



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



In the matter of:

ISCR Case No. 17-01042

Applicant for Security Clearance

**Appearances**

For Government: Caroline Heintzelman, Esq., Department Counsel  
For Applicant: *Pro se*

04/13/2018

**Decision**

DAM, Shari, Administrative Judge:

Applicant mitigated the drug involvement and substance misuse security concerns, but not the personal conduct security concerns. National security eligibility for access to classified information is denied.

**History of Case**

On June 2, 2017, the Department of Defense Consolidated Adjudications Facility (DOD CAF) issued Applicant a Statement of Reasons (SOR) alleging security concerns under Guideline H (Drug Involvement and Substance Misuse) and Guideline E (Personal Conduct). Applicant answered the SOR in writing on June 28, 2017, and requested a hearing before an administrative judge.

The Defense Office of Hearings and Appeals (DOHA) assigned the case to me on August 16, 2017. DOHA issued a Notice of Hearing on December 12, 2017, setting the hearing for January 10, 2018. Department Counsel offered Government Exhibits (GE) 1 through 5 into evidence. Applicant testified, and offered Applicant Exhibits (AE) A and B into evidence. All exhibits were admitted without objections. Applicant's wife testified. DOHA received the hearing transcript (Tr.) on January 19, 2018.

## Findings of Fact

Applicant admitted the allegations in SOR ¶¶ 1.a and 1.b regarding his history of illegally using marijuana. He also admitted the falsification allegations in SOR ¶¶ 2.a through 2.d, and admitted, in part, the allegation in SOR ¶ 2.e. His admissions are incorporated into these findings of fact.

Applicant is 32 years old and married since 2015. He and his wife have a one-year-old child. He earned a bachelor's degree in 2008 and a master's degree in 2013. While in undergraduate college, he obtained an internship position with a defense contractor and completed his first security clearance application (SCA) in March 2007 (2007 SCA). He subsequently received an interim security clearance that he held until October 2007. (Tr. 16-21; GE 3, GE 5)

During the summer of 2008, Applicant experimented with marijuana two to five times while working for a defense contractor in another internship program. After returning to college in the fall of 2008, he continued to use marijuana two to five times until he graduated in December 2008. Between December 2008 and January 2009, Applicant used marijuana multiple times. In February 2009, he started a full-time position with the defense contractor with whom he had his first internship. In June 2010, he submitted his second SCA (2010 SCA). He did not disclose his past marijuana use in the 2010 SCA or during a subsequent interview with a government investigator in 2010. In November 2010, he obtained a security clearance. He worked for that contractor until January 2014, when he started employment with his current employer. Between February 2009 and January 2014, he used marijuana twice. After starting employment with his current employer, Applicant used marijuana once in August 2014. He has not used it since then. (Tr. 22-29; GE 2, GE 4)

In September 2015, Applicant submitted his third SCA (2015 SCA) for purposes of upgrading his security clearance. He did not disclose his past marijuana use in it. (Tr. 30; GE 1) In March 2016, a government investigator interviewed Applicant. During the interview, Applicant confirmed that he had not used illegal drugs. Applicant subsequently requested another interview to discuss information about his master's thesis and he intended to disclose his past marijuana use. At the second interview on April 5, 2016, he became anxious and did not disclose his marijuana use. Because his past deceptions regarding his use of marijuana continued to upset him, he decided he would disclose the information during his upcoming polygraph. (Tr. 30-33, 42-44)

On April 8, 2016, Applicant was scheduled to participate in a polygraph. Based on his nervous demeanor, the polygraph examiner asked Applicant why he was worried. Applicant then voluntarily told the examiner about his history of marijuana use. After completing the polygraph, Applicant contacted the government investigator and asked for a third interview. On April 11, 2016, Applicant fully disclosed the extent of his illegal marijuana use to the government investigator. (Tr. 33-34; GE 4)

After the above interview, Applicant also disclosed his past marijuana use in a required quarterly security report that was sent to his facility security officer (FSO) in May 2016. He had not disclosed it in any previous security updates. Applicant's supervisor is now aware of this investigation, but Applicant is not certain that he knows that Applicant used marijuana while holding a security clearance. (Tr. 36-38)

Applicant stated that he initially justified using marijuana while holding a security clearance because he did not think it was important or necessary to disclose. (Tr. 28) After failing to disclose that adverse information, Applicant said that he "was stuck in a chain reaction and did not understand how or have the drive to get out of it." (Tr. 42) He rationalized his actions by telling himself that his non-disclosure was not significant, though he knew that to be false. (Tr. 46)

Applicant no longer associates with friends who use marijuana. (AE A) The last time he was in a situation in which marijuana was being used was in August 2015. (Tr. 39-40) He understands the gravity of his errors and the "detrimental effects" it has had on his life. (Tr. 47) He signed a letter of intent not to use illegal drugs in the future and agreed to an automatic revocation of his clearance if he was found to have ingested illegal substances. (Answer)

