



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
|                                  | ) | ISCR Case No. 12-00910 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: *Pro se*

11/29/2012

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**Decision**

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NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to deny his eligibility for a security clearance to work in the defense industry. Applicant failed to mitigate the security concerns raised by his falsification of an employment questionnaire and his security clearance application, as well as his drug use while working as a law enforcement officer. Clearance is denied.

**Statement of the Case**

Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> on August 16, 2012, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under the foreign preference and personal conduct guidelines. DOHA recommended the case be submitted to an administrative

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<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

judge for a determination whether to revoke or deny Applicant's access to classified information.

Applicant answered the SOR and requested a decision without a hearing. Department Counsel submitted the Government's written case on October 17, 2012. A complete copy of the file of relevant material (FORM) was provided to Applicant, who was afforded an opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. After receiving the FORM on October 30, 2012, Applicant submitted a response. He did not object to the items appended to the Government's brief, which are admitted as identified in the FORM as Government's Exhibits (GE) 1 through 8. The Government did not object to Applicant's FORM response, which is admitted to the record as Applicant's Exhibit A. The case was assigned to me on November 14, 2012.

### **Findings of Fact**

Applicant, a native of Afghanistan, immigrated to the United States in 2006, becoming a naturalized citizen in April 2011. Upon obtaining U.S. citizenship, Applicant returned his Afghan passport, which was scheduled to expire in September 2012, to the Afghan Embassy.<sup>2</sup>

In 2010, Applicant was hired by a federal contractor to work as a translator. During the hiring process, he completed a ten-question pre-interview form that sought information about illegal conduct, dual citizenship, and possible foreign interests. One question read, "[h]ave you ever been involved in the illegal use, possession, or distribution of narcotics or other controlled substances?" Applicant answered "no." During the Government counter-intelligence interview eight days later, Applicant admitted using marijuana on multiple occasions between 2004 and 2008, with the most recent use occurring while he was employed as a corrections officer at a state prison. In addition to the drug use, Applicant disclosed that he received mental health counseling for adjustment issues after he immigrated to the United States.<sup>3</sup> The screener noted that Applicant failed to disclose the drug use on his Standard Form (SF) 85, Questionnaire for Non-Sensitive Positions.<sup>4</sup>

Applicant completed a security clearance application in August 2011. He did not disclose his mental health counseling in response to 21: Mental and Emotional Health<sup>5</sup>

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<sup>2</sup> GE 3, 5, 7.

<sup>3</sup> GE 5, 6, 8.

<sup>4</sup> The SF 85 mentioned in the GE 8 is not part of the record in this case nor is the falsification of that document alleged in the SOR.

<sup>5</sup> In the last 7 years, have you consulted with a health care professional regarding an emotional or mental health condition or were you hospitalized for such a condition?

or his prior drug use in response to Section 23: Illegal Use of Drugs or Drug Activity.<sup>6</sup> In his answer to the SOR, Applicant admits the allegations, explaining he did not understand the questions, which lead him to answer them incorrectly. In response to the FORM, Applicant admits to using drugs only once in 2008, which he classifies as a mistake he will not repeat in the future. He blames his failure to disclose the drug use and the counseling on the security clearance application on the limited amount of time he was given to complete the form. Because he was working overseas, Applicant had computer access for only 30 minutes. The time pressure affected his ability to understand the questions causing him to select incorrect answers. He asserts that after completing the application he realized his mistake and was told he would have a chance to explain it later.<sup>7</sup>

### **Policies**

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.

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 security decision.

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<sup>6</sup> In relevant part, Section 23(a) asks the following: In the last 7 years, have you illegally used any controlled substance, narcotics, stimulants, depressants, steroids, inhalants, or prescription drugs? (b) Have you EVER illegally used a controlled substance while possessing a security clearance; while employed as a law enforcement officer, prosecutor, or courtroom official; or while in a position directly and immediately affecting the public safety?

<sup>7</sup> GE 3; AE A.

## Analysis

### Foreign Preference

Applicant's possession of an active Afghan passport is moot. Although Applicant claims to have mailed the passport to the Afghan embassy after obtaining U.S. citizenship in April 2011, he did not provide documentation to support that statement. However, a copy of the passport included in the record shows that document expired in September 2012, before the Government submitted the FORM, and there is no evidence that Applicant has renewed his Afghan passport.

### Personal Conduct

An applicant's personal conduct, on and off-duty, is relevant to a determination of his security worthiness when it shows "questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations" which may "raise questions about an individual's reliability, trustworthiness and ability to protect classified information."<sup>8</sup> The Government is particularly concerned, as it is here, when an applicant "[fails] to provide truthful and candid answers during the security clearance process."<sup>9</sup> Applicant used illegal drugs on multiple occasions between 2004 and 2008 and at least once while employed as a law enforcement officer. He failed to disclose this information on an employment form and on his April 2011 security clearance application. Applicant also failed to disclose his mental health treatment on his security clearance application.

Applicant admits the falsification allegations with qualification, claiming that his omissions were not deliberate, but the result of his failure to understand the questions on the forms. Although Applicant's claim is plausible, but given the record in this case it is not likely. Generally, evidence of omission alone is not sufficient to establish intentional falsification. In such cases, circumstantial evidence may be used as proof regarding an applicant's state of mind. Here, the record reveals Applicant's pattern of withholding potentially negative information on forms used to determine his employment qualifications or to vet his eligibility for sensitive positions. In addition to the two forms alleged in the SOR, Applicant also omitted negative information on an SF 85 he completed sometime before his counter-intelligence interview. Although this falsification is not alleged, it indicates a pattern of behavior and undercuts Applicant's argument that the falsifications alleged in the SOR were mere mistakes.<sup>10</sup> Applicant's credibility is further damaged by the inconsistent statements he has made about his drug use during the adjudication process. Furthermore, there is no evidence to support Applicant's statement that he tried to correct his security clearance application at any point in the adjudication process. In addition to concerns about Applicant's trustworthiness, his use

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<sup>8</sup> AG ¶ 15.

<sup>9</sup> AG ¶ 15.

<sup>10</sup> See ISCR Case No. 00-633 (App. Bd. Oct. 24, 2003) (facts not alleged in an SOR can still be relevant and material to a broad range of procedural and evidentiary matters, specifically an applicant's credibility and to evaluate any mitigating evidence.)

of illegal drugs while working as a corrections officer at a prison indicates poor judgment and unwillingness to comply with rules and regulations. Accordingly, AG ¶¶ 16(a)<sup>11</sup> and (c)<sup>12</sup> apply without mitigation.

### **Whole-Person Concept**

I have significant reservations about Applicant's current reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I considered the whole-person factors at AG ¶ 2(a). A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Applicant has not demonstrated the requisite honesty, good judgment, and reliability of those given access to classified information. Clearance is denied.

### **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 C: | FOR APPLICANT     |
| Subparagraph 1.a.         | For Applicant     |
| Paragraph 2, Guideline E: | AGAINST APPLICANT |
| Subparagraphs 2.a. – 2.e. | Against Applicant |

### **Conclusion**

In light of all of the circumstances, 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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Nichole L. Noel  
Administrative Judge

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<sup>11</sup> Deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar for used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibility.

<sup>12</sup> Credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not safeguard protected information.