



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 15-00550

**Appearances**

For Government: Carroll Connelley, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esq.

01/27/2017

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**Decision**

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CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, Applicant mitigated drug involvement and personal conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on May 21, 2013, to obtain a security clearance required for his duties with a defense contractor. After an investigation conducted by the Office of Personnel Management (OPM), the Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On September 21, 2015, DOD issued Applicant a Statement of Reasons (SOR) detailing security concerns for drug involvement (Guideline H) and personal conduct (Guideline E). The action was taken under Executive Order 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 in the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 11, 2015. He admitted the two allegations of drug use under Guideline H, and denied the five allegations of personal conduct under Guideline E.<sup>1</sup> Department Counsel was prepared to proceed on April 27, 2016, and I was assigned the case on September 7, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on September 30, 2016, scheduling a hearing for October 19, 2016. I convened the hearing as scheduled. The Government offered five exhibits, which I marked and admitted into the record without objection as Government Exhibits (GX) 1 through 5. Applicant and one witness testified. Applicant offered ten exhibits that were marked and admitted into the record without objection as Applicant Exhibits (AX) A through J. I kept the record open for Applicant to submit additional documents. Applicant timely submitted one additional document which was marked and admitted into the record without objection as AX K. (GX 6, e-mail, dated November 7, 2016) DOHA received the transcript of the hearing (Tr.) on October 28, 2016.

### **Findings of Fact**

Applicant's admissions are included in my findings of fact. After a thorough review of the pleadings, transcript, and exhibits, I make the following additional findings of fact. Applicant is a 33-year-old high school graduate. He attended college for a year and a half and received an associate's degree. He served on active duty in the Navy from May 2005 until August 2010, when he received an honorable discharged as a petty officer second class (E-5). He was deployed during his active duty tour to Afghanistan (July 2009 to May 2010), Okinawa (January 2009 to July 2009), and Djibouti (August 2007 to February 2008). Applicant received eligibility for access to classified information in 2005, and to Sensitive Compartmented Information (SCI) in 2007. He received numerous awards and decoration for his service. He has been married for three years and has one son. (Tr. 27-34, 41-43; GX 1, E-QIP, dated May 21, 2013; AX A, DD 214: AX J. Photograph)

The SOR alleges, and Applicant admits, that he purchased and used cocaine from September 2012 until January 2013. (SOR 1.a) He admitted that when he used cocaine, he was eligible for access to classified information including SCI. (SOR 1.b) The SOR alleges this same conduct as a personal conduct security concern. (SOR 2.a) The SOR further alleges as a personal conduct security concern that Applicant falsified information on his EQIP when he answered "no" in response to questions in Section 23 concerning use of a controlled substance in the last seven years (SOR 2.b), and while having access to classified information. (SOR 2.c). The SOR further alleges that Applicant deliberately omitted material facts concerning his use of cocaine during a subject interview with an authorized security investigator on August 12, 2013 (SOR 2.d), and on October 8, 2013 (SOR 2.e). Applicant initially denied the personal conduct allegation when he responded to the SOR. However, at the hearing, Applicant amended his responses and admitted all of the Guideline E allegations. (Tr. 9-15)

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<sup>1</sup> As noted below, Applicant changed his response to the Guideline E allegations at the hearing from denial to admission. See below.

Applicant was in his mid-twenties when he served for ten months in Afghanistan. His duties mainly involved in the fielding of communications equipment to Afghanistan combat and police units. Most of his work with the Afghan forces required Applicant to travel outside of secure combat base camps. His team was required to leave the base camps at least three times a week and stay at forward operating bases. While he was "beyond the wire," he was close to a number of significant explosions that killed or wounded people. He was not required to fire his weapon, treat wounded soldiers or civilian casualties, or otherwise engage in combat operations. However, he did fear for his life from these incidents. (Tr. 28-32)

Applicant returned from Afghanistan in August 2010 and was discharged. About six months after his discharge, Applicant started feeling depressed and anxious. He had nightmares and felt lost. He admitted to using cocaine from September 2012 until January 2013 to help him cope with his issues. He purchased the drugs from an individual in his former neighborhood. He believes he may have spent about \$130,000 purchasing cocaine or on spending binges caused by the effects of the PTSD. He is now a young father and he and his family moved and no longer lives close to his former neighborhood. He no longer associates with the people that sold him illegal drugs.

