



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



In the matter of:

Applicant for Security Clearance

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ISCR Case No. 17-00565

**Appearances**

For Government: Daniel F. Crowley, Esquire

For Applicant: *Pro se*

09/21/2018

**Decision**

LYNCH, Noreen A., Administrative Judge:

**Statement of the Case**

On March 14, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct).<sup>1</sup> Applicant timely answered the SOR 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 25, 2017. Applicant received the FORM on June 13, 2017. Applicant did not object to the Government's evidence, and he provided no response to the FORM. The Government's evidence, included in the FORM and identified as Items 1 through 9, is admitted without objection. The case was assigned to me on August 27, 2018. Based on my review of the documentary evidence, I find that Applicant has not

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<sup>1</sup> The action was taken under Executive Order 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 or after September 1, 2006. Since that time, the AG were amended as *Guideline H: Drug Involvement and Substance Abuse*, and it is now in effect for any adjudications on or after June 8, 2017.

mitigated personal conduct security concerns. He has mitigated the security concerns under drug involvement.

### **Findings of Fact**

Applicant is 27 years old. He graduated from high school in 2009 and attended community college courses, but did not obtain a degree. He is single and has no children. He has been employed as a security officer with various companies since approximately 2010. Applicant was granted a security clearance by DOD in 2011, and in 2013 an SCI by another government agency. (Item 9) He was terminated from a previous job in 2014 and his security clearance was revoked by another government agency in July 2014 for failure to list his use of marijuana in 2009 to 2011 on a few occasions. ((Item 5) Applicant completed his latest security clearance application (SCA) in April 2015. He reports no military service.

When Applicant was 16 or 17 years old in 2009, he initially used marijuana. He remembers one other incident in 2011, when in college, that he used marijuana. (Item 6) He claims that at the time, he was influenced by his peers and he was very young. He elaborated that he was at a party on one occasion and was using alcohol. Applicant no longer associates with those friends and he has no intention of using any illegal drugs in the future. Applicant held a security clearance in 2011, when he admits using marijuana again. However, his explanation for the event is that he was unaware of the severity of its use and the honor of holding a security clearance. He further clarified that he was in the wrong place at the wrong time. (Item 2)

In an SCA completed in April 2015, Applicant responded "No" to the question concerning illegal use of drugs in the past seven years in Section 23. (Item 3) Yet in his Answer and in his subject interview in 2016, he stated that he used illegal drugs in the past seven years and while possessing a security clearance. (Item 7) His explanation for omitting this information is he completed the SCA by "simply resubmitting" the previous SCA. He states that he was in a rush so he just pressed the resubmit button. He also explained it was an isolated event and he did not think about it. However, in 2014, the prior year, he was given a polygraph exam and when confronted, remembered the illegal marijuana use. He was also terminated for not disclosing that information to his employer in 2014. (Item 2) He apologizes for the incident.

In an SCA completed in April 2011, Applicant responded "No" to the question concerning illegal use of drugs in the past seven years in Section 23. (Item 4) His explanation for omitting the information was he answered to the best of his ability, that he only remembered the use in 2009 when he was a minor and did not think that needed to be listed. He stated that his security representative told him not to list the marijuana usage because he was around 16 or 17 years of age. He explained that in the future, he will not rush and will read each section of the SCA. (Item 2)

In a 2016 sworn affidavit, Applicant reiterated that he had a security clearance when he used marijuana. He stated that he did not report it because he did not

understand the importance of it. He wishes that he had listed it on his SCA. He explained that he has never been diagnosed as drug dependent, nor failed a drug test. He does not use drugs. (Item 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. 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.

Under Directive ¶ E3.1.14, the Government must 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. The Government reposes a high degree of trust and confidence in those granted access to classified information. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard such information. Decisions shall be in terms of the national interest and do not question the loyalty of an applicant.

## **Analysis**

### **Guideline H, Drug Involvement and Substance Misuse**

The security concern for this guideline is set forth in AG ¶ 24, where it is noted that the illegal use of a controlled substance, and the use of other substances that can

cause physical or mental impairment or are used in a manner inconsistent with their intended purpose, can raise questions about an individual's reliability and trustworthiness. This is because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Such use also raised questions about a person's ability or willingness to comply with laws, rules, and regulations.

Here, Applicant admitted he used marijuana on a few occasions between 2009 and 2011. One of those instances occurred after he was granted a security clearance in 2011. This is sufficient to raise AG ¶ 25(a): any substance misuse, and ¶ 25(f): any illegal drug use while granted access to classified information or holding a sensitive position. The Government's substantial evidence, as provided by Applicant's admissions, thus raises security concerns under Guideline H. Therefore, the burden shifts to Applicant to produce evidence to rebut, explain, extenuate, or mitigate related security concerns.

