



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



In the matter of: )  
)  
) ISCR Case No. 11-11660  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esq., Department Counsel  
For Applicant: *Pro Se*

09/04/2013

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant’s long-term illegal use of drugs, including drug use while possessing a clearance, his lack of credibility, and his falsifications cast serious doubt on his current reliability, trustworthiness, judgment, and ability to follow the law. Clearance denied.

**Statement of the Case**

Applicant submitted his most recent security clearance application (SCA) on April 26, 2011. On January 10, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) listing security concerns under Guideline H (drug involvement), Guideline E (personal conduct), and Guideline F (financial considerations).<sup>1</sup> Applicant answered the SOR on April 4, 2013, and requested a hearing before an administrative judge.

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<sup>1</sup> DOD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; 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.

The case was assigned to me on May 14, 2013. The Defense Office of Hearings and Appeals (DOHA) issued the notice of hearing on May 22, 2013, scheduling a hearing for June 27, 2013. At the hearing, the Government offered exhibits (GE) 1 through 11, which were admitted without objection. Applicant testified and submitted one exhibit (AE 1) post-hearing, which was received late. The Government objected to the admission of AE 1. I admitted the document. DOHA received the hearing transcript (Tr.) on July 8, 2013.

### **Findings of Fact**

Applicant admitted the factual allegations under SOR ¶¶ 1.a, 1.c, 1.e, 1.f, and 2.d. He denied the allegations in SOR ¶¶ 1.b, 1.d, 1.g, 2.a through 2.c, 2.e through 2.o, and 3.a and 3.b. Applicant's admissions are herein incorporated into the findings of fact. After a thorough review of all the evidence, including his testimony and demeanor while testifying, I make the following additional findings of fact:

Applicant is a 30-year-old financial project manager working for a government contractor. He attended college from 2001 to 2008, and received a bachelor's degree in financial economics. He is currently working towards completing his public accountant certification (CPA). Applicant has never been married. He has a four-year-old son for whom he provides financial support.

Applicant illegally used marijuana from 2001 (age 18) until April 2010. Between 2001 and 2005, he used marijuana three to ten times per month on average. In December 2001, he was arrested for, and charged with, possession of marijuana and drug paraphernalia. The charges were later placed on a STET docket. Between 2005 and 2007, he used marijuana approximately 12 times per year. Between 2007 and 2010, he used marijuana three to ten times per month on average. Between 2001 and 2007, Applicant purchased marijuana. He purchased hallucinogenic mushrooms in 2004.

Applicant attended college abroad between January and June 2004. During that period, he used hashish three to ten times, marijuana three to four times, and hallucinogenic mushrooms once. Additionally, Applicant used cocaine in January 2004, in February 2008 (with his then girlfriend), and in the summer of 2008 (he snorted cocaine "given" to him by a stranger outside of a bar).

In addition to the December 2001 arrest and charge for possession of marijuana, Applicant was involved in three alcohol-related incidents. In November 2001, Applicant was convicted of possession of alcoholic beverage by a person under age 21. In February 2006, he pled guilty to driving a vehicle under the influence of alcohol (DUI). He was sentenced to 24 months supervised probation. In July 2006, Applicant was charged (among other things) with DUI, and driving on a suspended license and privileges.

Applicant worked for a government contractor from July 2005 until June 2007, and submitted his first SCA in September 2005. SCA Section 23 (Your Police Record), asked Applicant to disclose whether he had ever been charged with or convicted of any offenses related to alcohol or drugs, and whether in the last seven years he had been arrested for, charged with, or convicted of any offenses not previously disclosed in the 2005 SCA. Applicant answered "No," and deliberately failed to disclose that in December 2001, he was arrested for, and charged with, possession of marijuana and drug paraphernalia. The charges were later placed on a STET docket. Applicant also deliberately failed to disclose that in November 2001, he was convicted of possession of an alcoholic beverage by a person under age 21.

