenses in 2007, when he turned 21. There was no further need for his use of a fake driver's license. He acknowledged his questionable behavior and took steps to avoid such behavior in the future. His disclosures to the government investigator, and at his hearing, eliminate any possible vulnerability to exploitation, manipulation, or duress.

Considering the record as a whole, I find that the following Guideline E mitigating conditions apply:

AG ¶ 17(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;

AG ¶ 17(d): the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

AG ¶ 17(e): the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

## Guideline H, Drug Involvement

AG ¶ 24 articulates the security concern about 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.

Applicant illegally used marijuana from June 2003 (high school) until July 2010. He also illegally experimented with cocaine twice, and used Adderall without a prescription from November 2004 until February 2011. Applicant knew that his possession, use, and purchase of marijuana, cocaine, and his use of Adderall without a prescription was illegal.

Two drug involvement disqualifying conditions raise security concerns in this particular case: AG ¶ 25(a) "any drug abuse";<sup>2</sup> and AG ¶ 25(c) "illegal drug possession including cultivation, processing, manufacture, purchase . . ."

AG ¶ 26 provides two potentially applicable drug involvement mitigating conditions:

(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;

(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; and

(4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant stated his illegal drug use was primarily experimental and it took place while he was in high school and during college. His illegal drug of choice was marijuana,

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<sup>2</sup> AG ¶ 24(b) defines "drug abuse" as "the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction."

AG ¶ 24(a) defines "drugs" as substances that alter mood and behavior, including: (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.

and he used it from June 2003 until July 2010, which cannot be considered experimental. However, he has been abstinent since July 2010. He also sought psychiatric treatment and obtained a prescription for Adderall.

Applicant disclosed his illegal drug use in his SCA, and was candid and forthcoming during the security clearance process. He credibly testified that he does not intend to use any illegal drugs in the future. He has entered the work force, and he has learned what it means to be a responsible, law-abiding member of society. He wishes to continue his career path working on government contracts. He has a strong desire to work in the field of information security, and he understands the importance of being eligible to possess a security clearance. Additionally, he is in a stable relationship, and he is disassociating himself from his drug-using friends.

Applicant's recent actions show that he has matured. His questionable drug-related behavior is not likely to recur, and it does not cast doubt on his current reliability, trustworthiness, and judgment. Additionally, he is implementing lifestyle changes to help him remain abstinent. Both mitigating conditions apply, and his drug involvement concerns are mitigated.

### **Whole-Person Concept**

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case, and under the whole-person concept. AG ¶ 2(c). Applicant was young and immature when he experimented with illegal drugs and manufactured fake driver's licenses. Since 2010, he has demonstrated a sincere desire to remain abstinent and become a productive member of society. His disclosures in the SCA, his candid and forthcoming responses during the security clearance process, his disassociation from drug-using friends, and his seeking psychiatric treatment for ADHD demonstrate his intent to not abuse drugs in the future.

Considering the record evidence as a whole, I find Applicant's recent mature behavior removes any lingering doubt on his reliability, judgment, and willingness and ability to comply with the law. He mitigated the security concerns under Guidelines E and H.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant

Paragraph 2, Guideline H:

FOR APPLICANT

Subparagraphs 2.a-2.c:

For Applicant

### **Conclusion**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's eligibility for a security clearance. Eligibility for a security clearance is granted.

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JUAN J. RIVERA  
Administrative Judge