



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-12657
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Philip J. Katauskas, Esq., Department Counsel  
For Applicant: *Pro se*

09/24/2013

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**Decision**

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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On February 1, 2013, the Department of Defense issued to Applicant a Statement of Reasons (SOR) 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 effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant’s answer to the SOR was undated. He elected to have his case decided on the written record. On June 26, 2013, Department Counsel submitted the Government’s file of relevant material (FORM). The FORM was mailed to Applicant and

it was received on July 10, 2013. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation. Applicant did not provide additional information. The case was assigned to me on September 3, 2013.

### **Findings of Fact**

Applicant denied the allegation in SOR ¶ 1.f and admitted the remaining allegations with explanations. 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 earned a bachelor's degree in February 2012. He has been employed by a federal contractor since June 2011. He served in the Army from 1990 to 2010 and was honorably discharged upon his retirement. He was deployed to Iraq for four months in 2003, for 12 months from January 2005 to January 2006, and for 15 months from July 2007 to October 2008. Applicant has been married since 2005. He has two children ages eight and four.<sup>1</sup>

Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) on June 21, 2011. In response to Section 22.a, which required Applicant to disclose if he had been arrested by any police officer, sheriff, marshal, or any other type of law enforcement officer in the last seven years, he stated "no." In his Answer to the SOR he stated: "I ADMIT. No excuses, I should have read the question thoroughly."<sup>2</sup>

In response to Section 22.b, which required Applicant to disclose if he had ever been charged with any offense(s) related to alcohol or drugs, he responded "no." Applicant was arrested on May 8, 2009, for speeding and driving under the influence of alcohol. He was charged on January 1, 2000, for drunk and disorderly conduct. He was charged on June 13, 1998, for drunk driving. He was charged on July 4, 1997, for public intoxication.<sup>3</sup> Applicant did not disclose any of this information. In his Answer to the SOR he stated:

I ADMIT-however the question asked from 7 to 10 years back. Again on April 14, 1992, I do not have any knowledge of the charge of wrongful possession/use of marijuana. I DO NOT USE DRUGS. The other occurrences are not in the range of the 7 to 10 year timeline with the exception of the charge dated May 8, 2009.<sup>4</sup>

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<sup>1</sup> Items 5, 6.

<sup>2</sup> Items 4, 5, 6.

<sup>3</sup> SOR ¶ 1.b.5 alleges on April 14, 1992, Applicant was arrested for wrongful possession/use of marijuana. Applicant has consistently denied that he was arrested for or used illegal drugs. There is no evidence in the record to support this allegation.

<sup>4</sup> Items 4, 5, 6.

In response to Section 24.c, which required Applicant to disclose if in the past seven years he had received counseling or treatment as a result of his use of alcohol, he answered “no.” Applicant sought alcohol treatment from the Army in 2009. In his Answer to the SOR he stated: “I ADMIT. The counseling I received from the United States Army was assumed as having internal help within the organization and was not recognized as help from a civilian company or agency. Once my military career ended, I assumed all documents were voided.”

In response to Section 25.a, which required Applicant to disclose if he had ever had his background investigated and/or a security clearance granted. Applicant answered “no.” Applicant was granted a Secret security clearance by the Army Personnel Security Clearance Facility in September 1994. In his Answer to the SOR, Applicant stated: “I ADMIT. I had filled out 2 questionnaires in the year 2011[,] and I did not mean to falsify any material.”<sup>5</sup>

In response to Section 25.b, which required Applicant to disclose if he had ever had a clearance or access authorization denied, suspended, or revoked; or if he had been debarred from government employment, Applicant answered “no.” Applicant failed to disclose that his security clearance was revoked in approximately May 2001. In his response to the SOR, Applicant stated: “I had filled out 2 questionnaires in the year 2011 and I did not mean to falsify any material.”<sup>6</sup>

Applicant was interviewed by a government investigator on August 9, 2011. He told the investigator that he had never been arrested for any offense involving alcohol or drugs, and he had not been arrested in the past seven years by any type of law enforcement official. Applicant was confronted by the investigator with information that he had been arrested at least three other times. Applicant then admitted he was arrested in May 2009. He stated that he believed at first the charge was reckless driving, but after he took two breathalyzers he may have been arrested for driving under the influence of alcohol. He did not disclose the May 2009 charge because he was not convicted of driving under the influence, but was instead convicted of reckless driving. He thought he disclosed the reckless driving offense on the e-QIP. Applicant denied any other alcohol or drug-related charges in his background. Applicant failed to disclose the June 2000 drunk and disorderly charge; the June 1998 drunk driving charge; and the July 1997 public intoxication charge. In his Answer to the SOR, Applicant stated:

I DENY. I did not falsify these material facts because the DoD investigator asked of arrest[s] being made seven years back. I told him about the charge dated May 8, 2009, but the other charges were out of the seven year timeline.<sup>7</sup>

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<sup>5</sup> Items 4, 5, 6.

<sup>6</sup> Items 4, 5, 6.

<sup>7</sup> Items 4, 5, 6.

During Applicant's August 2011 interview with a government investigator he stated he had never had a security clearance suspended or revoked. Applicant's security clearance was revoked in 2001.<sup>8</sup>

Applicant sought alcohol treatment through the Army in 2009. During his August 2011 interview with a government investigator he stated he had never been involved in any form of alcohol counseling or treatment. In his Answer to the SOR, he stated: "I ADMIT. Again I thought the counseling was internal help provided to Soldiers in the organization and not considered help from a civilian organization."

Applicant deliberately and intentionally failed to disclose specific and relevant material on his e-QIP and during his background investigation with a government investigator.

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). 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 decision, I have drawn only those conclusions that are reasonable, logical, and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 as to obtaining a favorable security decision."

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<sup>8</sup> Items 4, 5, 6.

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 E, Personal Conduct**

AG ¶ 15 expresses the security concern about personal conduct:

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.

I considered the disqualifying conditions under AG ¶ 16 that could raise a security concern and conclude the following has been raised:

(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; and

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

Applicant deliberately failed to disclose his May 2009 alcohol-related arrest and his other alcohol-related charges. He deliberately failed to disclose he sought counseling for his alcohol use. He deliberately failed to disclose that at one time he had a security clearance and it was later revoked. Applicant deliberately falsified material facts to a government investigator when he denied he had any other alcohol-related

arrests and denied he ever had a security clearance revoked. The above disqualifying conditions apply.

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

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant intentionally failed to disclose material facts on his e-QIP. His explanations that he did not believe some of the offenses fell within the seven to ten-year timeframe are not supported by the plain reading of the question, which required he disclose all alcohol or drug-related offenses and there is no timeframe. His May 2009 offense fell within the timeframe and he did not disclose it. His explanation that he did not have to disclose his alcohol counseling because it was provided by the Army and not a civilian agency is not credible. The question did not differentiate the source of the counseling. Applicant deliberately provided false statements to a government investigator during his background interview. Applicant had a duty to answer all of the questions on his e-QIP and during his interview truthfully. He deliberately failed to do so. His explanations were not credible. The concealment of this information is a cause of concern. I find none of the above mitigating conditions apply. There is no evidence in the record to support that Applicant was arrested in 1992 for wrongful possession/use of marijuana.

### **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):



## **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's eligibility for a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge