



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



In the matter of: )  
)  
) ISCR Case No. 15-00977  
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Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: Jacob Ranish, Esq.

09/13/2016  
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**Decision**  
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CURRY, Marc E., Administrative Judge:

Applicant mitigated the security concerns generated by his illegal drug use, but failed to mitigate the security concerns generated by his falsifications during the investigative process. Clearance is denied.

**Statement of the Case**

On August 22, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines H, drug involvement, and E, personal conduct. 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).

Applicant answered the SOR on September 22, 2015, admitting the allegations and requesting a hearing. The case was initially assigned to another administrative judge on March 23, 2016, before being transferred to me on May 11, 2016. On June 8, 2016, a notice of hearing was issued scheduling the case for July 7, 2016. At the hearing, I received four Government exhibits marked as Government Exhibits (GE) 1 through 4,<sup>1</sup> in addition to six Applicant exhibits (AE A - AE F), together with Applicant's testimony, and the testimony of an expert, qualified in the field of psychology. (Tr. 14) After the record closed, Applicant's counsel moved to re-open the record to consider additional information from Applicant's psychologist who testified and provided a written evaluation (AE A). I denied the request. The transcript was received on July 15, 2016.

### **Findings of Fact**

Applicant is a 34-year-old single man with an adopted child, age 14, who is the son of his ex-girlfriend. (Tr. 78) Shortly after graduating from high school in 2000, he enlisted in the U.S. Army, serving through 2004. While enlisted, Applicant completed a 15-month combat tour of duty from March 2003 to June 2004. (Tr. 39) Since leaving the Army, Applicant has worked for various military contractors, initially, as a diesel mechanic, and later as a network administrator. (AE A at 4; Tr. 44) He worked in a combat zone from 2010 through 2012, and he has been working abroad at another non-combat location since 2013. (Tr. 77-78) Applicant is currently pursuing a degree in cybersecurity.

In September 2004, while in the Army, Applicant failed a random drug screening, testing positive for cocaine. (GE 3 at 1) He was administratively separated, receiving a general discharge under honorable conditions. (GE 3; Answer at 2-3) Applicant admits using cocaine on one occasion shortly before failing the drug test. (Tr. 37) He held a security clearance at the time, which was later suspended. (GE 3 at 11) Applicant used cocaine approximately three times after leaving the military. His last use was in 2008 while celebrating his birthday with friends at a party. (Tr. 55, 60)

Applicant experimented with marijuana while in high school. (Tr. 58) He did not use it while in the military. He used it once or twice after leaving the military. His last use was in 2008. His last use resulted in a failed pre-employment drug screening. (GE 1 at 35) On November 12, 2015, a certified drug abuse counselor evaluated Applicant. After conducting a comprehensive biopsychosocial test and a drug abuse screening test, she concluded that Applicant was not drug dependent and that there was no risk of relapse. (AE C at 1-2)

Applicant attributes his use of cocaine to the stress of combat. Specifically, while deployed, he came under fire frequently, and lived in constant fear of poison gas attacks. (Tr. 33) Moreover, he lost several fellow soldiers including his best friend. (Tr. 34)

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<sup>1</sup>I admitted GE 4, subject to Applicant's corrections and modifications. (Tr. 51-53)

When Applicant's tour of duty was over, he had trouble adjusting to civilian life, experiencing frequent nightmares, "cold sweats," crying spells, and extreme anxiety during events such as amusement park firework shows. (Tr. 65-66; AE A at 5) At the prompting of his mother, Applicant, some time between 2005 and 2006, met with a family friend who works with a support group for wounded veterans. (Tr. 65)

Beginning in 2006, Applicant begin attending pastoral counselling. (Tr. 67) His pastor, a veteran, helped him deal with war-related emotional issues. (Tr. 67-68) Applicant attended counseling with him once or twice per month until he went abroad again to work for a defense contractor in 2010. (Tr. 68)

Applicant completed a questionnaire for public trust positions in 2008. He answered "no" to a question requiring him to disclose any drug use within the year before completing the application, when, in fact, he had smoked marijuana once during this time period. (GE 2 at 11)

Applicant completed a security clearance application in 2011. He was required to disclose any drug use that occurred within seven years of the date he completed the application. He disclosed one episode of marijuana usage in 2008, but disclosed neither the other episodes, nor the 2004 cocaine use.

In 2012, an investigative agent interviewed Applicant. During the interview, Applicant mischaracterized the reasons for receiving a general discharge under honorable conditions, stating it was because military police detected the smell of alcohol on his breath while he was entering the base, rather than because he tested positive for cocaine during a random drug test.

In November 2015, Applicant met with a psychologist. After conducting a comprehensive psychological test during a lengthy interview, the psychologist concluded that Applicant suffered from post-traumatic stress disorder (PTSD) related to his combat experience, and that "the passage of time has been helpful in resolving some of these issues." (AE A at 6) Also, he reasoned that Applicant's decision to use illegal drugs related to his PTSD. (AE A at 6)

Applicant's psychologist explored issues related to Applicant's falsifications. Specifically, he testified that Applicant's drug use was a symptom of his PTSD, and that he neglected to disclose it to the investigator and include it on the applications, not as intentional falsifications, but as a "coping mechanism" to deal with his PTSD. (Tr. 18) Further, the psychologist characterized Applicant as in denial regarding his drug use history for several years. He characterized denial as a "self-protect[ion] mechanism [where] the mind simply revises history to eliminate traumas." (Tr. 18)

After interviewing Applicant, his psychologist administered a test that measured the validity of Applicant's responses. (AE A at 5) After reviewing the results, he concluded that Applicant was making "no effort to minimize his mental or emotional problems and was frank and open as he took the test." (AE A at 6)

Applicant testified that he was under an extraordinary amount of stress when the investigative agent interviewed him in 2012. His stress was caused by issues related to the breakup of his relationship with his then fiancée and the revelation that a six-year-old child with whom he had been supporting financially her entire life was not actually his biological child. (Tr. 73) Per Applicant, this stress compelled him not to disclose the actual reason for his discharge from the Army.

