



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



In the matter of: )  
)  
) ISCR Case No. 11-15133  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

03/27/2014

**Decision**

DUFFY, James F., Administrative Judge:

Applicant failed to mitigate the security concerns arising under Guidelines H, drug involvement, and E, personal conduct. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 15, 2013, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E. DOD CAF acted 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 on September 1, 2006.

On July 17, 2013, Applicant answered the SOR and requested a hearing. The case was assigned to me on December 6, 2013. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on December 20, 2013, and the hearing was held as scheduled on January 23, 2014. At the hearing, Department Counsel

offered documents admitted into evidence without objection as Government's Exhibits (GE) 1 through 5. Applicant testified, called two witnesses, and offered documents admitted into evidence without objection as Applicant's Exhibits (AE) A through L. DOHA received the hearing transcript (Tr.) on January 30, 2014.

### **Findings of Facts**

Applicant is a 24-year-old associate electrical engineer who works for a defense contractor. He began working in that job in June 2011. He earned a bachelor's degree in electrical engineering in 2011 and a master's degree in computer science in 2013. He has never been married and has no children. He has held a security clearance in the past.<sup>1</sup>

Under Guideline H, the SOR alleged that Applicant used marijuana at least three to four times from about 2007 to 2009, and that he used marijuana after being granted a security clearance in April 2009 (SOR ¶¶ 1.a and 1.b). Under Guideline E, it alleged that he falsified three responses to questions in two Electronic Questionnaires for Investigations Processing (e-QIP) by failing to disclose information about his drug use (SOR ¶¶ 2.a through 2.c). In his Answer to the SOR, he admitted the use of marijuana allegation (SOR ¶ 1.a) and one falsification allegation (SOR ¶ 2.a). His admissions are incorporated as findings of fact.<sup>2</sup>

Applicant submitted two e-QIPs. The first e-QIP was submitted on April 14, 2009, and the second on August 11, 2011. After submitting the first e-QIP, he was granted an Interim Secret security clearance on April 18, 2009, and a Secret security clearance on May 23, 2009. In both e-QIPs, he responded "No" to all questions in Section 23 that asked about illegal drug use or other drug activity. Specifically, he denied in both e-QIPs that he used any controlled substances, including marijuana, in the past seven years. In the second e-QIP, he denied that he ever used a controlled substance while possessing a security clearance.<sup>3</sup>

Applicant's second e-QIP indicated that he attended college from August 2007 to May 2011. In an Office of Personnel Management (OPM) interview on September 26, 2011, he stated that he used marijuana at parties with roommates on about three to four occasions while attending college. The interview summary did not reflect the specific dates or years in which he used marijuana. In the interview, Applicant stated that he and his roommates each contributed about five dollars to purchase the marijuana. They consumed the marijuana by either smoking joints or using a bong. He stated he never used any other illegal drugs, nor sold, supplied, or grew marijuana. He has not received any medical treatment or counseling for his marijuana use.<sup>4</sup>

---

<sup>1</sup> Tr. at 28; GE 1, 4, 5; AE E.

<sup>2</sup> Tr. at 4-5; Applicant's Answer to the SOR.

<sup>3</sup> GE 1, 2, 5.

<sup>4</sup> Tr. at 29-30; Applicant's answer to the SOR; GE 1, 2, 3. The e-QIP indicated the dates that Applicant attended college were "estimated" dates.

The OPM interview summary also contained the following excerpt:

When asked if [he] ever used a controlled substance while possessing a security clearance, [Applicant] responded yes (discrepant). He used marijuana as previously discussed while possessing a Secret clearance for his internship at [name of employer]. [Applicant] adds he is not certain if his clearance was active when he used marijuana. When asked why he did not mark yes to this question in his forms, [Applicant] responded he did not update his SF86 forms from his previous investigation in 03/09, and did not read the question as thoroughly as he thought he had. The previously discussed could not be used against him to include exploitation, blackmail, or coercion.<sup>5</sup>

In responding to interrogatories on March 19, 2013, Applicant indicated the summary of his OPM interview accurately reflected the information he provided during that interview. After making one change about when his girlfriend moved out of his residence, he adopted the summary of the interview and agreed it could be used in determining his suitability to hold a security clearance.<sup>6</sup>

