



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



In the matter of:	)	
	)	
REDACTED	)	ISCR Case No. 15-02813
	)	
Applicant for Security Clearance	)	

**Appearances**

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

06/21/2016

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**Decision**

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MENDEZ, Francisco, Administrative Judge:

Applicant did not mitigate the security concerns raised by her past illegal drug involvement and dishonesty about it during the security clearance process. Notwithstanding the presence of some favorable evidence, her conduct raises questions about her security clearance eligibility. Clearance is denied.

**History of the Case**

On October 17, 2015, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) sent Applicant a Statement of Reasons (SOR) alleging that her conduct raised security concerns under the drug involvement and personal conduct guidelines.<sup>1</sup> Applicant answered the SOR and requested a hearing to establish her eligibility for access to classified information.

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<sup>1</sup> This action was taken under Executive Order (E.O.) 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) implemented by the Department of Defense on September 1, 2006.

On June 9, 2016, a date mutually agreed to by the parties, a hearing was held.<sup>2</sup> Applicant chose to testify, and Exhibits 1 – 3 and A – H were admitted into evidence without objection. The transcript of the hearing (Tr.) was received on June 16, 2016.

### **Findings of Fact**

Applicant is a 43-year-old high school graduate employed by a defense contractor. She is a single mother of two minor children. She has earned information systems certificates through successful completion of courses of studies offered by technical training schools, including while unemployed. She was unemployed from March 2011 to August 2014, when she was hired by her current employer. Her current work duties primarily consist of providing information technology (IT) support to the military. She submitted a security clearance application (SCA) in August 2014 in connection with her current job. She has not previously held a clearance.<sup>3</sup>

Applicant was asked in the SCA whether she had used any illegal drugs, including marijuana, in the past seven years. Applicant answered “no.”<sup>4</sup> This response was false, as Applicant later admitted during a security clearance background interview that she had used marijuana from about 1992 to 2014. This interview occurred less than a month after Applicant submitted her SCA. Specifically, under questioning by the investigator, Applicant admitted the following:

Subject first used marijuana in 1992 as a result of peer pressure. When Subject was asked for details, she said that she used it weekly on and off for many years. When asked to provide details of “many years” she said that she couldn’t recall due to the passage in time. When asked whether she smoked marijuana in the past seven years, she readily admitted that she last smoked marijuana in June 14. She smoked marijuana weekly from Apr 14 until Jun 14. Subject declined to elaborate. After questioning, she said that she didn’t smoke marijuana for three years prior to Apr 14. Prior to that, she had been smoking on and off from 1992 until 2011. . . . The marijuana made her “paranoid.” When asked why she smoked it if it made her paranoid, she said she was a social marijuana smoker and it relaxed her. In Jun 14, Subjected stopped smoking marijuana and stopped associating with individuals that smoked marijuana. Subject stopped smoking marijuana because she no longer wanted to be part of that lifestyle. Subject has no future intent to use marijuana. Subject declined to provide any names of individuals who could verify her marijuana use.<sup>5</sup>

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<sup>2</sup> Correspondence with the parties, the notice of hearing, and the case management order (CMO) are attached to the record as Appellate Exhibits (App. Exh.) I – III, respectively.

<sup>3</sup> Tr. 21-22; Exhibit 1.

<sup>4</sup> Exhibit 1 at 26.

<sup>5</sup> Exhibit 2 at 13.

Applicant was sent a copy of the summary of the background interview during the course of the current security clearance review. She was asked to verify the contents of the summary. She reviewed the summary and indicated that certain portions of it were incorrect. She made no corrections or edits to the above cited passage. She did state, however, since the interview was her first experience going through a security clearance background interview and the interview was conducted at her place of employment that she felt “intimidated and nervous.” She did not indicate that her admission to the investigator about her past illegal drug involvement was false.<sup>6</sup>

Applicant now recants her admission to the background investigator. She claims that she last used or was involved with marijuana in 1995 or 1996, when she was arrested and convicted of illegal drug possession. She admits that she made the above cited statement to the investigator, but claims that it was the result of undue pressure and coercion by the investigator.<sup>7</sup> She submitted no evidence to corroborate her claims. She further claims that she did not deliberately falsify her SCA when she responded no to the drug history question.<sup>8</sup> Applicant’s recantation and claims are not credible.

Applicant submitted letters from a coworker, recruiter, and a social reference who provide a favorable opinion regarding her work performance, reliability, and overall good character. The references are not aware of the SOR allegations.<sup>9</sup> Applicant also submitted evidence noting her good work performance and volunteer activities. She is a spokesperson for a community organization that helps underprivileged persons regain their economic and social footing.<sup>10</sup>

## **Policies**

“[N]o one has a ‘right’ to a security clearance.” *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). Individual applicants are eligible for access to classified information “only upon a finding that it is clearly consistent with the national interest” to authorize such access. E.O. 10865 § 2.

When evaluating an applicant’s eligibility 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. The guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, an administrative judge applies the guidelines in a commonsense manner, considering all available and reliable information, in arriving at a fair and impartial decision.

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<sup>6</sup> Exhibit 2.

<sup>7</sup> Tr. 20-21, 23-36; Answer.

<sup>8</sup> Tr. 43-46.

<sup>9</sup> Exhibits A, G, H; Tr. 39-40.

