



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



In the matter of: )  
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 REDACTED ) ISCR Case No. 11-15124  
 )  
 Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: *Pro se*

02/06/2014

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the drug involvement concerns as his last use of illegal drugs was over five years ago. However, he failed to mitigate the security concerns arising from his deliberate falsification of his security clearance application. He deliberately failed to disclose his past drug use. Applicant’s untruthfulness during the security clearance process continues to cast doubt on his judgment, reliability, and trustworthiness. Clearance is denied.

**Statement of the Case**

On August 22, 2012, the Department of Defense (DoD), in accordance with DoD Directive 5220.6, as amended (Directive), issued Applicant a Statement of Reasons (SOR), alleging security concerns under Guideline H (Illegal Drug Involvement) and Guideline E (Personal Conduct). Applicant answered the SOR, waived his right to a hearing, and requested a decision on the written record.

On December 4, 2012, Department Counsel issued a file of relevant material (FORM) and sent it to Applicant. The FORM contains the SOR, Answer, and Applicant’s

security clearance application (SCA). On January 17, 2013, Applicant mailed his response to the FORM (Response) to the Defense Office of Hearings and Appeals.

On January 16, 2014, the FORM and the Response were forwarded to the hearing office. On January 23, 2014, I was assigned Applicant's case.

### **Findings of Fact**

Applicant, 41, has been working for a federal contractor since September 2011. He has never been married and has no children. Between 2004 and 2008, he frequently used marijuana. From 2007 to 2008, he also used cocaine on a frequent basis. He purchased both drugs on multiple occasions. In 2008, he received treatment for his substance abuse. He was diagnosed by the treatment facility with alcohol and cannabis dependence. (SCA; Answer)

In 2011, Applicant submitted a SCA in connection with his employment as a federal contractor. He was asked on the form if he had used illegal drugs in the past seven years. He answered "no." (SCA at 32-33) Applicant admits he falsified his SCA. He lied because he was embarrassed to admit his past drug use. (Answer)

Applicant states that he now realizes he made a mistake by falsifying his SCA. He claims that he was honest about his illegal drug involvement during his security clearance interview. He further claims his past "substance abuse" was due to his parent's death, a breakup with a girlfriend, and family turmoil. He states that he is no longer involved with illegal drugs and does not associate with those involved with illegal drugs. (Response)

### **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are only eligible for access to classified information "only upon a finding that it is clearly consistent with the national interest" to authorize such access. Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's eligibility, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a common sense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. An 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.” Directive ¶ E3.1.15. An applicant also bears the ultimate burden of persuasion to establish his or her eligibility.

In resolving the ultimate question regarding an applicant’s eligibility, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b). Moreover, “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.<sup>1</sup>

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. 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 an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.<sup>2</sup>

Clearance decisions must be made “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.” E.O. 10865 § 7. Thus, a decision to deny a security clearance amounts to a finding that an applicant, at the time the decision was rendered, did not meet the strict guidelines established for determining eligibility for access to classified information.

## Analysis

### Guideline H, Drug Involvement

The security concern regarding illegal drug involvement is set forth at AG ¶ 24:

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.

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<sup>1</sup> See also, ISCR Case No. 07-16511 at 3 (App. Bd. Dec. 4, 2009) (“Once a concern arises regarding an Applicant’s security clearance eligibility, there is a strong presumption against the grant or maintenance of a security clearance.”) (citing *Dorfmont v. Brown*, 913 F. 2d 1399, 1401 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991)).

<sup>2</sup> See ISCR Case No. 11-13626 (App. Bd. Nov. 7, 2013) (security clearance determinations require administrative judges to make predictive judgments). See also, *Kaplan v. Conyers, et al.*, 2013 U.S. App. LEXIS 17278 at \*\* 23-24, 40-51 (Fed. Cir. Aug. 20, 2013) (federal courts will generally defer to such predictive judgments).