Section 24 (Your Use of Illegal Drugs and Drug Activity) asked Applicant to disclose whether in the last seven years he had illegally used, purchased, or received any controlled substances, including marijuana, hashish, hallucinogenic mushrooms, and cocaine. Applicant answered "No" to these questions and deliberately failed to disclose that he illegally used marijuana, cocaine, mushrooms, and hashish during the preceding seven years. He also failed to disclose his purchase of marijuana and mushrooms during the same period. Relying on Applicant's falsifications, in July 2006, DOD granted Applicant a security clearance at the top secret level.

In July 2010, Applicant started working for his current employer. That same month, he submitted his second SCA seeking access to sensitive compartmented information (SCI) to work with another government agency (Agency). Section 22 (Police Record) of the July 2010 SCA asked Applicant to disclose whether he had been cited to appear in court in a criminal proceeding, and whether he had ever been charged with any offenses related to drugs or alcohol. Applicant answered "Yes" and disclosed his November 2001 conviction for possession of alcohol as a minor. He deliberately failed to disclose his December 2001 charge for possession of marijuana and both of his February and July 2006 charges for DUI.

Section 23 (Illegal Use of Drugs or Drug Activity) asked Applicant to disclose whether in the last seven years he had illegally used, purchased, or received any controlled substances, including marijuana, hashish, hallucinogenic mushrooms, and cocaine. Section 23 also asked Applicant whether he had ever illegally used a controlled substance while possessing a security clearance. Applicant answered "No" to both questions and deliberately failed to disclose that he illegally used marijuana, cocaine, mushrooms, and hashish during the preceding seven years, while possessing a security clearance. He also failed to disclose he purchased marijuana and mushrooms during the same period.

In February 2011, Applicant participated in a polygraph-assisted interview. During the first part of the interview, Applicant partially disclosed his involvement with illegal drugs. After the polygraph test, Applicant fully disclosed his involvement with illegal drugs as described in the preceding paragraphs. Applicant was asked to explain why he denied any involvement with illegal drugs in his April 2005 SCA and during his April 14, 2006 interview. Applicant stated that he deliberately withheld his drug

involvement because he knew he would not be administered a polygraph to test the veracity of the information he provided. (GE 6) He was denied access by the Agency.

Applicant submitted his pending SCA on April 26, 2011. Section 23 (Illegal Use of Drugs or Drug Activity) asked him to disclose whether in the last seven years he had illegally used or purchased any controlled substances, including among others marijuana, cocaine, hashish, and hallucinogenic mushrooms. Applicant answered "Yes," and stated that he "experimented with marijuana while in college . . . socially engaged in marijuana use less than 100 times from January 2001 to June 2006." (GE 3) Applicant deliberately falsified his 2011 SCA when he failed to disclose the full extent of his marijuana use from January 2001 to April 2010. He also concealed his use of cocaine, hashish, and hallucinogenic mushrooms, and that he purchased marijuana and hallucinogenic mushroom during the prior seven years.

Section 23 also asked Applicant whether he had ever illegally used a controlled substance while possessing a security clearance. Applicant answered "No" to this question. He deliberately failed to disclose that he illegally used marijuana and cocaine between 2006 and April 2010, while possessing a top secret security clearance.

Section 26 (Financial Record) asked Applicant to disclose whether during the last seven years he had a judgment entered against him. Applicant answered "No" and deliberately failed to disclose that in October 2010, he had a \$15,000 judgment entered against him.

Applicant was interviewed by a government investigator in May 2011 concerning his illegal drug use and his financial situation. (GE 11) He told the investigator that he started using marijuana in January 2001. He said that while in college, he used marijuana socially with a diverse number of friends "one to two times a month". He told the investigator that he had stated in his 2011 SCA that his last use of marijuana was in June 2006, but since completing the documents, he recalled smoking marijuana one more time in April 2010 while attending a bachelor party with some of his college friends. Applicant told the investigator that he did not illegally use drugs between June 2006 and April 2010.

When asked why he failed to disclose in his 2011 SCA that he used marijuana while possessing a top secret security clearance, Applicant explained that, at the time, he did not believe he was in possession of a clearance. When asked why he did not disclose in his 2005 SCA and subsequent interview his illegal use of drugs, Applicant explained that "he was not currently using it at the time and he does not know why it was never brought up". (GE 11) Applicant deliberately failed to disclose the full extent of his illegal marijuana and cocaine use between January 2001 and April 2010, during his May 2011 interview with a government investigator.

