



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 11-13978 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel

For Applicant: *Pro se*

08/28/2013

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**Decision**

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O'BRIEN, Rita C., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, I conclude that Applicant has not mitigated the security concerns raised under the guidelines for drug involvement and personal conduct. Accordingly, his request for a security clearance is denied.

**Statement of the Case**

On March 22, 2013, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) citing security concerns under Guideline H (drug involvement) and Guideline E (personal conduct) of the Adjudicative Guidelines (AG).<sup>1</sup> In his Answer to the SOR, Applicant admitted the drug-related allegations. He also

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<sup>1</sup> Adjudication of the case is controlled by Executive Order 10865, as amended; DOD Directive 5220.6 (Directive), as amended; and the Adjudicative Guidelines, which supersede the guidelines listed in Enclosure 2 to the Directive. They apply to all adjudications or trustworthiness determinations in which an SOR was issued on or after September 1, 2006.

admitted one allegation under Guideline E, but denied the other. He requested a hearing before an administrative judge. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on July 23, 2013, and I convened the hearing on August 8, 2013. I admitted four Government exhibits (GE 1-4), and six exhibits offered by the Applicant (AE A-F). I admitted one additional exhibit received after the hearing, without objection, as AE G. DOHA received the transcript on August 16, 2013.

### **Findings of Fact**

Applicant's admissions are incorporated as findings of fact. After a thorough review of the pleadings and the record evidence, I make the following findings of fact.

Applicant is 33 years old. He married in 2010 and has two children, six weeks old and two years old. He received a bachelor's degree in computer engineering in 2002 and a master's degree in electrical engineering in 2008. From July 2002 to August 2008, he worked for a defense contractor. After completing a security clearance application in 2002, when he was 22 years old, he received his first security clearance at the secret level. In February 2008, his sponsor requested a top secret clearance, and Applicant completed a second security clearance application. Applicant testified that he thinks he lost his secret clearance sometime in 2008. In August 2008, he joined a start-up defense-contracting company, where he currently supports the Army as an engineer. (GE 1-3; AE D, G; Tr. 22-26, 39)

Applicant began using marijuana when he was in high school in 1996, at the age of 16. He continued using it during college, usually at parties with friends. He smoked it approximately monthly, except for a period in 2000, when he used it weekly. Between 2005 and 2007, he used it primarily at a friend's home. During college, between 1999 and 2002, Applicant also used psychoactive mushrooms (psilocybin) three times and LSD three times. After graduating college in 2002, Applicant used cocaine twice—once in 2004 and once in 2007. (GE 1, 2, 4; AE C; Tr. 25-26, 29, 41)

Applicant provided conflicting information about purchasing drugs. In his 2002, 2008, and 2011 security clearance applications, Applicant stated he did not purchase illegal drugs. However, at his March 2008 security interview by a DOD investigator, Applicant said whenever he used mushrooms and LSD, he contributed about \$40 to buy them. He also stated that each semester in college, he bought a \$50 supply of marijuana, but after college, from 2002 to 2005, he did not buy marijuana because his roommates supplied it. At his 2011 security interview, Applicant told the investigator that he never purchased any type of illegal drugs. At the hearing, Applicant testified that, "I certainly have purchased drugs before" and noted that the interviewer's report might not be accurate. In February 2013, DOHA provided Applicant an opportunity to review and correct the interviewer's report. He made several corrections, but did not correct the statement that he had never purchased drugs. In his Answer to the SOR, he admitted that he contributed money toward the purchase of marijuana, cocaine, mushrooms, and LSD on multiple occasions. (GE 1, 2, 4; Tr. 29, 52-53)

Before beginning his job with a defense contractor in 2002, Applicant passed a pre-employment drug test. He subsequently passed a random drug test during his employment, although he had used cocaine twice, as well as marijuana, while he worked for the company. Applicant had some breaks in his marijuana use. He testified,

I also know that for a substantial period of time, you know, while I was working at [company] and while I was using drugs that I did have a lot of guilt, a lot of anxiety surrounding the circumstances that I found myself putting myself in. So I know that I did have some breaks in that period of time but I don't think that they were any longer than maybe three months at a time. (Tr. 50)

