



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



In the matter of: )  
)  
) ISCR Case No. 17-00952  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O'Connell, Esq., Department Counsel  
For Applicant: *Pro se*

07/19/2018

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**Decision**

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COACHER, Robert E., Administrative Judge:

Applicant failed to mitigate the drug involvement and substance misuse or the personal conduct security concerns. Eligibility for access to classified information is denied.

**Statement of the Case**

On May 18, 2017, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H and Guideline E. DOD acted 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).<sup>1</sup>

Applicant answered the SOR on June 8, 2017, and requested a hearing before an administrative judge. The case was assigned to me on December 13, 2017. The

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<sup>1</sup> I decided this case using the AGs implemented by DOD on June 8, 2017. However, I also considered this case under the previous AGs implemented on September 1, 2006, and my conclusions are the same using either set of AGs.

Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 28, 2018, and the hearing was convened as scheduled on April 11, 2018. The Government offered exhibits (GE) 1-15. I overruled an objection to GE 2. All offered exhibits were admitted. The Government's discovery letter (September 13, 2017) and exhibit index were marked as hearing exhibits (HE) I and II respectively. Applicant testified, but did not offer any exhibits. DOHA received the hearing transcript (Tr.) on April 19, 2018.

### **Findings of Fact**

In his answer, Applicant admitted all the SOR Guideline H allegations, with explanations, but he denied all falsification allegations under Guideline E. His admissions are incorporated as findings of fact. After a review of the pleadings and evidence, I make the following additional findings of fact.

Applicant is a 59-year-old employee of a defense contractor. He has worked in his current position since November 2016. He is a high school graduate. He is single, never married, and has no children. He served in the Navy from 1977 until 1981, after which he was honorably discharged. He has held a security clearance in the past.<sup>2</sup>

The SOR alleges Applicant was fired from his employment because he tested positive for amphetamines in May 2014; he used amphetamines in May 2014 after being granted a security clearance in 2005; he used marijuana with various degrees of frequency from approximately 1977 to 1993; he was arrested for driving under the influence of alcohol (DUI) and possession of marijuana in September 1992; and he used marijuana in about 1991, while holding a security clearance. It also alleged he falsified information on his November 1988, June 1989, May 1990, November 1992, and March 2015 security clearance questionnaires (SCQ) when he failed to disclose the full extent of his marijuana use and his amphetamine use. The SOR also alleged he falsified information provided to defense investigators in his personal statements (PSI) to them from September 1990, August 1994, and February 2017. His firing due to amphetamine use, while holding a security clearance, and his marijuana use, also while holding a security clearance, were all cross-alleged as personal conduct allegations.

Applicant has given different versions of the extent of his marijuana use at different times when completing his SCQs and answering investigator questions. A recap of his answers is appropriate:

November 1988 SCQ: In response to the question of whether he ever used any marijuana he wrote, "smoked marijuana a couple of times while in high school." He also admitted being accused of possessing marijuana in 1979 while in the U.S. Navy. He claimed those charges were dropped.<sup>3</sup>

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<sup>2</sup> Tr. at 8, 36, 37; GE 1.

<sup>3</sup> GE 8.

June 1989 SCQ: In response to the question of whether he ever used any marijuana, he wrote, “smoked marijuana a few times while in high school.” He also admitted being accused of possessing marijuana, under Article 92 of the UCMJ, in 1979 while in the U.S. Navy. He claimed those charges were dropped at Captain’s Mast.<sup>4</sup>

May 1990 SCQ: In response to the question of whether he ever used any marijuana, he wrote, “marijuana last used 770607. Smoked marijuana a couple of times while in high school at parties off campus due to peer pressure and to satisfy my own curiosity. It did nothing for me nor to me and I never intend to use it again.”<sup>5</sup>