Under Guideline H, conditions that could mitigate security concerns arising from drug involvement and substance misuse are enumerated. The following mitigating conditions under AG ¶ 26 potentially apply to Applicant's case:

- (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) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions to overcome this problem, and has established a pattern of abstinence, including but not limited to: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; and (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant's last use of marijuana, an illegal substance, took place nearly seven years ago. He reported using marijuana a few times during the period from 2009 through 2011. In the life of this Applicant, in terms of age, maturation, and work history, sufficient time has passed to deem his marijuana usage as not being recent. Between 2009 and 2011, he used marijuana a few times, reflecting that his usage was infrequent. Although he did have a security clearance, he did not realize the consequences of using marijuana in 2011. Applicant has no intention of returning to drugs, or jeopardizing his career. I find AG ¶ 26(a) and 26(b)(1)-(3) apply.

## **Guideline E, Personal Conduct**

The security concern for personal conduct is set out in 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 or sensitive information.

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 national security eligibility or trustworthiness, or award fiduciary responsibilities, and

(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 classified or sensitive information.

Here, Applicant intentionally answered "No" on his 2015 and his 2011 SCAs in response to a question inquiring whether he had illegally used any controlled substance, for example marijuana, since the age of 16 or in the preceding seven years. (Section 23) In truth, Applicant had used marijuana on about five occasions after the age of 16, between 2009 and 2011. He also used marijuana once in 2011, after being granted a security clearance. Consequently, these two disqualifying conditions apply.

AG ¶ 17 describes conditions that could mitigate security concerns. Potentially applicable in this matter is 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, untrustworthiness, or good judgment.

Here, Applicant exhibited two instances of unreliable conduct reflecting questionable judgment. These include the few instances he used marijuana between 2009 and 2011, and which included his singular use of the drug in 2011 after being granted a security clearance. Spread out over a dozen years, his use of marijuana was mainly in his high school and college years. Only a singular incident occurred in this decade, in 2011 while maintaining a security clearance. His drug use in academia could

be readily dismissed due to youthful indiscretion. This is particularly true given its infrequency. His failure to disclose on his 2011 and 2015 SCA, that he had used marijuana was intentional. The responses that he provided were not reasonable and varied each time he responded. In 2014, the year prior to the 2015 SCA, he was terminated for failure to disclose the prior illegal drug use. He also had been given a polygraph exam when the information was first elicited. He did not voluntarily report the use. He was under the pressure of the polygraph. His reasoning for not reporting his use when he was 16 or 17 on his 2011 SCA do not ring true either. He gave various reasons why he answered "No" to Section 23. He stated that a security representative told him that he did not need to list the drug information if he was only 16 or 17 years old. I do not find that plausible, given the plain language of the question on the SCAs. I find none of the mitigating conditions apply in this case.

### **Whole-Person Concept**

Under the whole-person concept, one must evaluate security clearance eligibility by considering the totality of the applicant's conduct and all relevant circumstances. Consideration shall be given to the nine adjudicative process factors listed at AG ¶ 2(d). The final determination must be an overall commonsense judgment based on 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, and conducted a whole-person analysis based on the record. In addition to Applicant's past drug involvement and personal conduct. He did not respond to the FORM to supplement the record. Thus, I have no other evidence to consider.

Applicant is a 27-year-old security guard. He was granted a security clearance in 2011, but it was revoked in 2014. He has attended college courses, but did not obtain his degree. He is single and has no children.

Applicant tried marijuana in high school and in college, a varied number of times. His last use was in 2011 and he intends never to use an illegal drugs again. His focus is his career. He no longer associates with those who use drugs. The passage of seven years has brought contrition.

However, he intentionally falsified two security clearance application regarding his use of marijuana. The reasons he gave are not plausible. He was terminated a year prior to the 2015 SCA due to failure to disclose his previous use of marijuana. He had gone through a polygraph where the information was divulged. I have doubts as to Applicant's trustworthiness, judgment, and reliability. Any doubts must be resolved in favor of the Government. Under these circumstances, I find Applicant has mitigated drug involvement and substance misuse, but has not mitigated the personal conduct security concerns due to intentional falsifications of two SCAs. Clearance is denied.

### **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
Subparagraphs 1.a-1.d:	Against Applicant
Paragraph 2, Guideline H:	FOR APPLICANT
Subparagraphs 2.a-2.b:	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 grant Applicant a security clearance. Eligibility for access to classified information is denied.

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Noreen A. Lynch  
Administrative Judge