Applicant offered a document showing negative results of a recent drug test. It is signed by the Applicant, and includes a date of July 29, 2013, hand-written by Applicant. As the test was administered by Applicant, was not random, and was not administered by a professional and unbiased tester, I assign little weight to the document (AE B). Applicant has not had a professional, random test administered within the past five years. (AE B; Tr. 18, 42-43, 50-52)

After being granted a secret security clearance in 2002, applicant used marijuana about monthly from 2002 to 2007. He also used cocaine in 2004 and 2007. He was aware that his drug use was illegal, and that use of illegal drugs while holding a security clearance was against regulations. Applicant has never received drug treatment or counseling, and has not used illegal drugs since 2007. He submitted a signed statement that he will abstain from drug abuse and that he understands any future illegal drug use will result in revocation of any security clearance he is granted. (GE 4; AE A, D; Tr. 27-29, 51-52)

Applicant completed three security clearance applications: 2002, 2008, and 2011. On the drug-related question in the 2002 application, Applicant did not disclose his use of mushrooms and LSD between 1999 and 2002. He did list marijuana use of 15 times between 1996 and 2000, but failed to reveal that he has used marijuana in 2001 and was still using marijuana in 2002, the year he completed his application. Applicant admits that he deliberately falsified the 2002 application. He testified that he knew it would be submitted to the Department of Defense, and knew the purpose was to obtain a security clearance, but he “. . . didn't really have a full appreciation for the gravity of this documentation.” (GE 1-3; Tr. 39-40)

Applicant submitted a second security clearance application in February 2008, which asked him about his illegal drug use for the previous seven years (February 2001 through February 2008). He disclosed two cocaine uses in 2004 and 2007, and monthly marijuana use from 2002 to 2007. He did not disclose his use of mushrooms or LSD in 2001 and 2002. He testified that this was an unintentional omission. He also did not disclose his use of marijuana between February 2001 and August 2002. In the six years between his first application in 2002 and his second application in February 2008,

Applicant also did not disclose his drug use to his supervisor, facility security officer (FSO), or anyone in his company, or at DOD. Applicant's first disclosure of his complete drug use occurred at his May 2008 security interview. (GE 2, 4; Tr. 34-39, 43-45)

In August 2008, Applicant left the company. He joined a start-up company, where he currently works. The company president is also the FSO. He learned of Applicant's illegal drug use in 2008, but Applicant does not remember exactly when the president became aware of it. Towards the end of 2008, Applicant received an SOR from DOHA. At that point, he and the president decided to withdraw his application for a security clearance so that his illegal drug use would be more distant in time when he reapplied. (Tr. 20-21, 38-39)

Applicant reapplied for a security clearance by completing an application in August 2011. The drug-related questions asked whether he had used illegal drugs during the previous seven years (August 2004 through August 2011). He disclosed one use of cocaine in 2007, and once-monthly use of marijuana from 2004 to 2007. He also disclosed that he used illegal drugs while holding a security clearance. (GE 1)

Applicant's exhibit C is a memorandum that lists the dates, type, and frequency of his illegal drug use from 1996 to 2007. He provided a copy to his wife, his parents, the president of his current company, and two coworkers. Each recipient signed and dated their acknowledgement of the memorandum. (AE C)

Applicant submitted four character reference letters. The president of Applicant's current company has known Applicant for ten years. He recruited Applicant because of his "engineering skills, ethics, accountability, and commitment to doing the best work possible . . . ." He opined that Applicant is committed to supporting their customers, despite ". . . some bad choices in the past, while still in his youth. . . ." A chief engineer, who was Applicant's supervisor at the company where he worked from 2002 to 2007, noted that Applicant's character was beyond reproach, and he displayed excellent judgment. He knew of no conduct that would "bring his morality or ethics into doubt." Two of Applicant's friends, with whom he used illegal drugs in the past, submitted character letters. Each noted that Applicant has changed and is now a responsible husband and father. One noted that Applicant's days of "associating with people in drug use environments are long in our pasts now." The other commented that Applicant "rarely associates with individuals from our network of friends that abuse drugs." (AE E, F, G; Tr. 48-49)

