



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



In the matter of: )  
 )  
 ) ISCR Case No. 14-01297  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: David Hayes, Esq., Department Counsel  
For Applicant: *Pro se*

03/28/2017  
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**Decision**  
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RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government's security concerns under Guideline H, drug involvement, and Guideline E, personal conduct security concerns. Applicant's eligibility for a security clearance is denied.

**Statement of the Case**

On June 8, 2016, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H, drug involvement, and E, personal conduct. The action was taken under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

Applicant answered the SOR on July 13, 2016, and requested a hearing before an administrative judge. The case was assigned to me on February 9, 2017. The

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on February 14, 2017. I convened the hearing as scheduled on March 3, 2015. The Government offered exhibits (GE) 1 through 5. Applicant testified and offered Applicant Exhibits (AE) A through E. All exhibits were admitted without objection. DOHA received the hearing transcript (Tr.) on March 14, 2017.

### **Findings of Fact**

Applicant admitted all allegations in the SOR, except he denied SOR ¶¶ 2.f and 2.g. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 51 years old. He has never married and has no children. He served in the Air Force from May 1988 to December 1991, and was honorably discharged. He graduated from college in 1995 and has worked for the same federal contractor since 1996. He has held a security clearance continuously during his employment.<sup>1</sup>

Applicant admitted that from 1982 to December 2012, he illegally used marijuana on various occasions. However, he testified that he did not use it while he was serving in the Air Force from 1988 to 1991, but resumed his use while he was attending college. During these periods before his military service and while in college, he used it several times a week. After college, he limited his use to the holiday periods in late December when his employer's offices were shutdown. He also used it with his brother one or two times during a July 4<sup>th</sup> weekend, but did not recall the year. He admitted that he was aware that his employer has a zero-tolerance drug policy. He was aware that he was violating that policy. He is required to participate in annual online training for drug awareness and handling classified information. He was aware that using illegal drugs after being granted a security clearance is prohibited. He testified that his marijuana use did not interfere with his job performance because he was on vacation when he used it. He believed the marijuana was out of his system by the time he returned to work.<sup>2</sup>

After he began working, Applicant testified that he obtained marijuana from his brother each year. He smoked the marijuana by himself through a pipe. He did not use it with friends, and he would consume the entire amount each year during the holiday break. He also stated that after he disclosed his marijuana use in 2012, he discarded marijuana that he had leftover at his house. He also discarded the pipe. He is estranged from his brother and believed his last contact was either in 2012 or 2013. If his brother contacts him for help, Applicant indicated he would respond.<sup>3</sup>

Applicant purchased marijuana for personal use before enlisting in the Air Force and during college. He sold marijuana to friends, but not for profit. He never purchased

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<sup>1</sup> Tr. 20-24.

<sup>2</sup> Tr. 25-27, 53, 59-60.

<sup>3</sup> Tr. 35-38, 47.

marijuana while holding a security clearance, but believed there was one occasion that he attempted to purchase marijuana, but he was unsuccessful. Applicant indicated on his March 2016 interrogatories, which asked about his intentions for future marijuana use and frequency, that “maybe when it’s legal and I’m retired.”<sup>4</sup> At this hearing, he testified, “my intent is to abstain until retirement.”<sup>5</sup> He further explained he would only use it where it was not prohibited by law. He confirmed he understood that his past use was illegal, and he had no explanation for his conduct.<sup>6</sup>

Applicant stated that he has been working with classified information for the past two to three years, and that his current project involves classified information. In the past, he has been exposed to classified information, but was not always directly involved in handling it.<sup>7</sup>

In April 2003, Applicant completed a security clearance application (SCA). In response to the inquiry about whether in the last seven years or since he was 16 whichever is shorter, if he had used illegal drugs, he answered “no.” He failed to disclose his marijuana use from 1996 through 2003. On the same questionnaire, he failed to disclose that he had used marijuana on various occasions while holding a security clearance from between at least 1988 to 2003. Applicant deliberately failed to disclose his past illegal drug use. He stated: “[s]o, misguided as it was, I decided if it doesn’t affect anyone, especially my work, then I should just go ahead and falsify the report. So, I did that.”<sup>8</sup> He explained that he was concerned he would not be granted a security clearance, and he would lose his job if he disclosed his past illegal drug use.<sup>9</sup>

In March 2010, Applicant completed another SCA, which inquired whether Applicant had used any illegal drugs in the past seven years, to which he responded “no.” On the same SCA, he failed to disclose that he had used marijuana on various occasions while holding a security clearance between at least 2003 to 2010. Applicant deliberately failed to disclose his past illegal drug use. Applicant admitted the falsifications on his March 2010 SCA were because “it was at the time easier to propagate the same mistake.”<sup>10</sup>

In approximately October 2013, Applicant was transferred by his employer to a new program with a special access area. He was required to complete a different

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<sup>4</sup> GE 3.

<sup>5</sup> Tr. 46.

<sup>6</sup> Tr. 40-47.

<sup>7</sup> Tr. 48-51.

<sup>8</sup> Tr. 29.

<sup>9</sup> Tr. 28, 56.