Applicant repeatedly expressed remorse and shame over his dishonesty, beginning in April 2016, when he decided to disclose his falsifications. Since then, he participated in a drug assessment that determined he did not have a substance abuse problem or was in need of treatment. He has counseled with his priest and members of his church. His family and friends are aware of the falsifications. His wife is supportive of Applicant and his commitment to honesty. Applicant has diligently focused on changing his life for the better through his work with the church and community. (Tr. 43-44, 54-58) He admitted that he failed to disclose his marijuana use for six years because he was afraid to lose his employment. He now relies on his wife and other people to help him remain accountable for his decisions. (Tr. 61, 66)

Applicant submitted numerous letters of recommendations from colleagues and members of the public. The authors attest to his accomplishments, strong character, and dedication to his job and family. He provided many certificates of college and work-related awards and accomplishments. (Answer; AE B)

### **Policies**

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), which became effective within the DOD on June 8, 2017.

When evaluating an applicant's suitability for national security eligibility, the administrative judge must consider the AG. In addition to brief introductory explanations

for each guideline, the AG list potentially disqualifying conditions and mitigating conditions, which are to be used in evaluating an applicant's national security eligibility.

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. 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.

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. I have not drawn inferences based on mere speculation or conjecture.

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.15 says that an "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."

A person applying for national security eligibility 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 national security eligibility. 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 or sensitive information.

Finally, as emphasized in Section 7 of Executive Order 10865, "[a]ny 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." See *a/so* Executive Order 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 describes the security concern involving drug involvement and substance misuse as follows:

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 sets out conditions that could raise a security concern. Two may be disqualifying:

(a) any substance misuse (see above definition); and

(f) any illegal drug use while granted access to classified information or holding a sensitive position.

Applicant admitted that he illegally used marijuana many times between June 2008 and August 2014. He used it after obtaining a security clearance in November 2010. The evidence is sufficient to raise the above disqualifying conditions.

Conditions that could mitigate drug involvement and substance misuse security concerns are provided in AG ¶ 26. The following two are potentially applicable:

(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 taken 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.

The evidence establishes mitigation under AG ¶¶ 26(a) and 26(b)(1), (2), and (3). The last time Applicant illegally used marijuana was in August 2014, more than three

years ago. His priorities have changed since then, and he now focuses on work, family and community. Applicant's wife is supportive and has helped him resolve the issues that contributed to his lapse in judgment. He no longer associates with friends or people who use marijuana. He provided a statement that he does not intend to use illegal drugs in the future, and acknowledged that additional use would be a basis for an automatic revocation of his security clearance. He repeatedly admitted that he made a serious mistake in using marijuana. The likelihood that he will engage in similar conduct is minimal. He continues to perform well at his job, as confirmed by colleagues and his employer.

## **Guideline E: Personal Conduct**

AG ¶ 15 explains the security concerns relating to 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 or sensitive information.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following two 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

(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.

Applicant deliberately failed to disclose past marijuana use on two e-QIPs, to government investigators during three interviews, and in annual security updates from 2010 to 2016. He falsified material facts during those three interviews with government investigators. The evidence established the disqualifying condition under AG ¶ 16(b).

AG ¶ 17 provides conditions that could mitigate security concerns. Two may potentially apply:

(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.

The evidence does not establish mitigation under AG ¶¶ 17(c) or 17(d). Over the course of six years, Applicant's repeatedly and deliberately failed to disclose requested information to the Government about his past illegal use of marijuana. That pattern of behavior is not a minor offense. His disclosure of the negative information occurred about two years ago, and happened on the day he was scheduled to give a polygraph. Although he has expressed deep remorse and has been candid about his past conduct, insufficient time has passed to determine whether similar conduct will recur or to find that he has gained a deep understanding of the reasons underlying his conduct.

### **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(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.

According to AG ¶ 2(c), the ultimate determination of whether to grant national security eligibility must be an overall commonsense judgment based upon careful consideration of the applicable guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all facts and circumstances surrounding this case. Applicant is a well-educated, intelligent and accomplished employee. Co-workers, friends, and family attest to his character, successes, and hardworking nature. After listening to his testimony and observing his demeanor, I found him to be candid and honest. He displayed remorse over his past deceptions and the ramifications they have had in his life. Since disclosing the past drug use in April 2016, he has matured and demonstrated a change in his character. While many of those factors sufficiently mitigated the drug involvement security concerns, they are insufficient to mitigate the falsification allegations that spanned six years. Overall, the

evidence raises 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 the Directive, are:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraphs 1.a and 1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraphs 2.a through 2.e:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the interests of national security to grant Applicant access to classified information. National security eligibility is denied.

SHARI DAM  
Administrative Judge