Applicant disclosed one episode of marijuana use on his 2011 security clearance application. (GE 1 at 34-35) When asked on cross-examination why he did not disclose the other episodes of marijuana use, he responded that the disclosed episode was the one that resulted in a failed drug test. (Tr. 70) Applicant also testified that when he completed the application for a position of public trust in 2008, he did not know that using illegal drugs was inconsistent with holding a position of public trust, and that he “didn’t know anything about security clearances.” (Tr. 63)

In 2010, Applicant worked overseas for a military contractor. Once, while completing his timesheet online, the Internet connection malfunctioned, as it was prone to do because of the remote location. When the connection came back online, Applicant completed his timesheet, but neglected to notice that the work date range, set forth in a box in the corner of the screen, had reverted to a default date range rather than the date range that he actually worked. (Answer at 3) His employer discovered the mistake and formally reprimanded him.

Later, while working for the same employer, Applicant listened to music on the company computer in violation of company policy, and was subsequently terminated. (Answer at 3) According to Applicant, American pop music was difficult to obtain where he was working, he received the music from coworkers, and he was unaware of the policy. (Answer at 3)

Applicant is highly respected on the job. His supervisor characterizes him as a man of “utmost professionalism and integrity” who produces exemplary results. (AE F at 2) A coworker whom Applicant supervised characterized him as a hard-working employee who “mak[es] everyone around him perform to the best of their abilities.” (AE F at 3) According to a military officer with whom Applicant worked, he was reliable, honest, trustworthy, and dependable. (Answer at 8)

### **Policies**

The adjudicative guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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.”

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 ultimate burden of persuasion to obtain a security clearance.

## **Analysis**

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

Under this guideline, “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.” (AG ¶ 24). Over the years, Applicant has used both marijuana and cocaine. One of his episodes of cocaine use occurred while he possessed a security clearance. AG ¶¶ 25(a), “any drug abuse,” 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” and 25(g), “any illegal drug use after being granted a security clearance,” apply.

Applicant’s drug use was infrequent, sporadic, and possibly related to his PTSD that was undiagnosed at the time. The last use of illegal drugs occurred eight years ago. In November 2015, a certified drug abuse counselor evaluated Applicant and concluded that he was neither drug dependent, nor at risk of relapse. AG ¶ 26(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 AG ¶ 26(b)(3), “an appropriate period of abstinence,” apply. Applicant has mitigated the drug involvement security concern.

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

The security concern under this guideline is 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.

Applicant’s omissions on his 2008 application for public trust, his omissions from his 2011 security clearance application, and his omission of relevant information about

past drug use when interviewed by an agent in 2012 raise the question of whether the following disqualifying conditions apply under AG ¶ 16 apply:

(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

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

According to Applicant's psychologist, his omission of information about his illegal drug usage was not deceptive, but indicative of denial as a coping mechanism of PTSD that he suffered from after completing a combat tour of duty. Applicant's description of the circumstances leading to the realization that he had PTSD was emotionally compelling. However, he failed to provide a nexus between his PTSD symptoms and his responses during the past security clearance investigation processes. Specifically, the psychologist defined denial as a total blanking out of negative experiences and negative behavior from one's past. Applicant, however, did not omit everything. Instead, his omissions were selective, as he listed one episode of marijuana - the one most easily discoverable through the security clearance investigative process as it resulted in a failed drug test - but not the other episodes of marijuana use. Moreover, Applicant's contention that he did not know illegal drug use was inconsistent with holding a position of public trust was not credible, and further undercut the nexus that he was seeking to develop between his PTSD and his omissions. Under these circumstances, I conclude that AG ¶ 16(a) and AG ¶ 16(b) apply without mitigation.

As for the allegation of time sheet fraud, alleged in subparagraph 2.a, I conclude that Applicant's explanation mitigated it satisfactorily. I resolve subparagraph 2.a in Applicant's favor.

Although listening to music on the office computer violated company policy (subparagraph 2.b), it was an infraction of minimal significance. I conclude AG ¶ 17(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," applies. I resolve subparagraph 2.b in Applicant's favor.

### **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.

Applicant deserves credit for overcoming his PTSD. There are several facts that reflect positively upon Applicant, including his decision to adopt his ex-girlfriend's child, and the strong character references. However, these positive attributes are not sufficient to overcome the negative security inference generated by Applicant's omission of relevant information from two recent background investigations. Upon considering this case in the context of the whole-person concept, I conclude that Applicant has failed to mitigate the 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:	FOR APPLICANT
Subparagraphs 1.a-1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a-2.b:	For Applicant
Subparagraphs 2.c-2.e:	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.

MARC E. CURRY  
Administrative Judge