<sup>10</sup> Tr. 28.

security form as part of the requirement for the job.<sup>11</sup> He testified that in this form he disclosed his past illegal drug use. He stated: “it finally hit that I was falsifying Government documents . . .” He testified that he needed to solve the problem. He further stated that he came to the realization that falsifying the form was worse than disclosing his past drug use, and he could no longer propagate the lie. Although he had been involved in other special access programs in the past, he believed this was the first that required him to complete new forms. He testified that he believed when he was disclosing his last use of marijuana that he incorrectly stated it was December 2013, when it should have been December 2012.<sup>12</sup>

In January 2014, a government investigator interviewed Applicant. During the interview, Applicant indicated that he had never purchased or sold illegal drugs. In response to interrogatories in November 2014, Applicant disclosed the following: “1982 – 1985 made several purchases of marijuana, less than ¼ oz. each, for personal use. Sold on several occasions less than 1g[ram] marijuana from personal stash to other students.”<sup>13</sup> At his hearing, Applicant explained that he was confused and that his interview statement was referring to the fact that he had never purchased or sold marijuana while holding a security clearance. He also stated that he was confused in that he thought the question was asking if he sold illegal drugs with the intent to distribute or to make a profit. The summary of government investigator’s interview with Applicant does not state the specific questions that were asked. Therefore, I am unable to determine if Applicant deliberately provided false statements or answered the questions accurately. I find there is insufficient evidence to conclude Applicant deliberately falsified material facts during his January 2014 interview.<sup>14</sup>

Applicant disclosed in his November 2014 interrogatories that he last used marijuana in December 2012. I found his timeline consistent, and he was confused when he stated his last use was December 2013. The documents support his disclosure to the government, in approximately October 2013, as part of the application process for the special access program, that he had used marijuana in the past while holding a security clearance. It is improbable that he would then use marijuana in December 2013 after said disclosure. I conclude Applicant did not intentionally provide a false statement when he indicated his last marijuana use was December 2012.<sup>15</sup>

Applicant testified that his leadership is aware of his past drug use and they support him and his continued employment. He did not know to what extent that his security manager is aware of his past drug use. He believes that his use of marijuana

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<sup>11</sup> Tr. 29; GE 4.

<sup>12</sup> Tr. 29-35, 57-58.

<sup>13</sup> GE 2.

<sup>14</sup> Tr. 39-42.

<sup>15</sup> Tr. 35.

did not affect his work, and no one other than his brother and employer is aware of his past use.<sup>16</sup>

Applicant provided copies of his performance evaluations from 2002 to 2016, which reflect he has been a “successful” or a “high” contributor or his “performance rating exceeded commitments” throughout his tenure, and that he is considered a valuable member of his team. He has received numerous cash awards for his performance. Character questionnaires completed by Applicant's supervisor, manager, and team leader describe him as a subject matter expert who is honest and a person of integrity. He has not had any security-related issues or been suspected of using drugs while working. His peers and superiors view him positively. He is considered dedicated, dependable, reliable, and highly competent.<sup>17</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, which are 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, these guidelines are applied 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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an “applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and has the ultimate burden of persuasion to obtain a favorable security decision.”

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<sup>16</sup> Tr. 27, 54.

<sup>17</sup> AE D.

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 of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that 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* EO 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 for 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.

I have considered the disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

- (a) any drug abuse; and
- (g) any illegal drug use after being granted a security clearance.

Applicant illegally used marijuana on various occasions from 1982 to 2012. He repeatedly used marijuana while holding a security clearance. I find the above disqualifying condition applies.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

- (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; and

(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.

Applicant has a long history of illegal marijuana use. He repeatedly used it while holding a security clearance. However, it has been more than four years since his last use. He has demonstrated that he will likely not abuse illegal drugs while working for a federal employer. I find that AG ¶ 26(b) partially applies.

The fact that Applicant knowingly used marijuana for many years while holding a security clearance raises questions about his ability and willingness to follow rules and regulations. His comment that he may use marijuana in the future after he retires also raises the same questions. Although, Applicant may be committed to not using illegal drugs while employed, his past repeated conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply.

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

AG ¶ 15 expresses the security concern for 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(a) deliberate omission, concealment, or falsifications 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;

(b) deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authorities, or other official government representative; 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.

Applicant used marijuana for many years while holding a security clearance. He deliberately falsified his 2003 SCA by failing to disclose his past illegal marijuana use from 1996 to 2003, and failing to disclose he had used marijuana on various occasions while holding a security clearance. He repeated these falsifications on his 2010 SCA, failing to disclose his marijuana use between 2003 and 2010, and that he used it from 1991 to 2010 while holding a security clearance. AG ¶ 16(a) and 16(e) apply.

There is insufficient evidence to conclude that Applicant deliberately falsified material facts during a January 2014 interview with a government investigator and in response to interrogatories issued in November 2014. I find AG ¶ 16(b) does not apply.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

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

(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.

Applicant did not make a prompt good-faith effort to correct his falsifications on his 2003 SCA or his 2010 SCA about his past drug use and use while holding a security clearance. Applicant's falsifications and drug use are serious and occurred over many years, and on two separate documents. It was not until he was required to complete another official document in 2013, for a special access program that he finally disclosed his misconduct. His behavior was frequent and did not happen under unique circumstances. Rather, Applicant was on notice after his 2003 and 2010 applications that the government had a special interest in illegal drug use, and specifically while holding a security clearance. Applicant disregarded his misconduct and intentionally lied about it. Based on his long history of drug use, his disregard for complying with the law, and his repeated falsifications, I cannot find that his behavior is unlikely to recur. I find that his conduct casts doubt on his reliability, trustworthiness, and good judgment. AG ¶¶ 17(a) and 17(c) do not apply.

### **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 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 a 51-year-old mature college-educated man and a veteran. He repeatedly used marijuana for many years while holding a security clearance and lied about his conduct. Applicant failed to meet his burden of persuasion regarding his drug involvement and personal conduct. This conduct raises serious questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the drug involvement and personal conduct security concerns.

### **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 H:	AGAINST APPLICANT
Subparagraphs: 1.a-1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs: 2.a-2.e:	Against Applicant
Subparagraphs: 2.f-2.g:	For 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 continue Applicant's security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge