



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



In the matter of: )  
)  
) ISCR Case No. 11-12935  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Melvin Howry, Esq., Department Counsel  
For Applicant: Lynn Swenson, Personal Representative

October 30, 2013

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the Drug Involvement, Criminal Conduct, and Personal Conduct security concerns. Drug Involvement security concerns arose out of Applicant’s methamphetamine use from April 2004 to November 2005; and from December 2010 to January 2011, while holding a security clearance. Criminal Conduct concerns resulted from Applicant’s two drug-related arrests in 1984 and 2005. Personal Conduct security concerns arose out of Applicant’s incomplete answers to questions about his criminal history on two Electronic Questionnaires for Investigative Processing (e-QIP). Eligibility for access to classified information is denied.

**Statement of the Case**

On July 21, 2011, Applicant completed an Electronic Questionnaires for Investigations Processing (e-QIP). On June 5, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement; Guideline J, Criminal Conduct; and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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) effective after September 1, 2006.

Applicant answered the SOR on June 28, 2013, and requested a hearing before an administrative judge. The case was assigned to me on August 26, 2013. Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 30, 2013, and the hearing was convened as scheduled on September 23, 2013. The Government offered Exhibits (GE) 1 through 6, which were admitted without objection. The Government also produced two Hearing Exhibits (HE) containing 21 U.S.C. § 802, marked as HE I; and 21 U.S.C. § 812, marked as HE II. The Applicant offered Exhibits (AE) A through J, which were admitted without objection. He also produced a copy of ISCR Case No. 11-12935 (A.J. July 24, 2013), which was marked HE III. Applicant testified on his own behalf and called one witness. Applicant requested that the record be left open for additional documentation. On September 26, 2007, Applicant presented AE K. Department Counsel had no objections to AE K, and it was admitted. The record then closed. DOHA received the hearing transcript (Tr.) on October 1, 2013.

### **Findings of Fact**

Applicant is a 54-year-old government contractor. He has worked for his employer for the past seven years. He is divorced and has two adult children. (Tr. 37-38, 80, 91.)

The Government alleged that Applicant is ineligible for a clearance under Drug Involvement because he used methamphetamine from April 2004 to November 2005; and from December 2010 to January 2011, while holding a security clearance. Criminal Conduct concerns resulted from Applicant's two drug-related arrests in 1984 and 2005. Personal Conduct security concerns arose out of Applicant's incomplete answers to questions about his criminal history on two Electronic Questionnaires for Investigative Processing (e-QIP). All of which raise questions about his reliability, trustworthiness, and ability to protect classified information. Applicant admitted all of the allegations under the guidelines Drug Involvement and Criminal Conduct, but denied intentionally falsifying his two e-QIPs. (Answer.)

Applicant's first alleged involvement with illegal substances was in 1984. Applicant testified that on that occasion, a friend asked him to help move boxes out of a motel room. Applicant started helping, and was suddenly surrounded by police. He claimed that unbeknownst to him, the boxes contained drugs. He was arrested and charged with Possession of a Controlled Substance for Sale/Methamphetamine and Possession of a Controlled Substance/Methamphetamine. He testified that the charges were dismissed against him and presented a court document to show this disposition. He claimed that at that time, he had never used an illegal substance. (AE J; Tr. 58-60, 91-95.)

Applicant claims he first used methamphetamines in April 2004. He testified that at that time, he was involved with a woman who used methamphetamines heavily. She

introduced him to the drug. Applicant admitted he knew methamphetamines were illegal at the time he used them but he gave in to “peer pressure” and used them. He used methamphetamines approximately 30 times, from April 2004 to November 2005. (Tr. 57, 78, 80-82.)

In November 2005 the police were called to his residence as a result of a domestic dispute with the woman with whom he first used methamphetamines. Applicant was arrested and charged with Felony Possession of a Controlled Substance; and Misdemeanor Under the Influence of a Controlled Substance. He pled no contest to the misdemeanor charge and the felony charge was dismissed. On March 21, 2006, Applicant received a suspended sentence. He was placed on probation for three years, fined, and required to attend a court ordered outpatient drug rehabilitation treatment program. Applicant successfully completed the treatment program and probation. His fines were paid in full. He ended his relationship with his significant other and obtained a restraining order against her. (GE 1; GE 5; AE K; Tr. 60-61, 78.)