September 1990 PSI: Applicant stated, “When in high school, I smoked marijuana. During the following four years in the Navy, I may have smoked it one or two times at parties, when I had been drinking. But I do not recall any specific times. . . . I do not intend to abuse drugs, including marijuana, in the future.”<sup>6</sup>

November 1992 SCQ: In response to the question of whether he had ever been arrested, he included that he was charged by the Navy for possession of marijuana in 1979 and that the charge was dropped. He also listed his September 1992 arrest for possession of marijuana. He detailed his sentence for that offense. In response to the question of whether he ever used marijuana, he wrote, “smoked marijuana a couple of times while in high school and have not smoked it since then.”<sup>7</sup>

August 1994 PSI: Applicant stated:

Concerning my use of marijuana, I tried marijuana once or twice when I was in high school in 1976 or 1977. On those occasions, I took two or three puffs off a marijuana cigarette, provided without charge, by friends. I have never smoked any marijuana since 1977. I was accused of possession of marijuana when I was in the USN (Navy) in 1981, but I was innocent. I refused to accept an Article 92, UCMJ for possession of marijuana and the charges were dropped. I was also arrested for possession of marijuana in Sep 92 when I was arrested for DUI. I had been to a bar that night. I left my cigarettes and lighter on the counter when I went to the restroom prior to leaving. When I came out of the restroom, my cigarettes and lighter were gone, but on the counter was a pack of cigarettes, my same brand, but in a box instead of a pack. I picked them up and put them in my pocket and left. I was soon afterward stopped for DUI. I agreed to a search of the vehicle and my person. The officer, when he looked inside the cigarette container found some marijuana. I did

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<sup>4</sup> GE 9.

<sup>5</sup> GE 10.

<sup>6</sup> GE 15.

<sup>7</sup> GE 11.

not know it was there and I did not know I was in possession of marijuana.<sup>8</sup>

January 2002 letter to DOHA as part of Applicant's reapplication process (also included in his June 2017 answer to the SOR): Applicant stated:

I used marijuana approx. 2 times while in high school (i.e. I smoked a whole marijuana cigarette on or around 1976 – 197[last number cut off]. Since that time I have taken a few puffs of a marijuana cigarette at a party or gathering or acquaintances while in the Navy from 1977 or 78 to 81, I also have done the same from 1981 to about Sept of 1994.<sup>9</sup>

March 2015 SCQ: In response to the question of whether he had ever been involved with drugs while possessing a security clearance, he answered “no.”<sup>10</sup>

February 2017 Affidavit: Applicant stated, “I did not use any illegal amphetamines leading up to the accident and I have not used any illegal controlled substances other than marijuana when I was 16 or 17 years old.” He further stated, “I tried marijuana when I was 16 or 17 years old” and “I have not had any further use of marijuana since.”<sup>11</sup>

In May 2014, Applicant was working as a truck driver. He was involved in an on-the-job accident where he was required to submit a post-accident urinalysis. The result of the urinalysis showed a positive reading for amphetamine/methamphetamine above the Department of Transportation (DOT) cutoff level. As a result of this positive test, Applicant received 30 hours of substance-use-disorder education. He was terminated by his employer. Applicant claims he did not use any form of illegal amphetamines. He asserts that the positive result was attributable to his taking the over-the-counter medicine called Claritin-D for a head cold or allergies. He talked to a pharmacist about this theory. He provided no documentation or expert opinion for his theory. I do not find Applicant's explanation for the positive test result credible.<sup>12</sup>

Applicant admitted he received a confidential clearance in 1986. He did not know if he received a secret clearance in 1989. He admitted receiving a clearance in 2005. His 1988, 1989, 1990, 1992, and 2001 SCQs all indicate that he held at least a secret security clearance.<sup>13</sup>

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<sup>8</sup> GE 13.

<sup>9</sup> SOR Answer (See January 14, 2002 letter attached to Answer).

<sup>10</sup> GE 1.

<sup>11</sup> GE 3.

<sup>12</sup> Tr. at 33, 54, 56-58; GE 2-3.

<sup>13</sup> Tr. at 38-40; GE 8-12.

## 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(a), 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 national security eligibility 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.

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 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 that an applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 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 H, Drug Involvement and Substance Misuse**

AG ¶ 24 expresses the security concern for drug involvement and substance abuse:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that 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, both 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. Controlled substance means any "controlled substance" as defined in 21 U.S.C. 802. Substance misuse is the generic term adopted in this guideline to describe any of the behaviors listed above.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. Those that are potentially applicable in this case include:

- (a) any substance misuse;
- (b) testing positive for an illegal drug; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant used marijuana, at various times, from approximately 1977 to approximately 1994. He tested positive for amphetamine/methamphetamine in May 2014. He held a security clearance during some of the time he was abusing marijuana. I find the above disqualifying conditions apply.

AG ¶ 26 provides conditions that could mitigate security concerns. One potentially applies in this 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.

Applicant's use of marijuana was infrequent, however, it occurred over a span of time from 1977 to 1994. He possessed a security clearance beginning in 1988 and continued through 2005. He denied using amphetamine/methamphetamine despite a positive test result. His long term use and denial of responsibility cast doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply.

## **Guideline E, Personal Conduct**

AG ¶ 15 expresses the personal conduct security concern:

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. 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 in this case. 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;

(b) deliberately providing false or misleading information; or concealing or omitting information, concerning relevant facts to an employer, investigator, security official, competent medical or mental health professional involved in making a recommendation relevant to a national security eligibility determination, or other official government representative; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress by a foreign intelligence entity or other individual or group.

Applicant's admission in his January 2002 letter that he used marijuana from 1981 to 1994 necessarily means his answers given in his November 1988, June 1989, May 1990, and November 1992 SCQs about the extent of his past marijuana use were false. Likewise, his denial in his March 2015 SCQ of using marijuana while holding a security clearance is also false. His statements to investigators from September 1990, August 1994, and February 2017 are also false because he denied any marijuana use beyond 1981. Applicant was fired for a positive amphetamine test result and used marijuana and amphetamines while holding a security clearance. Applicant had many opportunities to tell the truth about the full extent of his drug use, but failed to do so until 2002. I conclude that he intentionally falsified the above listed documents and lied to investigators as also listed. His deception created a vulnerability to his exploitation by others. AG ¶¶ 16(a), 16(b), and 16(e) all apply.

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

(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 has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that contributed to untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur.

Truthfully completing an SCQ is the initial crucial step in gaining access to classified information. Applicant was given numerous opportunities to disclose his true drug use history, yet he failed to do so. The Government expects, and must rely on, the honesty of applicants during this process. Therefore, providing false information at this stage is not a minor offense. Such deliberate action casts doubt on Applicant's reliability, trustworthiness, and good judgment. AG ¶ 17(c) does not apply. As recently as February 2017, he failed to disclose his true drug abuse history. There is no evidence that he sought counseling for his behavior, or evidence of other steps taken to mitigate his untrustworthy behavior. AG ¶ 17(d) does not apply.

### **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 the circumstances. The administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(d):

(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 guideline and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all relevant facts and circumstances surrounding this case. I have incorporated my



comments under Guidelines H and E in my whole-person analysis. Some of the factors in AG ¶ 2(d) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's military service and his federal contractor service. However, I also considered that he provided false information on numerous occasions, both on security clearance forms and to investigators. He had numerous opportunities to come forward with truthful information about his complete drug abuse history, but he failed to do so. Additionally, a urinalysis test result showed that he used amphetamines as recently as 2014, but denied such use. Offering instead an implausible tale of a false positive result due to using over-the-counter cold medicine.

Overall, the record evidence leaves me with questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate the drug involvement and substance misuse, and personal conduct 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.e:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs: 2.a – 2.i:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Robert E. Coacher  
Administrative Judge