



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 12-00907
	)	
Applicant for Security Clearance	)	

**Appearances**

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

08/22/2013

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate the security concerns arising from his personal conduct. He was previously convicted of filing a false police report and recently filed a security clearance application, where he deliberately omitted his history of illegal drug use. Although he has honorably served as a defense contractor for over two years, doubts about his eligibility persist because he refuses to take full responsibility for his conduct. Clearance is denied.

**Procedural History**

On October 10, 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 E (Personal Conduct). On November 23, 2012, Applicant answered the SOR and requested a hearing.

On December 21, 2012, Department Counsel indicated it was ready to proceed with a hearing in this matter. Scheduling of the hearing was delayed because Applicant was working overseas and due to the lack of a suitable video teleconference connection

at his overseas location. Furthermore, budgetary constraints prevented travel to conduct hearings. On July 2, 2013, a notice of hearing was issued scheduling Applicant's hearing for July 29, 2013, which coincided with his return to the United States.

The hearing was held as scheduled. Government Exhibits (Gx.) 1 through 4 and Applicant's Exhibits (Ax.) A and B were admitted into evidence without objection. Applicant testified and requested additional time to submit documents. I granted his request and he timely submitted Ax. C – Ax. E, which were admitted without objection. The hearing transcript (Tr.) was received on August 6, 2013, and the record closed on August 15, 2013.

### **Findings of Fact**

Applicant, 28, is single and has no children. He emigrated from Afghanistan as a young child and is a U.S. citizen. He is a linguist for a U.S. defense contractor. He has principally worked overseas in support of the U.S. military for the past two years. (Tr. at 26-27, 58, 102-103; Gx. 1 – 2, Gx. 4)

Applicant used marijuana prior to his employment as a defense contractor in August 2011. He started using marijuana when he was in high school and last used in November or December 2010. (Tr. at 30-37, 68-69, 97-99; Gx. 3)

In 2004, Applicant was stopped by police for driving a vehicle with an invalid temporary license plate. He had recently purchased a used car and was unaware that the license plate was invalid. He was charged with possession of a forged license plate. Applicant was unaware that the temporary license plate was a forgery, but pled guilty on the advice of counsel because the criminal charge would be reduced to a violation. His explanation was both plausible and credible. (Tr. at 46-48, 96-97; Gx. 4)

In 2005, Applicant was working as a delivery driver. He had recently graduated from high school and, instead of going to college, decided to get a job to support his mother and the rest of his family. One day, after making a number of deliveries, Applicant stopped to get gas and inadvertently left the door to his delivery truck open. When he returned, approximately \$5,000 in cash – the money he had collected that day on his delivery route – was missing. Applicant decided to concoct a story that the delivery truck was broken into to cover up his own negligence. He decided to break the truck's window and took other steps to make it appear as if the truck had been broken into. He then filed a false police report. The police investigated and became suspicious, when the evidence at the purported crime scene was inconsistent with Applicant's version of events. After being questioned by the police, Applicant confessed that he filed a false report. He was fired from his job and was charged with making a false police report. Applicant pled guilty to the charge, and was sentenced to community service and probation. (Tr. at 43-46, 88-92; Gx. 3)

Applicant testified that he has matured immensely since the 2005 arrest and conviction. After the incident, he went to college and graduated in 2009. He is currently

several credits shy of attaining a master's degree. Applicant's academic achievements, however, did not immediately lead to improved job prospects. He was only able to secure low-paying jobs and suffered a period of unemployment, which led him to become delinquent on a number of debts. His prospects changed dramatically when he was recruited for his current job in 2011. (Tr. at 26-27, 92-94; Ax. E)

In August 2011, Applicant submitted a security clearance application (SCA) in connection with his prospective job with his current employer. Applicant disclosed his prior criminal history and recent financial problems on his SCA. However, he did not disclose his past marijuana use because he was concerned that he would not get the job and the disclosure might affect his future employment opportunities in the intelligence arena. Applicant claims that he thought the SCA was only going to his new employer, not the Government. He testified that, shortly after submitting the SCA, his employer's Facility Security Officer (FSO) informed him that the SCA was going to be submitted to the Government as part of the process to determine if he would be granted a security clearance. Applicant claims that he immediately informed his FSO that he had omitted his past drug use on the SCA. The FSO purportedly advised him that it was too late to correct the SCA and he should inform the investigator of the adverse information during his subsequent background interview. Applicant did not submit any evidence to corroborate his testimony. (Tr. at 28-30, 69-77, 94-96; Gx. 2 – 3)

