



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



In the matter of: )  
 )  
 ) ISCR Case No. 15-02331  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

03/23/2017  
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**Decision**  
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LOUGHRAN, Edward W., Administrative Judge:

Applicant did not mitigate the personal conduct and drug involvement security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On December 3, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guidelines E (personal conduct) and H (drug involvement). 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) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on December 30, 2015, and requested a hearing before an administrative judge. The case was assigned to me on August 9, 2016. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on August 19, 2016, scheduling the hearing for October 6, 2016. The hearing was postponed and convened as rescheduled on November 16, 2016. Government Exhibits

(GE) 1, 2, 4, and 5 were admitted in evidence without objection. The objection to GE 3 was sustained. Applicant testified, but he did not submit documentary evidence. The record was held open for Applicant to submit additional information. He submitted documents that I have marked Applicant's Exhibits (AE) A and B and admitted without objection. DOHA received the hearing transcripts (Tr.) on November 29, 2016.

### **Findings of Fact**

Applicant is a 39-year-old employee of a defense contractor. He has worked for his current employer since May 2010. He seeks to retain a security clearance, which he has held since about 2010. He is a high school graduate. He is married with three children.<sup>1</sup>

Applicant has a history of alcohol and drug abuse, which he does not deny. He smoked marijuana on numerous occasions from 1991 through 2016. He used methamphetamine regularly from 1998 through 2001. He used LSD on several occasions between 1997 and 2000.<sup>2</sup>

Applicant was arrested in 1998 and charged with driving under the influence (DUI) of a controlled substance and possession of narcotics paraphernalia. He was charged in 2002 with possession of a hypodermic device and in 2003 with possession of narcotics paraphernalia. He was arrested in 2003 and charged with DUI and possession of narcotics paraphernalia. He tested positive indicating marijuana use during a drug test in 2012. He was arrested in 2013 or 2014 and charged with DUI.<sup>3</sup>

Applicant testified that he drinks, "but not even close to what [he] used to." He stated that he last smoked marijuana in about March 2016. He stated that he would likely continue to smoke marijuana on holidays or special occasions, but also not like he used to. He submitted a letter post-hearing in which he stated that after the hearing he spent a lot of time thinking about his actions and that he now completely understands the importance of his security clearance. He started attending Narcotics Anonymous (NA) meetings. He stated that he did not smoke marijuana over the holidays, and he promises to refrain in the future.<sup>4</sup>

Applicant was forthcoming and honest at his hearing. He credibly testified that he has never intentionally provided false information on a security clearance application or to an investigator. He is a good worker and highly valued by his employer.<sup>5</sup>

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<sup>1</sup> Tr. at 23, 30; GE 1, 2.

<sup>2</sup> Tr. at 21-22, 27-28; Applicant's response to SOR.

<sup>3</sup> Tr. at 21-23, 26-29; Applicant's response to SOR.

<sup>4</sup> Tr. at 21, 27-30; AE A.

<sup>5</sup> Tr. at 31-33; AE B.

## 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 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."

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.

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 adverse 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

The security concern for drug involvement is set out in AG ¶ 24:

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.

The guideline notes conditions that could raise security concerns under AG ¶ 25. The disqualifying conditions potentially applicable in this case include:

- (a) any drug abuse;<sup>6</sup>
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) any illegal drug use after being granted a security clearance.

Applicant possessed and used methamphetamine, LSD, and marijuana. He possessed drug paraphernalia. He tested positive for marijuana use in 2012 while holding a security clearance. The above disqualifying conditions are applicable.

AG ¶ 26 provides conditions that could mitigate security concerns. 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.

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<sup>6</sup> Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Applicant has not used methamphetamine or LSD since about 2001, and his most recent drug paraphernalia charge was in 2003. That conduct is mitigated. However, he smoked marijuana regularly from 1991 through about March 2016, including while holding a security clearance and after testing positive on a drug test. As of the date of the hearing, he testified that he would likely continue to smoke marijuana on special occasions.

I found Applicant to be completely honest and forthright about his illegal drug use. After the hearing, he wrote that he spent a lot of time thinking about his actions and that he now completely understands the ramifications of his actions and the importance of his security clearance. He is attending NA meetings, and he promises to refrain from illegal drug use in the future.

I believe Applicant is sincere, but that is insufficient to mitigate the well-established pattern of illegal drug use. His conduct continues to cast doubt on his reliability, trustworthiness, and good judgment. AG ¶ 26(a) is not applicable, and AG ¶ 26(b) is partially applicable.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in AG ¶ 15, 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.

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

(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;

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

(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 properly safeguard protected information; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing.

Applicant did not intentionally provide false information on a security clearance application or to an investigator. AG ¶¶ 16(a) and 16(b) are not applicable. SOR ¶ 2.b and 2.c are concluded for Applicant.

Applicant was arrested in 2003 and charged with DUI and possession of drug paraphernalia. He tested positive indicating marijuana use during a drug test in 2012. He held a security clearance at the time. That conduct reflected questionable judgment and an unwillingness to comply with rules and regulations. It also created vulnerability to exploitation, manipulation, and duress. AG ¶¶ 16(c) and 16(e) are applicable.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(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;

(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; 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;

(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; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant has been open and honest about his drug and alcohol use, which has reduced any vulnerability to exploitation, manipulation, or duress. AG ¶ 17(e) is applicable. The analysis above under drug involvement is also appropriate here. His

illegal drug use while holding a security clearance continues to cast doubt on his reliability, trustworthiness, and good judgment. That conduct is not mitigated.

### **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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines E and H in my whole-person analysis.

Applicant is a good worker who is highly regarded by his employer. He was brutally candid about his alcohol and drug issues. He now states that he will no longer smoke marijuana. However, his marijuana use was too often, too recent, and too frequently while holding a security clearance for him to retain his security clearance.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. I conclude Applicant did not mitigate the personal conduct and drug involvement 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
Subparagraphs 1.c-1.g:	For Applicant

Paragraph 2, Guideline E:	Against Applicant
Subparagraph 2.a:	Against Applicant
Subparagraphs 2.b-2.e:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Edward W. Loughran  
Administrative Judge