Applicant responded to DOHA drug-related interrogatories on October 18, 2012. The pertinent question asked whether he had ever used any narcotic depressant, stimulant, hallucinogen, or any marijuana or hashish. Applicant answered that he only

used small quantities of marijuana infrequently from 2001 to 2010. Applicant deliberately failed to disclose the full extent of his marijuana use; that he used cocaine on three occasions between 2004 and 2008; that he purchased and consumed hallucinogenic mushrooms in 2004; and that he used hashish in 2004.

At his hearing, Applicant admitted that he used illegal drugs while possessing a top secret security clearance, but explained that at the time he had no access to classified information. (Tr. 34) He claimed he only used marijuana on one or two occasions between 2008 and 2010. (Tr. 46) He believes the drug allegations should be mitigated by the passage of time. He averred that he has matured and that he is now a different person. He noted that most of his illegal drug activity occurred while he was in college, and that his most recent use was in 2010. He claimed he has made lifestyle changes to stay away from illegal drugs. He initially claimed that he no longer associates with his illegal drug-using friends. However, during the latter part of his testimony, he admitted that he currently associates with his college drug-using friends once or twice a year. (Tr. 54) He plans to get married in the near future and have a family. He would like to retain his clearance and his job to be able to take care of his family.

Applicant noted that he voluntarily took a polygraph test. He believes he was forthcoming during his interviews because he disclosed his prior drug use. He explained he falsified his 2005 SCA because he was only 22 years old and he was not ready to admit his illegal drug-related behavior. He claimed he engaged in good faith efforts to correct his omissions when he revealed his drug-related behavior after his polygraph test. He averred that anything he omitted from his SCAs or the interviews was due to the passage of time and him having memory problems. Applicant continued to minimize his drug-related behavior during his testimony. Considering the evidence as a whole, I find his testimony less than credible.

Applicant considers himself to be a hardworking, dedicated, and trustworthy employee. He is dedicated to his job and the United States. He noted that his brother is a U.S. Marine, and his father was in the Navy for 20 years. He is involved in community events, including sponsoring at-risk children.

Concerning the financial allegations, Applicant explained that he purchased his home at age 23. He has been able to retain his home notwithstanding he was financially overwhelmed when his adjustable rate mortgage escalated resulting in the judgment alleged in SOR ¶ 3.a (\$15,000). In 2011, he secured a mortgage modification that reduced his monthly payments and he started paying the mortgage. He did not present documentary evidence to establish how many payments he has made since 2011, or the status of the debt. Regarding SOR ¶ 3.b (a collection for \$1,326), Applicant returned the cable T.V. boxes and he is no longer indebted to the creditor.

## 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 H, Drug Involvement

AG ¶ 24 articulates the security concern for 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 was arrested and charged with possession of marijuana and drug paraphernalia in 2001. He illegally used drugs, with varying frequency, between January 2001 and April 2010. He purchased marijuana from 2001 until 2007. He purchased (once) and used hallucinogenic mushrooms in 2004. He used cocaine three times between 2004 and 2008. He used hashish numerous times in 2004. Applicant used marijuana and cocaine after he was granted access to classified information at the top secret level in 2006.

AG ¶ 25 describes eight conditions related to drug involvement that could raise a security concern and may be disqualifying. The following drug involvement disqualifying conditions apply in this case:

- (a) any drug abuse;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) any illegal use after being granted a security clearance.

AG ¶ 26 provides four 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;
  - (4) a signed statement of intent with automatic revocation of clearance for any violation;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements,

without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Considering the evidence as a whole, I find that none of the Guideline H mitigating conditions apply. Applicant's long-term use of drugs and his use of drugs while possessing a clearance continue to be a serious concern. Moreover, Applicant falsified responses in SCAs in 2005, 2010, and 2011 pertaining to his illegal drug-related behavior. He also made false statements to a government investigator during a 2011 interview, falsified material facts in his answers to a 2012 DOHA interrogatory, and minimized his drug-related activities at his hearing.