On May 1, 2007, Applicant completed an e-QIP in connection with his position with a government contractor. The e-QIP asked: “Section 23: Your Police Record. For this item, report information regardless of whether the record in your case has been “sealed” or otherwise stricken from the court record. The single exception to this requirement is for certain convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. d. Have you ever been charged with or convicted of any offense(s) related to alcohol or drugs?” Applicant answered, “Yes,” and indicated his arrest in November 2005, but failed to list his November 1984 arrest. Applicant testified he did not intentionally provide false information, but believed that he only needed to provide information for the preceding seven years when answering the e-QIP. He indicated that no help was available to address his question or help him complete the e-QIP. He testified that he did not disclose his 1984 arrest during this security interview. Applicant was subsequently granted a security clearance based on his e-QIP and security interview. He testified that he knew that as part of his clearance, he was required to abstain from illegal drug use. (GE 2; GE 3; AE D; Tr. 44-49, 62-63, 83.)

In December 2010 Applicant resumed methamphetamine use with a second woman, to help him get extra energy to remodel their house. He testified he used a half gram of methamphetamine in his home approximately 20 times with his then girlfriend approximately twice a day, on the weekends over the course of two months.<sup>1</sup> During that time, Applicant’s supervisor noticed that Applicant was, in Applicant’s words, “a little tired working,” and asked Applicant if he had any problems. Applicant disclosed his drug use to his supervisor. Applicant entered a 90-day outpatient program on February 4, 2011. He attended three classes per week for three months. He reported that he attended a total of thirty group sessions and also did one counseling session with a licensed therapist. All urinalysis administered during the course of rehabilitation were negative. He received a certificate of completion from the substance abuse treatment center on May 6, 2011. He testified that he has not used any illegal drugs since January

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<sup>1</sup> Applicant stated that he used methamphetamine in “11/2005 & 1/2011” a total of “8” times in his answers to Government interrogatories. (GE 6.)

2011. He no longer associates with that girlfriend or any other drug users. He has signed a statement of intent, “demonstrating [his] intent not to use or abuse illegal drugs in the future.” (GE 4; GE 6; AE G; AE H; Tr. 52-56, 79, 86-90, 95-100.)

On July 21, 2011, Applicant completed a second e-QIP, which asked: “Section 22: Your Police Record. For this item, report information regardless of whether the record in your case has been sealed, expunged or otherwise stricken from the court record, or the charge was dismissed. You need not report convictions under the Federal Controlled Substances Act for which the court issued an expungement order under the authority of 21 U.S.C. 844 or 18 U.S.C. 3607. Be sure to include all incidents whether occurring in the U.S. or abroad. e. Have you EVER been charged with or convicted of any offense(s) related to alcohol or drugs?” Applicant answered, “Yes,” and indicated his arrest in November 2005, but failed to list his November 1984 arrest. He testified that he copied the answers from his 2007 e-QIP and thought he was only required to report incidents occurring in the past seven years on the form. (GE 4; AE E; Tr. 49-52, 83-86.)

Applicant now resides with a third woman, his fiancée. He testified she is strongly opposed to drug use and has been supportive of his efforts to abstain from drugs in the future. He participates in church, and is active in a motorcycle group that raises funds for underprivileged children and homeless shelters. He testified that he now understands the importance of his personal conduct. (AE I; Tr. 55-57, 64-65, 67, 82.)

Applicant is well respected by those who know him, as verified by the witness who testified on his behalf. Additionally, Applicant presented letters of recommendation that attest to the high quality of his character. His supervisor believes he is a “valuable asset” to his team. His Facility Security Officer indicated she finds Applicant to be “very trustworthy, honest, and forthcoming to [her] about his issues, what [led] to [the] issues and his [ongoing] actions to correct them.” Applicant has been presented a number of achievement awards for his exceptional performance. (AE A; AE B; AE C; Tr. 102-110.)

### **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 to be 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, administrative judges apply the guidelines 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.

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 the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.

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 the applicant may deliberately or inadvertently fail to protect or 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 EO 10865 provides that adverse 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 H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to 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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25, and the following are potentially applicable:

- (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.

The Government presented sufficient information to support all of the factual allegations under Guideline H (SOR ¶¶ 1.a.-1.c.). Applicant used methamphetamine from April 2004 to November 2005; and from December 2010 to January 2011, while holding a security clearance. The facts established through the Government's evidence and through Applicant's admissions raise security concerns under all of the above disqualifying conditions.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26, and the following are potentially applicable:

(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; 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.

Applicant has worked hard to excel in his career. Since his last methamphetamine use almost three years ago, Applicant has matured. He has ceased association with anyone that continues to use illegal substances. He avoids environments where illegal drugs are used, and he has signed a statement of intent with automatic revocation of clearance for any violation. He performs well at work, as attested to by those that know him best. He underwent treatment for his methamphetamine addiction, although no prognosis was entered into evidence. He has not used any type of legal or illegal intoxicant since 2011. These mitigating factors are considerable, but are outweighed by other evidence in this case.