Applicant received a promotion, stock award, and other recognition while working for his previous employer. He submitted a copy of his 2008 report of investigation, which included interviews with Applicant's supervisor and coworkers during the 2004 to 2007 time period. Applicant's former supervisor described him as an outstanding engineer, who was well-respected in his company. Another supervisor described him as level-headed and mature for his age. His former instructor at an engineering development program praised Applicant's performance. A classmate during Applicant's master's

degree program, who is also a former coworker, described Applicant as efficient, self-confident, and reliable. None of the interviewees were aware at the time of Applicant's drug abuse. (AE D, F)

### **Policies**

Each security clearance decision must be a fair and commonsense determination based on examination of all available relevant and material information, and consideration of the pertinent criteria and adjudication policy in the AG.<sup>2</sup> Decisions must also reflect consideration of the factors listed in ¶ 2(a) of the Guidelines, commonly referred to as the “whole-person” concept. The presence or absence of a disqualifying or mitigating condition does not determine a conclusion for or against an applicant. However, specific applicable guidelines are followed whenever a case can be measured against them as they represent policy guidance governing the grant or denial of access to classified information. In this case, the pleadings and the information presented by the parties require consideration of the security concerns and adjudicative factors addressed under Guidelines H (drug involvement) and E (personal conduct).

A security clearance decision is intended only to resolve the question of whether it is clearly consistent with the national interest<sup>3</sup> for an applicant to either receive or continue to have access to classified information. The Government bears the initial burden of producing admissible information on which it based the preliminary decision to deny or revoke a security clearance for an applicant. Additionally, the Government must be able to prove controverted facts alleged in the SOR. If the Government meets its burden, it then falls to the Applicant to refute, extenuate or mitigate the Government's case. Because no one has a “right” to a security clearance, an applicant bears a heavy burden of persuasion.<sup>4</sup> A person who has access to classified information enters 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 requisite judgment, reliability, and trustworthiness of one who will protect the national interests as her or his 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.<sup>5</sup>

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<sup>2</sup> Directive. 6.3.

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

<sup>4</sup> See *Egan*, 484 U.S. at 528, 531.

<sup>5</sup> See *Egan*; AG ¶ 2(b).

## Analysis

### Guideline H, Drug Involvement

AG ¶ 24 expresses 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.

Of the eight disqualifying conditions listed at AG ¶ 25, the following apply:

- (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 drug use after being granted a security clearance.

Applicant admits he used marijuana over a period of 11 years, from 1996 to 2007. He used psychoactive mushrooms and LSD while in college from 1999 to 2002. He used marijuana about monthly, and cocaine twice, during the period 2002 to 2007. Applicant purchased marijuana regularly while in college, although he does not remember purchasing it after college. He also contributed funds to pay for psychoactive mushrooms and LSD while in college. After accepting a position with a defense contractor, Applicant was granted a secret security clearance in 2002. He continued to use illegal drugs from 2002 to 2007 while he held that security clearance. AG ¶¶ 25(a), (c), and (g) apply.

Two of the four mitigating conditions are relevant under AG ¶ 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;
- (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.

Although Applicant's drug use is not recent, it was frequent. Applicant's most extensive drug use involved marijuana, which he used from 1996 to 2007. His 11 years of use is longer than his 6 years of abstinence. He used marijuana with friends at parties, events that were not unusual, but commonplace. His feelings of guilt about his marijuana use while working for a defense contractor caused him to stop for short periods, only to return to using marijuana. Applicant's long-term and deliberate violation of the law, and especially his illegal conduct while holding a security clearance, raise concerns about his trustworthiness and judgment. AG ¶ 26(a) does not apply.

I find Applicant's testimony credible that he has no intent to use marijuana in the future, based on his abstention from marijuana use for the past six years, and his notarized statement that he will not use marijuana and other illegal drugs in the future, subject to revocation of his security clearance. Applicant still associates with friends with whom he used illegal drugs in the past. Partial mitigation is available to Applicant under AG ¶ 26(b).

### **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.

The Government alleges that Applicant knowingly falsified answers he provided to drug-related questions on security clearance applications he completed in 2002 and 2008. The following disqualifying conditions under AG ¶ 16 are relevant:

- (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

(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. . . .

In his 2002 application, Applicant listed only that he used marijuana 15 times between 1996 and 2000, which minimized the extent of his actual marijuana usage. He failed to disclose his illegal use of mushrooms and LSD. He admits that he deliberately falsified his answer on the 2002 application. Applicant denies he falsified his 2008 application. On that application, Applicant disclosed his two cocaine uses in 2004 and 2007. However, he listed that he used marijuana monthly from August 2002 to June 2007, failing to disclose that he also used marijuana during the 18 months from February 2001 to August 2002. He also did not reveal his use of mushrooms and LSD in 2001 and 2002, a time period covered by the question. I conclude that Applicant knowingly minimized his illegal drug use on his 2008 application. AG ¶ 16(a) applies.

Applicant used illegal drugs for five years, from 2002 to 2007, while holding a secret security clearance and working on classified information. He did not reveal his illegal drug use until his 2008 security interview. During the six years from 2002 to 2008, Applicant was vulnerable to exploitation because disclosure of his secret would have jeopardized his clearance and his job. AG ¶ 16(e) applies.

Guideline E contains factors that can mitigate disqualifying conditions. The following conditions under AG ¶ 17 are relevant:

(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 was not interviewed after he completed his 2002 application, and therefore, was not confronted at that time regarding possible illegal drug use. However, he could have and should have disclosed his illegal activities to his supervisor, FSO, or



DOD. However, he did not reveal it until six years after he received his security clearance. AG ¶ 17(a) does not apply. He revealed his conduct at his 2008 security interview, and also informed the president of his current company. He provided memoranda indicating that his wife, two coworkers, and his parents are aware of his history of illegal drug use. Applicant is no longer vulnerable to coercion, and AG 17(e) applies.

Applicant receives partial mitigation under AG ¶ 17)(d) because he has taken positive steps by revealing his conduct to his employer, family, and a coworker, and it is unlikely that he will use illegal drugs in the future. However, despite the five years that have passed since Applicant falsified his 2008 security clearance application, falsification of information provided to the Government is not minor; it goes to the heart of the security clearance process. Applicant's decision to falsify relevant facts reflects negatively on his trustworthiness and good judgment. AG ¶ 17(c) cannot be applied.

### **Whole-Person Analysis**

Under the whole-person concept, an administrative judge must evaluate the applicant's security eligibility by considering the totality of an applicant's conduct and all the circumstances. An 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.

AG ¶ 2(c) requires that the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept. Under the cited guidelines, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case.

Applicant's history includes positive factors that weigh in his favor, including his abstinence from marijuana use for the past six years, his achievements during his employment, and his positive character references from his supervisor, friends, and coworkers.

However, Applicant's illegal conduct and falsification outweigh these factors. Applicant engaged in criminal conduct by using four illegal drugs between 1996 and

2007. He used one of them—marijuana—about monthly for an extensive period of 11 years. He used illegal drugs while knowing that it was against the law. Despite feelings of guilt, he continued to use marijuana for five years while he held a security clearance and worked with classified information. Finally, Applicant concealed his illegal drug use from his employer and from DOD, and violated the security clearance holder's obligation to self-report, because he feared the consequences for his career. Those who hold security clearances enter into a fiduciary relationship with the Government based on trust. Applicant's conduct demonstrates a willingness to place his own desires above the Government's need for trustworthiness in those to whom it grants access to classified information.

A fair and commonsense assessment of the available information shows Applicant has not satisfied the doubts raised about his suitability for a security clearance. For these reasons, I conclude he has not mitigated the security concerns arising from the cited adjudicative guideline.

### **Formal Findings**

Formal findings on the allegations set forth in the SOR, as required by section E3.1.25 of Enclosure 3 of the Directive, are as follows:

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|---------------------------|-------------------|
| Paragraph 1, Guideline H: | AGAINST APPLICANT |
| Subparagraphs 1.a – 1.f   | Against Applicant |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 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 interests of national security to allow Applicant access to classified information. Applicant's request for a security clearance is denied.

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RITA C. O'BRIEN  
Administrative Judge