Applicant knew something was wrong with him but suffered through his psychological issues for about two years before seeking help from family, friends, and medical professionals. He saw a psychiatrist starting in early April 2013 and was diagnosed with post-traumatic stress disorder (PTSD). The psychiatrist prescribed medication that Applicant is still taking. Applicant has continually tested negative for illegal drugs. The doctor stated that Applicant's use of illegal drugs is in remission and his prognosis for remaining free from illegal drug use is good. (Tr. 34-36; AX B, Doctor's notes, dated April 3 to April 24, 2013; AX C, Laboratory Results 2015; AX I, Laboratory Results 2016)

Applicant also received mental health assistance from the Department of Veteran's Affairs (VA) from May 2013 until present. (GX 3, Transcript of Security Interview, dated August 12, 2013) Applicant completed a Statement of Intent not to use illegal drugs, and if he did use illegal drugs his security clearance could be automatically revoked. (AX D, Statement, dated December 8, 2015)

Applicant did not acknowledge his use of cocaine in the last seven years in response to drug use questions on his security clearance application and while having eligibility for access to classified information. (GX 1, e-QIP, dated May 21, 2013) Applicant did not disclose his use of illegal drugs during his August 2013 clearance interview. When re-interviewed in October 2013, Applicant initially denied using illegal drugs. He then voluntarily admitted his past use of drugs. (GX 3, Response to Interrogatories, Transcript, at 219)

Applicant stated that he was not in a clear state of mind when he completed his e-QIP in May 2013. He had seen his doctor but had not started taking the medication prescribed for PTSD. He was still depressed, anxious, and stressed. Applicant used

cocaine as self-medication to overcome his depression and anxiety. In January 2013, Applicant felt he reached rock bottom so he reached out to his father for help. He admitted to his father that he was using cocaine to overcome depression and anxiety. His father helped him get treatment with the VA as well as with a private doctor.

Applicant told a security investigator during an interview in August 2013 that he received mental health treatment starting in May 2013. However, he did not reveal that he used cocaine from September 2012 until January 2013. In the second interview with the security investigator in October 2013, the investigator asked Applicant if he used illegal drugs in the last seven years. He initially said "no" but immediately amended his answer to admit to cocaine use from September 2012 until January 2013. Applicant admitted not listing his cocaine use on his security clearance application and initially to the security investigators because he regretted using cocaine to medicate. He wanted to forget his use of cocaine and put it behind him. He did not have a malicious intent in not mentioning the drug use, just a desire to put the period of drug use behind him. (Tr. 36-42, 49-52, 74-79; GX 3, Transcript, at 3-4)

One of Applicant's co-workers, a government information technology specialist, testified that he has known Applicant since Applicant started working with their company as a contractor almost three years ago. He helped Applicant understand his assigned duties. Applicant's work performance was excellent. The witness knows Applicant's background, use of cocaine, failure to admit his cocaine use on his security clearance application, and his diagnosis of PTSD. Knowing all of this and knowing Applicant as he does, he does not have any reservations about recommending that Applicant be granted eligibility for access to classified information. (Tr. 20-27)

Applicant introduced letters of recommendation. A congressman who knew Applicant as a friend of his son wrote that Applicant demonstrated dependability and trustworthiness. The commander of a major DOD agency commended Applicant for his work in support of the agency. One of Applicant's doctors, who has known Applicant for over four years, wrote that Applicant is a professional and trustworthy person for whom she has the highest regard. He is a respectful, patriotic citizen who supports his family and community. Applicant's employer from October 2010 to February 2015 wrote that Applicant was a model employee who performed all tasks with a professional attitude and dedicated work ethic. He was a valuable member of the team and organization. Applicant's Navy supervisor in Afghanistan wrote that Applicant performed his duties exceptionally well. He showed integrity, bravery, and dedication to the unit's mission. He was professional, dependable, trustworthy, and reliable. He always maintained a positive selfless attitude. Applicant's father wrote that Applicant was always compassionate, capable, smart, and trustworthy. Applicant's supervisor since March 2015 wrote that Applicant has performed all of his duties in an exemplary manner. Applicant manages the organization's communication security (COMSEC) programs. He is a model employee and a true information technology professional. All of the letter writers recommend that Applicant be granted eligibility for access to classified information. (AX F and H, Letters) Applicant also provided a certificate of appreciation for his COMSEC work from the DOD agency he supports. (AX G)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Administrative Guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching adjudicative goal is a fair, impartial and common sense 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 avoided drawing 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, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by department counsel. . ." The applicant has the burden of persuasion to obtaining a favorable security 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 protect or safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation as to potential, rather than actual, risk of compromise of classified information.

