



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 14-06283

Appearances

For Government: Andrew H. Henderson, Esquire, Department Counsel

For Applicant: *Pro se*

11/30/2017

Decision

BENSON, Pamela C., Administrative Judge:

Applicant failed to mitigate the security concerns under Guideline E, personal conduct. Applicant's eligibility for a security clearance is denied.

Statement of the Case

Applicant submitted a security clearance application (SCA) on April 7, 2011, and again on April 29, 2014. On April 8, 2016, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines E, personal conduct. 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) effective within the DoD on September 1, 2006. On June 8,

2017, new AGs were implemented and are effective for decisions issued after that date.¹

Applicant answered the SOR on October 6, 2016, and elected to have his case decided on the written record in lieu of a hearing. Department Counsel submitted the Government's file of relevant material (FORM) on May 9, 2017. Applicant received it on June 6, 2017. The Government's evidence is identified as Items 1 through 8. Applicant was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of receipt of the FORM. He did not provide a response to the FORM, object to the Government's evidence, or submit documents. The case was assigned to me on September 25, 2017. ²

Findings of Fact

Applicant admitted the allegations cited as SOR ¶¶ 1.a through 1.c, 1.g and 1.h. He denied the allegations cited as SOR ¶¶ 1.d, 1.e and 1.f. After a thorough and careful review of the pleadings and exhibits submitted, I make the following findings of fact.

Applicant is 36 years old. He attended a fire academy from August 2010 to November 2010 and earned certification in fire suppression. He also attended college from August 2001 to June 2004, but he did not earn a degree. He has never married, and he is a father of a young child. He has worked for his present employer, a government contractor, since August 2012.³

The SOR alleged in ¶¶ 1.a and 1.b that Applicant had used and purchased marijuana between 1999 and January 2008. He was arrested or cited on at least three occasions for Possession of Marijuana in 2002, 2004 and 2007, as alleged in SOR ¶ 1.c. He admitted this conduct in his Answer. The SOR also alleged in ¶¶ 1.g and 1.h that when Applicant completed his SCA in 2011, he deliberately failed to list his use, purchase, and his arrests or citations involving marijuana. In addition, he failed to list a June 2007 DUI arrest that had occurred well within the required seven-year period. Applicant also admitted these allegations in his Answer.

Applicant denied, however, that he deliberately failed to list his use, purchase, and his arrests or citations involving marijuana, and his alcohol-related arrest, on the SCA he completed in April 2014, as alleged in ¶¶ 1.d 1.e, and 1.f. Applicant claimed that when he answered the 2014 SCA question concerning whether he had been cited or arrested within the last seven years, he honestly thought he had not been arrested during that time period, so he answered that question with a negative response. He

¹ I considered the previous Adjudicative Guidelines, effective September 1, 2006, as well as the new Adjudicative Guidelines, effective June 8, 2017. My decision would be the same if the case was considered under the previous Adjudicative Guidelines.

² Item 1.

³ Item 1, 2, 3.

was, however, arrested in June 2007, which was a couple of months within of the full seven-year period, and the arrest was required to be listed. He also claimed that when he answered the 2014 SCA question concerning whether he had “**EVER**”⁴ been charged with an offense involving alcohol or drugs, he assumed this question also pertained to the seven year timeline, and listed a negative response to this question as well. There was no seven year limitation to this question. Applicant was required to list his three marijuana offenses that occurred in 2002, 2004 and 2007, as well as his alcohol-related offense in 2007.

Applicant also denied intentionally falsifying the 2014 SCA question concerning whether he had used or purchased any illegal drug, to include marijuana, within the last seven years. Applicant stated that he thought his last use and purchase of marijuana occurred more than seven years ago, so he answered this question with a negative response. Applicant admitted he last used and purchased marijuana in January 2008. That use was within nine months of the seven-year cut-off, and should have been listed on the 2014 SCA. He also noted on his 2014 SCA that he had never been previously investigated by the U.S. Government and he had never been granted security clearance eligibility. Applicant did not disclose any adverse information on either of his 2011 or 2014 SCAs.⁵