Seven days later, Applicant was interviewed by an agent from the Office of Personnel Management (OPM). Applicant testified that he told the OPM agent about omitting his past drug use from his SCA. The OPM agent's summary of the interview is silent regarding any discussion of past drug use or Applicant's purported admission that he omitted such drug use on the SCA. (Tr. at 40-43, 70-72, 77-78; Gx. 4) However, the summary is replete with other information discussed at the interview, to include Applicant's background, his criminal record, and other matters of potential security concern. The summary contains Applicant's statement to the OPM agent that he inadvertently failed to list being fired from the delivery driver job on the SCA. (Gx. 4 at 4) At hearing, Applicant admitted that he intentionally omitted being fired from the delivery driver job on the SCA because he feared the adverse information would prevent him from obtaining the job as a defense contractor.<sup>1</sup> (Tr. at 107)

The next day, Applicant underwent a counterintelligence (CI) background interview. He was specifically asked if he had used illegal drugs in the past. He revealed his past drug use and his deliberate falsification of the SCA. Applicant corrected his SCA to reflect his past drug use and that he was fired from his job as a delivery driver. He was subsequently hired by the defense contractor, granted a security clearance, and has worked overseas in support of the U.S. military for the past two years. (Tr. at 29, 37-40, 84, 103-107; Gx. 1; Gx. 3)

Applicant testified that his initial year-long deployment to Afghanistan was not overly dangerous – at least in comparison to his recent deployment. Applicant's living

---

<sup>1</sup> Applicant's deliberate omission of this adverse employment history was not alleged in the SOR, and is only being considered in assessing his credibility and mitigation case.

conditions during his initial deployment were austere and he placed his life on the line on a number of occasions to support the U.S. military mission. He also suffered a serious injury, but kept working for months due to the lack of skilled linguists in Afghanistan. When Applicant returned to the United States from this initial deployment, he was twice cited for driving on a suspended driver's license. (Tr. at 48-52, 59-64)

Applicant's subsequent deployment to Afghanistan has been far more dangerous. He has been subjected to constant enemy fire. U.S. military service members praise his dedication and work in support of the U.S. mission, and his courage in the face of danger. (Tr. at 56-57, 64-67; Ax. A – B; Ax. D)

Applicant was placed in charge of other linguists, and was granted access to highly sensitive and classified U.S. information. He was hand selected as the "primary linguist" on countless important missions in support of U.S. military efforts in Afghanistan. He has been exposed to illegal drug use and has not been tempted to engage in such illicit conduct. (Tr. at 53-55, 97-98; Ax. A – B)

Applicant is extremely security conscious. He generally refuses to discuss his work with others for concern he may inadvertently reveal sensitive U.S. information. At hearing, Applicant was hesitant to reveal even general information about his work that would be favorable to him. No sensitive or classified information was revealed. Applicant wishes to continue to serve the United States in support of the U.S. mission in Afghanistan. (Tr. at 67-68, 93-94, 101-102; Ax. D – E)

## **Policies**

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has the authority to "control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information." *Id.* at 527. The President has authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Executive Order (E.O.) 10865, *Safeguarding Classified Information within Industry*, § 2 (Feb. 20, 1960), as amended.

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations, the guidelines list potentially disqualifying and mitigating conditions that are to be used in evaluating an applicant's eligibility for access to classified information. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge must apply the guidelines in a common sense manner and take into account the whole person in reaching a fair and impartial decision. An administrative judge should consider all available and reliable information about the person, past and present, favorable and unfavorable.

The Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, 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 has the ultimate burden of persuasion to obtain a security clearance.

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.

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.

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 is merely an indication an applicant has not met the strict guidelines the President and the Secretary of Defense have established for determining eligibility for access to classified information.

## **Analysis**

### **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’s submission of a false police report in 2005 and deliberate falsification of his SCA constitutes a pattern of deceitful conduct, and directly implicate the Guideline E security concerns.<sup>2</sup> This record also establishes the following disqualifying conditions under AG ¶ 16:

---

<sup>2</sup> The SOR also alleges Applicant’s past marijuana use (¶1.c), 2004 conviction for possession of a forged license plate (¶1.d), and citation in 2011 for driving on a suspended driver’s license (¶1.e).

(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

(c) credible adverse information in several adjudicative issue 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.