On March 19, 2013, Applicant also responded to interrogatories concerning drugs. In this set of interrogatories, he stated that he did not currently use controlled substances. When asked the approximate dates of his illegal drug use, he indicated, "Approx Dates 2007-2009: Very light marijuana use during college. (3-4 times)" and stated his last use occurred in "2009."<sup>7</sup>

In his Answer to the SOR, Applicant admitted that he used marijuana at least three to four times, but noted he ceased such use prior to April 2009. He also admitted to lying on his first e-QIP (April 14, 2009) by failing to disclose his illegal drug use, but indicated he did not fully understand the importance of that document or the consequences of lying. He denied using marijuana after being granted a security clearance during an internship program. He also stated his response on the second e-QIP regarding his drug use was incorrect, but he did not submit that response with the intent to mislead or deceive the Government. He claimed he used the earlier digital form when filling out the second e-QIP and failed to correct the response about drug use on the earlier form. His Answer included a Statement of Intent that he will never use illegal drugs again and agreed to an automatic revocation of his security clearance if he used illegal drugs in the future.<sup>8</sup>

---

<sup>5</sup> GE 3.

<sup>6</sup> GE 3.

<sup>7</sup> Tr. at 37-38; GE 4.

<sup>8</sup> Tr. at 28-34; Applicant's answer to the SOR; AE A.

At the hearing, Applicant testified that he no longer associated with his college roommates with whom he used marijuana and last saw any of them in 2011. He again admitted that he falsified his first e-QIP by failing to disclose his marijuana use and indicated he did so because he was immature and in fear of his internship, future job, and overall future. He testified that he did not intend to use marijuana in the future.<sup>9</sup>

In his testimony, Applicant denied falsifying his second e-QIP by failing to disclose his marijuana use or by responding that he did not use a controlled substance while possessing a security clearance. He stated that, when he logged into the computer program to fill out the second e-QIP, the information from the first e-QIP was already there, and that he inadvertently failed to make the corrections to reflect his prior marijuana use in the second e-QIP.<sup>10</sup> In this regard, Applicant testified, in part, as follows:

**Applicant:** When I logged into the eQIP form on the computer all the information was there and I just had to click the next button to continue to the next page.

**Question:** Okay. Now I'm talking about 2011, when you got onto the computer and you realized that all the information was in there from the previous time you submitted the eQIP, did you just go to the end and say approved? What did you do?

**Applicant:** That is correct. I went to the last page and selected approved. I updated my location of residence because I had moved.

**Question:** Okay.

**Applicant:** But that was it.

**Question:** So that was the only change you made, just for your residence?

**Applicant:** That's correct, sir.<sup>11</sup>

I did not find Applicant to be a credible witness. Contrary to his testimony, a comparison between his first and second e-QIPs revealed that he made a number of changes to the second e-QIP. Besides changing information about his residence, he changed information in the second e-QIP about his weight (Section 7); added email addresses and changed telephone number information (Section 8); deleted "No" responses to questions in Items 10C and 10D (Section 10); added a termination date for

---

<sup>9</sup> Tr. at 29-33, 36-37.

<sup>10</sup> Tr. at 31-32, 37-42.

<sup>11</sup> Tr. at 42-44.

his college education and changed the name and address of the “Person Who Knows You” (Section 12); added employment information about current job and added information about a period of unemployment from 09/2010 to 06/2011 (Section 13); changed termination date of travel to Canada and changed the number of days of that trip (Section 20C); and added information about previous investigations and clearance records (Section 25).<sup>12</sup>

Two supervisors attested to Applicant’s trustworthiness. One testified that Applicant was in the top 20 percent of the employees at his company. Other supervisors, coworkers, and friends provided letters of reference describing him as hardworking, honest, and trustworthy. His performance appraisals indicated that he is a top contributor and reflected that he “exceeded” or “significantly exceeded” expectations in most work performance categories. He received a merit pay increase in March 2013 and earned several Performance Excellence Awards. He submitted documentation showing he passed a drug screening test in January 2014.<sup>13</sup>

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions that 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,

---

<sup>12</sup> GE 1, 2.