Applicant used methamphetamine from April 2004 to November 2005, and again in December 2010 through January 2011 while possessing a security clearance. He underwent court ordered rehabilitation in 2005, yet four years later, he relapsed. He made a conscious choice to use methamphetamine again, despite his responsibilities that existed at the time to his job. He indicated that he knew methamphetamine use was illegal and that he should not use methamphetamine while holding a security clearance, yet he placed his own desires above that of the national interest. Given these facts, I cannot afford much weight to his signed statement without the passage of additional

time and a demonstrated commitment to remaining drug free. Applicant has not mitigated the security concerns relating to his Drug Involvement.

### **Guideline J, Criminal Conduct**

The security concern relating to the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

AG ¶ 31 describes conditions that could raise a security concern and may be disqualifying. The following is potentially applicable:

(a) a single serious crime or multiple lesser offenses.

Applicant was arrested in November 1984 and charged with Possession of a Controlled Substance for Sale/Methamphetamine and Possession of a Controlled Substance/Methamphetamine. He was arrested again in November 2005 and charged with Felony Possession of a Controlled Substance; and Misdemeanor Under the Influence of a Controlled Substance. He pled no contest to the misdemeanor charge and the felony charge was dismissed. The above disqualifying condition has been established.

Three Criminal Conduct mitigating conditions under AG ¶ 32 are potentially applicable:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment;

(b) the person was pressured or coerced into committing the act and those pressures are no longer present in the person's life; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

Applicant has been arrested twice, in 1984 and 2005. Both arrests were related to methamphetamines. While Applicant testified that he did not know about the drugs he was accused of possessing in 1984, he certainly was aware of possessing methamphetamines in 2005. In fact, his illegal conduct recurred in December 2010 through 2011, when he again chose to use methamphetamines despite his 2005 arrest

and rehabilitation. Due to the large time lapses between his criminal behavior, I cannot find future criminal behavior is unlikely to recur. AG ¶ 32(a) does not apply.

Applicant argued that he used methamphetamines due to peer pressure. He also argued that those individuals who pressured him to use methamphetamines are no longer present in his life. However, he attributed each arrest and period of use to different individuals. Applicant alone is responsible for his illegal conduct. AG ¶ 32(b) does not apply.

As noted above, while Applicant attended a court-ordered rehabilitation program in 2005, he relapsed and used methamphetamines again in December 2010 to January 2011. Not enough time has passed to determine that Applicant will not again relapse, despite his exceptional work performance record. AG ¶ 32(d) does not apply.

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

The security concern for the Personal Conduct guideline is set out in AG ¶ 15:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying conditions are potentially applicable:

(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;

Applicant was repeatedly dishonest about the full extent of his criminal conduct. He deliberately omitted his November 1984 arrest on his May 1, 2007, and July 21, 2011 e-QIPs. While he testified that he thought he only needed to disclose information within seven years of the dates he completed the forms, the questions he falsified clearly state otherwise. In doing so, he demonstrated that he lacked the good judgment to comply with rules and regulations that are counter to his desires. The above disqualifying conditions apply.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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 failed to present information that he made a prompt, good-faith effort to correct his omission of his 1984 arrest on either of his e-QIPs. AG ¶ 17(a) does not apply.

Applicant made poor decisions to violate laws, security procedures, and company policies because he did not agree with them. Applicant exhibited a pattern of exercising poor judgment in falsifying his e-QIP and by using methamphetamine while holding a security clearance. He failed to produce sufficient evidence that similar lapses in judgment are unlikely to recur, without the passage of more time or other evidence that demonstrates trustworthiness and good judgment. AG ¶¶ 17(c) and 17(d) are not applicable.

Applicant has earned an excellent reputation for honesty and trustworthiness at work. However, not enough time has passed to know whether Applicant could again be tempted to violate laws or other rules for his own personal benefit, as he did when he knowingly falsified his e-QIP. AG ¶ 17(e) does not apply.

### **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 relevant circumstances. 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all pertinent facts and circumstances surrounding this case. Applicant is highly respected by those who know him. He has not used methamphetamine since January 2011. He has signed a written statement that he will not use illegal substances in the future and no longer associates with drug users. However, not enough time has passed since Applicant's drug use in 2011 to permit a finding that future drug use is unlikely to occur. Further, his word lacks credibility as a result of his choice to falsify his two e-QIPs.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement, Criminal Conduct, and Personal Conduct security concerns.

### **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
Subparagraph 1.a-1.c:	Against Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a-2.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a-2.b:	Against Applicant

### **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.

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Jennifer I. Goldstein  
Administrative Judge