Several mitigating conditions under AG ¶ 17 were potentially raised by the evidence, specifically:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the fact;

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the 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; and

(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.

Applicant's submission of a false police report in 2005 and decision in 2011 to falsify his SCA raises serious security concerns about his judgment, reliability, and trustworthiness. In both instances, Applicant decided to lie versus accept the potential consequences of his personal conduct. However, two years have passed since Applicant submitted his SCA and he corrected the omission just a week after submitting the SCA. No evidence was presented that the Government was aware of his past drug use prior to Applicant's voluntary disclosure of this adverse information to the CI

---

Applicant admitted these allegations, but mitigated the security concerns arising from these allegations. Accordingly, SOR ¶¶ 1.c – 1.e are decided for Applicant and will not be further discussed.

investigator.<sup>3</sup> Moreover, over the past two years, Applicant has proven his reliability time and again while in combat in support of the U.S. military mission in Afghanistan. Additionally, he has not engaged in the conduct that led him to falsify his SCA, namely, illegal drug use – even though he has been exposed to such while working in Afghanistan. Yet, Applicant failed to meet his heavy burden to mitigate the security concerns at issue because during the course of his background investigation and at hearing he attempted to minimize his intentional falsification of the SCA.

Applicant claims that his FSO contributed to the falsification of his SCA by not allowing him to correct it, and advising him to simply inform the investigator of the adverse information during his background interview. Applicant submitted no evidence to corroborate his testimony and I found this portion of his testimony not credible.<sup>4</sup>

Furthermore, when first given an opportunity to reveal his past drug use and deliberate falsification of his SCA, Applicant did not reveal the adverse information. At hearing, Applicant testified he informed the OPM agent that he omitted his past drug use from his SCA. However, the summary of interview, Gx. 4, is silent on this point. Although it is *theoretically* possible that the OPM agent simply forgot to include this adverse information, it is not reasonable or plausible, especially in light of the detailed information about Applicant's background and other matters of a potential security concern contained in the summary. In addition, Applicant apparently provided false information to the OPM agent during his background interview, when he claimed that he *inadvertently* omitted being fired from the delivery driver job on his SCA.

After considering Applicant's minimization and less-than-candid responses during the course of the underlying security investigation, I am left with concerns as to whether he would be fully candid if faced with a security-related matter requiring full disclosure, especially if such disclosure might impact his livelihood. Under such circumstances, none of the mitigating conditions under AG ¶ 17 fully apply and the favorable evidence noted above does not mitigate the security concerns at issue.

---

<sup>3</sup> The CI investigator's question to Applicant, whether he had used illegal drugs in the past without more, does not amount to "being confronted with the facts" prior to Applicant's voluntary disclosure.

<sup>4</sup> I further found Applicant's testimony that he was unaware that the SCA was being submitted to the U.S. Government for consideration of a security clearance unpersuasive. The SCA states in clear language that the purpose of the form is for the consideration of the individual submitting the form for a security clearance. See, e.g., Gx. 2 at 2 ("**Purpose of this Form** . . . U.S. Government conducts background investigations . . . for positions requiring access to classified information . . . Withholding, misrepresenting, or falsifying information will have an impact on a security clearance . . . up to an including denial or revocation of your security clearance . . .") (emphasis in original). Applicant's testimony that he thought the SCA was only going to his employer as part of his employment application is simply not credible in light of the clear language of the SCA, and Applicant's age and educational background. Moreover, even if Applicant actually thought he was only lying to his employer, such does not mitigate the security concerns at issue. See AG ¶ 16(b) (deliberately providing false or misleading information concerning relevant facts to an employer . . . .)

## 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>5</sup> I specifically considered Applicant's service as a defense contractor in Afghanistan, to include the letters from U.S. military members who have served with him. This record evidence demonstrates that over the past two years Applicant has risked his life in support of the U.S. mission in Afghanistan and he has been repeatedly entrusted with highly sensitive and classified information without issue. However, doubts regarding Applicant's suitability persist because he refuses to take full responsibility for his misconduct and continues to minimize his deliberate falsification of his SCA. Consequently, in light of the clearly consistent standard and the requirement that all doubts raised by the evidence be resolved in favor of national security, eligibility for a security clearance is hereby denied.

### Formal Findings

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraphs 1.a – 1.b:	Against Applicant
Subparagraphs 1.c – 1.e:	For 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.

---

Francisco Mendez  
Administrative Judge

---

<sup>5</sup> The non-exhaustive list of 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 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.