



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 15-04088

**Appearances**

For Government:  
Andrew H. Henderson, Esquire  
Department Counsel

For Applicant:  
Ryan C. Nerney, Esquire  
The Edmunds Law Firm

January 20, 2017

**Decision**

ROSS, Wilford H., Administrative Judge:

Applicant used marijuana less than ten times between 2006 and 2009, with an additional use in 2012. In 2009, when he was young and immature, he falsified a Government questionnaire on his marijuana use. Since that time he has been truthful with the Government, and his life and career show successful mitigation. Based on a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted his most recent Electronic Questionnaire for Investigations Processing (e-QIO) on October 7, 2014. (Government Exhibit 2.) On December 30, 2015,

the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (Answer) on March 2, 2016, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on March 28, 2016. The case was assigned to me on April 4, 2016. The Defense Office of Hearings and Appeals (DOHA) issued Notices of Hearing on May 4, and May 10, 2016. I convened the hearing as scheduled on June 9, 2016. The Government offered Government Exhibits 1 through 3, which were admitted without objection. Applicant offered Applicant Exhibits A through Q, which were admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until June 17, 2016, to permit him to submit additional evidence. On June 10, 2016, he submitted Applicant Exhibit R, to which Department Counsel had no objection, and the exhibit was admitted into the record, which closed as scheduled. DOHA received the transcript of the hearing (Tr.) on June 17, 2016.

### **Findings of Fact**

Applicant is a 29-year-old employee of a defense contractor. He has a master's degree in electrical engineering. He has held a security clearance since 2009, originally in connection with an internship with his current employer while in undergraduate school. He is engaged to be married for the first time.

#### **Paragraph 1 (Guideline E – Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has engaged in conduct that shows poor judgment, untrustworthiness or unreliability. Applicant admitted the two allegations under this paragraph.

1.a. Between 2006 and 2009, when Applicant was an undergraduate in college, he used marijuana between five and ten times. He used marijuana one additional time, in 2012, when he was attending a concert with a friend. He has not used marijuana or any other drug since that time. Applicant credibly testified that marijuana no longer has any part in his life, and that he deeply regrets his past use. In addition to other documentary evidence, he submitted a signed statement of intent, stating that any involvement with illegal drugs in the future, including being around or involved with anyone who uses drugs, can result in automatic revocation of his security clearance. (Tr. 19-25, 30-31, 42-; Applicant Exhibits A, B, and C.)

1.b. Applicant first filled out an e-QIP on July 10, 2009, when he was still attending undergraduate school. (Government Exhibit 1.) Section 23a of the questionnaire asks whether Applicant had used any illegal drugs, including marijuana, in the preceding seven years. Applicant answered this question, "No." This was a false answer to a relevant question concerning his drug use.

Applicant filled out a second e-QIP on October 7, 2014. (Government Exhibit 2.) On this questionnaire Applicant truthfully and completely set forth his history of drug use.

Applicant is extremely contrite about his failure, when 22 years old, to be truthful with the Government. Concerning this decision he testified, "I feel very terrible. You know, this mistake has haunted me. . . . I knew this was something serious that would come back to me." He further testified, "I couldn't have this on my conscious any further." Applicant also testified that this single act, "has slowly been eating me up as I matured in my career and in my personal life." Finally, Applicant stated that he felt, "Relieved," that he had told the truth and "just let the Government know and decide on what they want to do with me." (Tr. 29-36, 38.)

## **Mitigation**

Applicant submitted evidence showing that he is a highly respected and successful person and employee, who has greatly matured over recent years. In 2011 Applicant volunteered to go to Afghanistan to assist his employer and the warfighter. He went there three different times for a total of five months. (Tr. 37-38, 50-54; Applicant Exhibits J at 7, and R.)

Letters of recommendation were submitted for Applicant from people who know him personally, and professionally. Applicant informed all of the correspondents of the nature of this proceeding and the contents of the SOR. The correspondents range from his fiancé, who is a doctor, to a director for his employer. Several of Applicant's supervisors submitted letters on his behalf. Friends who provided letters include a member of the United States Secret Service, and another person who is a Rhodes Scholar and currently an assistant city attorney for a major metropolitan area. All of them recommend him for a position of trust, and his co-workers indicate their understanding of security clearance requirements. (Tr. 32-35, 39, 46-49; Applicant Exhibits I, and Q.)

Applicant has a long history of volunteering his time and expertise to various charitable organizations. (Tr. 40-42; Applicant Exhibit I at 6.)

Applicant's evaluations and other documentation from his employer show that he exceeds expectations on his job, received individual recognition on several occasions, has been promoted several times, and is being groomed by his employer for positions of increasing responsibility. (Applicant Exhibits G, J, K, N, O, and Q.)

## Policies

Security clearance decisions are not made in a vacuum. When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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. In addition, the administrative judge may also rely on his or her own common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of the 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "Any determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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**

### **Paragraph 1 (Guideline E – Personal Conduct)**

The security concern relating to Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgment, lack of candor, dishonesty or unwillingness to comply with rules or 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.

I have examined the disqualifying conditions under AG ¶ 16 and especially considered the following:

(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;

(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 (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing.

The following mitigating conditions under AG ¶ 17 may apply to the facts of this case:

(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; and

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

Applicant's conduct in using marijuana during and after college, and then lying about it in his 2009 questionnaire, was serious. However, his subsequent conduct, particularly since his single use of marijuana in 2012, has mitigated any continuing security significance. His four years of abstinence, along with Applicant's conduct and testimony, show a credible intent not to use marijuana, or any other drugs, in the future.

Applicant was young and immature when he falsely filled out his first questionnaire in 2009. From his testimony it became clear that this single act, which is obviously not consistent with Applicant's character, had a continuing emotional impact on him. He described the impact as eating him up to the core. He was relieved to tell the Government the truth in 2014. (Tr. 36.)

With the exception of the single slip in 2012 when he shared a friend's marijuana at a concert, Applicant's conduct since 2009 has been exemplary. Rehabilitation from his immature conduct when in his early 20s has been shown by years of private philanthropy, work in a combat zone, and excellent job performance. Also to his credit is that all of the correspondents who wrote letters of recommendation for him had knowledge of this proceeding and the contents of the SOR. This not only reduces any possibility of coercion, but shows a frankness that justifies a belief in his future trustworthiness. Paragraph 1 is found for Applicant.

### **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 pertinent facts and circumstances surrounding this case. Applicant, while still relatively young, has overcome his immature conduct in using marijuana and then lying about it to the Government. He has matured, has learned hard lessons, and is now law abiding, trustworthy, and responsible. Overall, the record evidence does not create doubt as to Applicant's present eligibility and suitability for a security clearance.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline E:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant

### **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 or continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is granted.

WILFORD H. ROSS  
Administrative Judge