Applicant's falsifications establish his lack of credibility. His lack of credibility adversely impacts the validity of his testimony concerning his change of behavior, disassociation from drug-using friends, successful rehabilitation, and his ability and willingness to abstain from illegal drugs. Overall his use of drugs and falsifications demonstrate Applicant's lack of reliability and trustworthiness. Applicant's testimony and evidence are insufficient to mitigate the drug involvement security concerns.

### **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 2001 and April 2010, Applicant illegally purchased and used drugs with varying frequency. He used marijuana and cocaine after he was granted access to classified information at the top secret level in 2006. Applicant falsified SCAs in 2005, 2010, and 2011 to cover the full extent of his illegal drug-related behavior. He made false statements to a government investigator during a 2011 interview and in his 2012 response to DOHA interrogatories, and minimized his drug-related activities at his hearing.

Additionally, he was prosecuted for minor in possession of alcohol in November 2001, possession of marijuana in December 2001, and DUI in February 2006. He received either probation before judgment or a deferred prosecution for those offenses. In July 2006, he was convicted of DUI and driving on a suspended license.

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

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative; 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.

AG ¶ 17 provides seven conditions that could mitigate the personal conduct security concerns.

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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;

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

(f) the information was unsubstantiated or from a source of questionable reliability; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

For the same reasons discussed under the Guideline H, incorporated herein, I find that none of the Guideline E mitigating conditions apply. On balance, Applicant's testimony and evidence are insufficient to mitigate the personal conduct security concerns.

### **Guideline F, Financial Considerations**

Under Guideline F, the security concern is that failure or inability to live within one's means, satisfy debts, and meet financial obligations may indicate poor self-control, lack of judgment, or unwillingness to abide by rules and regulations, all of which can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information. An individual who is financially overextended is at risk of having to engage in illegal acts to generate funds. AG ¶ 18.

The evidence established the two delinquent debts alleged in the SOR, totaling over \$16,000, which became delinquent around 2010. Financial considerations disqualifying conditions AG ¶ 19(a): "inability or unwillingness to satisfy debts" and AG ¶ 19(c): "a history of not meeting financial obligations," apply.

AG ¶ 20 lists six conditions that could mitigate the financial considerations security concerns:

(a) the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment;

(b) the conditions that resulted in the financial problem were largely beyond the person's control (e.g., loss of employment, a business downturn, unexpected medical emergency, or a death, divorce or separation), and the individual acted responsibly under the circumstances;

(c) the person has received or is receiving counseling for the problem and/or there are clear indications that the problem is being resolved or is under control;

(d) the individual initiated a good-faith effort to repay overdue creditors or otherwise resolve debts;

(e) the individual has a reasonable basis to dispute the legitimacy of the past-due debt which is the cause of the problem and provides documented

proof to substantiate the basis of the dispute or provides evidence of actions to resolve the issue; and

(f) the affluence resulted from a legal source of income.

Applicant has been fully employed with a government contractor since 2010. Based on the admitted credit reports, he seems to be living within his financial means and has no other delinquent debts. He presented evidence of contacts with his creditors and of efforts to resolve his debts. He established a mortgage modification in 2011 with the creditor alleged in SOR ¶ 3.a, and resolved the debt alleged in SOR ¶ 3.b. Considering the evidence as a whole, I find that the financial considerations mitigating conditions apply.

### **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 is a 30-year-old financial project manager employed with government contractors since 2006. He completed a bachelor's degree and is working on his public accountant certification. Applicant considers himself to be an honest, hardworking, and productive employee. Apparently, he is a valuable employee and volunteers in his community. Notwithstanding, Applicant's long-term illegal use of drugs, his use of drugs after possessing a top secret security clearance, his lack of credibility, and his falsifications and false statements cast serious doubt on his current reliability, trustworthiness, judgment, and on his ability to follow the law.

### **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.g:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a - 2.o:	Against Applicant
Paragraph 3, Guideline F:	FOR APPLICANT
Subparagraphs 1.a - 1.b:	For Applicant

## **Conclusion**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant eligibility for a security clearance to Applicant. Clearance is denied.

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JUAN J. RIVERA  
Administrative Judge