Applicant's extensive drug involvement from 2004 to 2008 and diagnosis of cannabis dependence raises the above concern. The record evidence also establishes the following disqualifying conditions under the guideline:

AG ¶ 25(a): any drug abuse;<sup>3</sup>

AG ¶ 25(b): illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

AG ¶ 25(d): diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence.<sup>4</sup>

The guideline also sets forth a number of conditions that could mitigate the drug involvement concern. The following mitigating conditions were potentially raised by the evidence:

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;

AG ¶ 26(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

AG ¶ 26(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's last involvement with illegal drugs was over five years ago. Such a lengthy period of abstinence satisfies his heavy burden of demonstrating that he will not use illegal drugs in the future. AG ¶¶ 26(a) and 26(b) apply.<sup>5</sup> Applicant mitigated the drug involvement security concerns.

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<sup>3</sup> The Directive defines "drug abuse" as the "illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." See AG ¶ 24(b).

<sup>4</sup> Although the record is silent as to whether a listed duly qualified professional diagnosed Applicant with cannabis dependence, such can be inferred from the admitted facts. At a minimum, a qualified professional from the treatment facility evaluated him with such a condition. See AG ¶ 25(e).

<sup>5</sup> Applicant's lengthy period of abstinence also strongly suggests that he satisfactorily completed all the terms of the substance abuse treatment program. However, he did not submit any documentary

## **Guideline E, Personal Conduct**

The personal conduct concern is set forth at 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.

Applicant admits that he intentionally falsified his SCA by failing to disclose his past drug involvement. His falsification directly implicates the above listed security concern and establishes the disqualifying condition at 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."

The guideline also sets forth several conditions that could potentially mitigate the personal conduct concern. I have considered all the mitigating conditions and only AG ¶ 17(a), "the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the fact," warrants discussion. Applicant claims that he was honest during his background interview regarding his past drug involvement. However, he submitted no evidence to substantiate his claim. He failed to meet his burden to establish any of the available mitigating conditions.<sup>6</sup> Applicant's deliberate falsification of his SCA continues to cast doubt on his judgment, reliability, and trustworthiness.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>7</sup> I considered the favorable and extenuating factors in

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evidence from the treatment facility or other duly qualified professional providing him with a favorable prognosis. AG ¶26(d) does not apply.

<sup>6</sup> Although the adverse information about Applicant's past drug involvement likely came out during his background interview, I have no evidence upon which to find that he volunteered the information before being confronted by the investigator. It is just as likely that Applicant revealed the information only after being asked by the investigator about any potential past drug involvement. Applicant bore the burden of demonstrating the applicability of the mitigating condition and failed to do so. His decision to have his case decided on the written record left me unable to determine the credibility of his statement that he volunteered the adverse information.

<sup>7</sup> The adjudicative factors are: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct, to include knowledgeable participation; (3) the frequency and

this case, including that Applicant admitted his wrongdoing and now recognizes that he should have been upfront about his past drug use on his SCA. However, the security clearance process relies upon the honesty of all applicants and begins with the answers provided in the SCA. Applicant's after-the-fact recognition that he should have been honest about his past drug use from the very beginning of the security clearance process is insufficient, *at this point*, to mitigate the serious security concerns raised by his dishonesty.<sup>8</sup> His dishonesty continues to raise doubts about his eligibility for a security clearance and such doubts must be resolved in favor of national security. See AG ¶ 2(b).

### Formal Findings

I make the following formal findings regarding the SOR allegations:

Paragraph 1, Guideline H (Drug Involvement)	FOR APPLICANT
Subparagraphs 1.a – 1.d:	For Applicant
Paragraph 2, Guideline E (Personal Conduct)	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

### Conclusion

In light of the record evidence and for the foregoing reasons, it is not clearly consistent with the national interest to grant Applicant access to classified information. Applicant's request for a security clearance is denied.

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Francisco Mendez  
Administrative Judge

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rency 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.

<sup>8</sup> See *generally*, ISCR Case No. 09-01652 at 7 (App. Bd. Aug. 8, 2011) (falsifications "strike at the very heart of the security clearance process.")