Applicant was interviewed by an authorized DoD investigator for his 2011 and 2014 DoD background investigations. He was provided copies of both interview reports in Interrogatories issued by the Defense Office of Hearings and Appeals. Applicant responded to the Interrogatories in February 2015, and provided corrections to the inaccuracies he found in the interview reports. With his additional comments noted, he then affirmed as accurate the information enclosed in the two summaries.⁶

Applicant did not voluntarily provide information about his illegal drug use, drug arrests or citations, or DUI arrest until he was specifically asked by the DoD investigator. In a 2011 follow-up interview for additional information about Applicant’s alcohol and drug use, Applicant stated that he first used marijuana in 2002 during college, and his last use occurred in 2002. He claimed that he did not recall his 2007 charge of Possession of Marijuana. He also stated that he had no intent to use marijuana in the future. Applicant admitted in his Answer that he falsified his 2011 SCA.⁷

During his 2014 interview, when questioned about his DUI arrest, Applicant claimed that he could not recall the date of the arrest. He did not list this arrest on the

⁴ Item 3. The 2014 SCA Section 22 has a section that begins each question in bold print; “**In the past seven (7) years** have...” The second part of Section 22 begins each question with; “Have you **EVER** been...”

⁵ Item 1, 2, 3.

⁶ Item 4.

⁷ Item 4.

SCA due to it being past the seven-year time period. He also gave another reason he did not list it – he thought the DUI arrest had been expunged. The investigator asked Applicant if he had ever been charged with an offense involving alcohol or drugs. He stated that he had been cited for Possession of Marijuana on three occasions. He was able to recall the dates and the details of each incident which resulted in a charge of Possession of Marijuana being filed against him.⁸

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 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 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." 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 not drawn inferences grounded on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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

⁸ Item 4.

extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of Executive Order 10865 provides that 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 E, Personal Conduct

AG ¶ 15 expresses the security concern for personal conduct:

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 or sensitive information. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following 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 national security eligibility or trustworthiness, or award fiduciary responsibilities.

Applicant was aware he was required to list alcohol and drug-related offenses, as well as disclose his illegal drug history, when he completed his SCA in 2011 and 2014. He admitted his deliberate falsifications on his 2011 SCA. I find that his explanation that he thought the question on his 2014 SCA asking him if he had “EVER” been charged with or arrested for any drug, or alcohol-related offenses to only pertain to a seven-year time period was not credible. I also find that he knowingly omitted that his last use and purchase of marijuana occurred in January 2008. There is sufficient evidence to apply AG ¶ 16.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

(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

(d) the individual 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.

Applicant admitted in his Answer to falsification of his 2011 SCA, but he denied that he falsified this information on his 2014 SCA. He did not fully disclose this adverse information until asked during his background interview by the investigator. There is no evidence that Applicant made a good-faith effort to correct the omission until confronted by the investigator. AG ¶ 17(a) and (c) do not apply. Applicant's omissions were serious and cast doubt on his reliability, trustworthiness, and good judgment. There is insufficient evidence to raise AG ¶ 17(d).

Whole-Person Concept

Under the whole-person concept, the administrative judge must evaluate an applicant's national security eligibility 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 Guideline E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is a 36 years old and has worked for his present employer since August 2012. He was aware that he had an alcohol-related arrest and three drug-

related offenses. He was also aware that he had used and purchased marijuana from 1999 through January 2008. Applicant's failure to disclose this relevant adverse information on either of his 2011 or 2014 SCAs is concerning. He provided conflicting reasons for not listing his DUI offense on the 2014 SCA. He said he thought it was past the seven-year limit, but then also noted that he did not disclose it because he believed the DUI arrest had been expunged. Applicant's conduct raises questions about his judgment, reliability, and trustworthiness. Overall, the record evidence leaves me with serious questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concern arising under the personal conduct guideline.

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 E:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	Against Applicant
Subparagraph 1.e:	Against Applicant
Subparagraph 1.f:	Against Applicant
Subparagraph 1.g:	Against Applicant
Subparagraph 1.h:	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 a security clearance. Eligibility for access to classified information is denied.

Pamela C. Benson
Administrative Judge