## **Analysis**

### **Guideline H, Drug Involvement**

The use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, because it may impair judgment and

raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. Drugs are defined as mood and behavior altering substances, including drugs material and other chemical compounds identified and listed in the Controlled Substances Act of 1970. Cocaine is included in the Schedule 1 list. (AG ¶ 24) Applicant used cocaine at various times from September 2012 until January 2013. He admitted using cocaine after being granted a security clearance. Applicant's use of cocaine while having eligibility for access to classified information raises the following Drug Involvement Disqualifying Conditions under AG ¶ 25:

(a) any drug use; and

(g) any illegal drug use after being granted a security clearance.

26: I considered the following Drug Involvement Mitigating Conditions under AG ¶

(a) the behavior happened so long ago, was so infrequent, or happened under such unusual 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 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

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirement, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of drug involvement, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

These mitigating conditions apply. Applicant admits to using cocaine as a self-medication method to overcome the symptoms of depression and anxiety from having PTSD from servicing in Afghanistan. He was at a low point in his life at the time he used the cocaine. He used cocaine for approximately four months until he received a

diagnosis and treatment for PTSD. He has not used cocaine or any other illegal drugs since January 2013. Applicant realizes that he is an adult with eligibility for access to classified information so he cannot use illegal substances. He clearly stated his intent not to use illegal drugs in the future. His last use of cocaine was over four years ago, his use was infrequent, and his use of the illegal drug happened under circumstances that are now unlikely to recur. He is still consults with his doctor for his PTSD. Applicant's environment is now one of maturity and a professional life that prohibits illegal drug use. He no longer lives in the area where he obtained the illegal drugs. While Applicant did not enroll in and complete a substance abuse program, he did receive a favorable evaluation and prognosis from a duly qualified medical professional. There has been an appropriate period of abstinence, and a change in lifestyle and circumstance. Applicant mitigated security concerns for drug involvement.

## **Personal Conduct**

Personal conduct is a security concern because conduct involving questionable judgment, untrustworthiness, unreliability, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified and sensitive information. Of special interest is any failure to provide truthful and candid answers during the process to determine eligibility for access to classified information or any other failure to cooperate with this process (AG ¶ 15). Personal conduct is always a security concern because it asks whether the person's past conduct justifies confidence the person can be trusted to properly safeguard classified or sensitive information. Authorization for a security clearance depends on the individual providing correct and accurate information. If a person conceals or provides false information, the security clearance process cannot function properly to ensure that granting access to classified or sensitive information is in the best interest of the United States Government.

While there is a security concern for a deliberate omission, concealment, or falsification of a material fact in any written document or oral statement to the Government when applying for a security clearance, not every omission, concealment, or inaccurate statement is a falsification. A falsification must be deliberate and material. It is deliberate if it is done knowingly and willfully with intent to deceive.

The SOR alleges that Applicant did not provide full, complete, and accurate information concerning his drug use in responses to questions on his security clearance application and from security investigators. There is sufficient evidence to indicate that Applicant did not provided full, complete, and accurate information to the security investigators concerning his use of cocaine to treat his PTSD. Applicant's failures raise the following security concerns under Personal Conduct Disqualifying Condition 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: and

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

Applicant admitted that he intentionally did not provide full, complete, and accurate information on his security clearance application or to security investigators. When he completed his security clearance application and talked to the investigator, he was suffering from PTSD based on a tour of duty in Afghanistan. He had seen by a medical professional and been prescribed medication. However, he was still suffering from PTSD and was not thinking clearly. In his second interview with the security investigator, Applicant changed his response on his own, and admitted his use of cocaine. This was a prompt, good-faith effort by Applicant to correct the omission. I find Applicant mitigated the personal conduct security concern.

### **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 the 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 the facts and circumstances surrounding this case. I considered Applicant's active duty service in the Navy and that he is a good worker commended by the government agency he supports for dedication, trustworthiness, and reliability. I considered that he was granted access to classified information and SCI for over ten years without any allegations of security violations.

Applicant admitted using cocaine to self-medicate from the effects of PTSD from service in Afghanistan. His last use of cocaine was over four years ago after he received medical assistance from a medical professional. He received a good prognosis



concerning his drug use from the medical professional. While Applicant provided incomplete information concerning his illegal drug use on his security application and to security investigators, his actions were a result of his suffering from PTSD. These facts leave me without questions and doubts about Applicant's eligibility and suitability for access to classified information. For all these reasons, I conclude that Applicant has mitigated drug involvement and personal conduct security concerns. Eligibility for access to classified information is granted.

### **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:	FOR APPLICANT
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Subparagraph 1.a - b:	For Applicant
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Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraph 2.a - e:	For Applicant
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### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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THOMAS M. CREAN  
Administrative Judge