<sup>10</sup> Exhibits B-F; Tr. 42.

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

Administrative judges are responsible for ensuring that an applicant receives fair notice of the security concerns at issue, has a reasonable opportunity to address those concerns, and is not subjected to unfair surprise. ISCR Case No. 12-01266 at 3 (App. Bd. Apr. 4, 2014). 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, recognizing the difficulty at times in making suitability determinations and the paramount importance of protecting national security, the Supreme Court has held that “security clearance determinations should err, if they must, on the side of denials.” *Egan*, 484 U.S. at 531.

An individual who is granted 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. Security clearance 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.

## **Analysis**

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

The security concern regarding illegal drug involvement is set forth at 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.

Applicant admitted during her background interview that she used marijuana from approximately 1992 to 2014, with her last use occurring about two months before she submitted the SCA. I found Applicant’s admission to the investigator credible. Applicant’s extensive history of illegal drug involvement, including past conviction for illegal drug possession, raises the drug involvement security concern and the following disqualifying conditions:

AG ¶ 25(a): any drug abuse;<sup>11</sup> and

AG ¶ 25(c): illegal drug possession . . . or possession of drug paraphernalia.

Once disqualifying conditions are established, the burden shifts to Applicant to present evidence demonstrating extenuation or mitigation sufficient to warrant a favorable security clearance decision. ISCR Case No. 15-01208 at 4 (citing Directive ¶ E3.1.15). The adjudicative guidelines set forth a number of potential conditions that may mitigate the drug involvement security concern. I have considered all the applicable mitigating conditions, including the following:

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): 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's illegal drug involvement ended about two years ago. However, her dishonesty on the SCA and during the course of the security clearance process about her past drug involvement undercut the mitigating value of the passage of time and other favorable record evidence. Specifically, I find that AG ¶¶ 25(a) and 25(c) apply. Although AG ¶ 26(a) and 26(b) have some applicability, they are insufficient to mitigate the drug involvement security concern.

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

The personal conduct security concern is explained 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.

The SOR alleges at 2.a that Applicant deliberately falsified her SCA when she denied using illegal drugs, to include marijuana, in the past seven years. The security clearance process is contingent upon the honesty of all applicants. It begins with the answers provided in the SCA and continues throughout the security clearance process.

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<sup>11</sup> The Directive defines "drug abuse" as the "illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction." See AG ¶ 24(b).

The omission of material, adverse information standing alone is not enough to establish that an applicant intentionally falsified his or her SCA. An omission is not deliberate if the person genuinely forgot the information requested, inadvertently overlooked or misunderstood the question, or sincerely thought the information did not need to be reported. An administrative judge must examine the facts and circumstances surrounding the omission to determine an applicant's true intent.<sup>12</sup>

Applicant falsified her SCA when she deliberately omitted the negative information about her marijuana use. Although she revealed her past drug conviction on the SCA and then within a month of submitting the SCA revealed the adverse information about her past drug use, she later recanted this admission. She now claims her admission to the background investigator was false and the byproduct of coercion or pressure. Her self-serving claims are not credible or supported by any reliable evidence. Applicant, who had been out of work for three years before starting her current job, deliberately falsified her SCA to secure a position requiring a security clearance. She did not want to reveal she had stopped using marijuana just two months earlier and that her recent use was part of a long history of illegal drug involvement.

After considering all the evidence, including Applicant's age, education, and the straightforward nature of the question involved, as well as her demeanor at hearing, I find that she deliberately falsified the SCA as alleged in SOR 2.a. I further find that AG ¶ 16(a)<sup>13</sup> was established by the evidence. I have considered all the applicable mitigating conditions listed at AG ¶ 17. However, Applicant's dishonesty about her past drug involvement during the course of the current security clearance review counters against application of any of the available mitigating conditions. Overall, unresolved doubts about Applicant's honesty, reliability, and trustworthiness remain.

### **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 factors listed at AG ¶ 2(a). I hereby incorporate my above analysis and highlight some additional whole-person factors.

I gave due consideration to Applicant's strong work ethic, good employment record, charitable volunteer efforts, and other favorable record evidence. However, the favorable record evidence is insufficient to mitigate and outweigh the serious security concerns raised by her conduct, notably, her dishonesty during the security clearance process. The Appeal Board has held that such dishonesty "strikes at the heart of the

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<sup>12</sup> See *generally* ISCR Case No. 02-12586 (App. Bd. Jan. 25, 2005).

<sup>13</sup> AG ¶ 16(a): deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire . . . or similar form used to conduct investigations . . . determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

security clearance process.”<sup>14</sup> Furthermore, the Directive specifically states that failure to provide truthful responses on an SCA “will normally result in an unfavorable clearance action.” AG ¶ 15. Consequently, the record evidence leaves me with doubts about Applicant’s eligibility for access to classified information.

### **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 (Drug Involvement):	AGAINST APPLICANT
Subparagraphs 1.a and 1.b:	Against Applicant
Paragraph 2, Guideline E (Personal Conduct):	AGAINST Applicant
Subparagraph 2.a:	Against Applicant

### **Conclusion**

In light of the circumstances presented by the record in this case, 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.

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Francisco Mendez  
Administrative Judge

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<sup>14</sup> ISCR Case No. 09-01652 at 7 (App. Bd. Aug. 8, 2011).