<sup>13</sup> Tr. at 13-27, 32-34; AE B, C, H-L; Applicant’s Answer to the SOR.

or mitigate facts admitted by the applicant or proven by Department Counsel.” The applicant has the ultimate burden of persuasion to obtain a favorable 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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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* Executive Order 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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered all of the evidence in this case and the disqualifying conditions under AG ¶ 25 and find 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 drug use after being granted a security clearance.

Applicant admitted that he used marijuana at least three to four times from about 2007 to 2009 while attending college. He contributed money with his roommates to purchase the marijuana. AG ¶¶ 25(a) and 25(c) applies.

In an OPM interview, Applicant reportedly stated that “he used marijuana . . . while possessing a Secret clearance for his internship at [name of employer].” Details of such marijuana use lend credence to that statement. Specifically, it is unlikely that the investigator would have mistakenly reported such marijuana use occurred during an internship at a specific employer unless Applicant made those statements. In responding to interrogatories, Applicant adopted the summary of that interview as accurate. Only after issuance of the SOR did Applicant deny that such use occurred. Sufficient evidence was presented to establish that Applicant used marijuana after being granted a security clearance in April 2009. AG ¶ 25(g) applies.

AG ¶ 26 sets forth the following 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 qualified medical professional.

Applicant admitted that he used marijuana about five years ago while he was in his late teens or early twenties. He claims that he has not used any controlled substances since then and has disassociated himself from college roommates with whom he used drugs. He provided a Statement of Intent that he will not abuse drugs in the future and agreed to an automatic revocation of his security clearance for any further violation. On the other hand, Applicant admitted to falsifying his first e-QIP, and I found him not to be a credible witness. I placed

little weight on his claim that he has reformed himself and his marijuana use will not recur. Although his use of marijuana was a youthful indiscretion, I find that he has not provided sufficient evidence to mitigate fully the drug involvement security concerns. AG ¶¶ 26(a) and 26(b) partially apply. AG ¶¶ 26(c) and 26(d) do not apply.

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

The security concern for personal conduct is set out in AG ¶ 15, as follows:

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 condition is 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 admitted that he falsified his first e-QIP by failing to disclose that he used marijuana in college. He attributed that error to immaturity and fear. Based on his admission, I find that AG ¶ 16(a) applies to SOR ¶ 2.a.

Applicant denied that he falsified information about his drug involvement in the second e-QIP. He indicated that, when he began to fill out his second e-QIP online, he found that it was already populated with his responses from the first submission. He stated that he made changes to information about his residence, went to the end of the document without reviewing other responses, and certified the second e-QIP. Because of that precipitous review, he claimed he overlooked the incorrect information about his drug involvement in the second e-QIP. An examination of the first and second e-QIPs, however, does not support Applicant's testimony. The evidence shows that he made a number of changes to various sections of the second e-QIP. I did not find convincing Applicant's claim that the incorrect information about his drug involvement in the second e-QIP was due to an oversight. Additionally, my discussion under Guideline H about his use of marijuana while possessing a security clearance applies equally here. From the evidence presented, I find that AG ¶ 16(a) applies to SOR ¶¶ 2(b) and 2(c) because Applicant deliberately falsified information about his drug involvement in the second e-QIP.



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;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advise of unauthorized personnel or legal counsel advising or instructing the individual specifically concerning security clearance process. Upon being made aware of the requirement to cooperate or provide 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; and
- (f) the information was unsubstantiated or from a source of questionable reliability.

Applicant deliberately provided false information on his first and second e-QIPs. This is recent and repetitive misconduct. After examining all of the applicable mitigating conditions, I find that none apply to those falsifications.

### **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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is young. A number of individuals have attested to his good character. Nevertheless, significant concerns about his integrity and trustworthiness remain. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. From the evidence presented, he failed to mitigate the drug involvement and personal conduct security concerns.

### **Formal Findings**

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

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a – 2.c:	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.

---

James F. Duffy  
Administrative Judge