



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



In the matter of:

ISCR Case No.17-01522

Applicant for Security Clearance

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel

For Applicant: *Pro se*

03/13/2018

**Decision**

Mason, Paul J., Administrative Judge:

Applicant has not mitigated his recent marijuana use. Though it was only three years in duration, he used the drug weekly during the period. He knowingly omitted his drug history from his 2016 security clearance form. He has not mitigated the personal conduct guideline either. Eligibility for access to classified information is denied.

**Statement of the Case**

Applicant signed an Electronic Questionnaire for Investigations Processing (e-QIP, Item 3) on January 4, 2016. He provided an interview (PSI, Item 5) to an investigator from the Office of Personnel Management (OPM) on September 15, 2016. On May 25, 2017, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under drug involvement and substance misuse (Guideline H) and personal conduct (Guideline E). This case is adjudicated in accordance with 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 1992), as

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amended (Directive); and the adjudicative guidelines (AG) dated June 8, 2017. These guidelines superseded the former guidelines that had been in effect since September 1, 2006. My decision in this case would be the same under the 2006 or 2017 guidelines.

On July 7, 2017, Applicant furnished a notarized answer to the SOR. The Government sent a copy of the Government's File of Relevant Material (FORM), the Government's evidence in support of the allegations of the SOR, to Applicant on September 28, 2017. Applicant received the FORM on October 11, 2017. The FORM recommended he file objections, submit additional information or provide explanations within 30 days of receiving the FORM. Applicant's response was due on November 10, 2017. DOHA received no response. I was assigned the case for decision on January 17, 2018.

## **Rulings on Evidence**

In a footnote on the second page of the FORM, the Government advised Applicant that he could make corrections to the November 17, 2015 PSI (Item 5) to improve the exhibit's clarity and accuracy. Alternatively, the Government advised if he objected to the entire PSI, it would not be entered into evidence. Applicant did not object, and the exhibit is admitted into evidence. See, E3.1.20. of DOD Directive 5200.6, page 52.

## **Findings of Fact**

The SOR alleges drug involvement and personal conduct. Applicant admitted using marijuana between 2012 and 2015 (SOR 1.a). Though he did not state directly that he used the drug while holding a security clearance during the period, the record reflects that he has held a security clearance since 1981. I find that he used the drug while holding a security clearance. In response to SOR 1.b, Applicant admitted using marijuana in the 1980s, but claimed the drug use occurred before he held a security clearance. Applicant admitted that he falsified his January 4, 2016 e-QIP (SOR 2.a). He explained that he omitted the information because he wanted to explain his use in person (to a government investigator) and to preserve his integrity. (Response to SOR)

Applicant is 60 years old. He has been married since 1983. He has a 40-year-old son from his first marriage. A defense contractor has employed him as senior security architect since January 2012. His previous employment has been primarily in network security. Applicant joined the United States (U.S.) Army in January 1975. He was on active duty until 1978, when he transferred to the Army Reserve. Upon receiving his commission in December 1983, Applicant returned to active duty until his honorable discharge in December 2000. Applicant received a bachelor's degree in English in 1983 and a master's degree in English in 1992. He was an assistant professor at a military academy from 1992 to 1996. He has held a security clearance since September 1981. (Item 3 at 10-21; Item 5 at 8)

SOR 1.a – Applicant admitted using marijuana between 2012 and 2015, while holding a security clearance. His brother gave him the marijuana and he used small quantities with his wife once a week. Surprisingly, though he smoked the drug weekly for three years, he could not remember when he stopped use in 2015 (a year before he provided his September 2016 PSI), and he could not remember the average amount used on each occasion. He stopped because continued use was “not worth the effort” and he was ready to stop. He enjoyed the effects of the drug, but was never dependent. Applicant never tested positive for marijuana use. The drug had no impact on his finances, his judgment, or his ability maintain a confidence. He does not intend to use marijuana in the future. (Item 3 at 11)

SOR 1.b – Applicant used marijuana in the 1980s, but there is insufficient evidence to find that he used while holding a security clearance. In his July 2017 answer to the SOR, he claimed that the use occurred before he had a security clearance. In a January 1998 PSI, he indicated that for a six-month period in the 1980s, he used the drug once or twice a week with a classmate. With Applicant’s monetary contributions, his classmate would purchase the marijuana. In his September 2016 PSI, Applicant confirmed the excerpt from his January 1998 PSI. During the early 1980s, he was in college and in the Army Reserve between September 1980 and 1983. His drug use would have to occur between his September 1980 enrollment in college and the granting of his security clearance in September 1981. (Item 4 at 2, 8; GE 5 at 12)

SOR 2.a – On January 4, 2016, Applicant executed an e-QIP (Item 3). In response to Section 23 (Illegal use of drugs or drug activity), he indicated he had not engaged in illegal drug use in the last seven years. In addition, he indicated that he never used drugs while possessing a security clearance.<sup>1</sup> In his September 2016 PSI, he volunteered his recent marijuana use (2012 to 2015) occurred while holding a security clearance. He explained that embarrassment was the reason he omitted the information on his 2016 e-QIP.

## **Policies**

The objective of the security clearance process is to employ a common-sense assessment of a person’s life to make a determination regarding a person’s eligibility for a security clearance. The adjudicative process is a careful weighing of a number of variables referred to as the “whole-person” concept, viewing a person by the totality of his or her acts, omissions, motivations and various other variables. Each case must be evaluated on its own merits, taking into consideration all relevant circumstances, and

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<sup>1</sup> However, in the September 2016 PSI, he did not reveal his 1980 marijuana use until the OPM investigator showed him his 1997-PSI admitting the use. Applicant also denied illegal drug use in a security clearance application (SCA) that he signed and certified in November 1997. The unalleged omissions will be addressed to determine whether Applicant has demonstrated successful rehabilitation and to provide evidence in the whole-person section of this decision. (Item 4 at 8)

applying sound judgment, mature thinking, and careful analysis. In all adjudications, the protection of the national security is the paramount consideration. Therefore, any doubt concerning personnel being considered for access to classified information is resolved in favor of national security.

## **Analysis**

### **Drug Involvement<sup>2</sup> and Substance Misuse**

24. 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.<sup>3</sup> *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.

25. Conditions that could raise a security concern and may be disqualifying include:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (f) any illegal drug use while granted access to classified information or holding a sensitive position.

In the 1980s, Applicant used marijuana with a classmate on a regular basis of once or twice a week for a six-month period. (SOR 1.b) He did not purchase the drug, but he provided money to his classmate to purchase the drug. From September 1980 to December 1983, he was attending college while in the Army Reserve. In view of his claim that he used marijuana before he received a security clearance in 1981, then he must have used the drug while in college between September 1980 and 1981. Though he did not have a security clearance during the short time period, he exercised poor judgment by using

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<sup>2</sup> Reference Appendix B of this document regarding statutory requirements contained in Public Law 110-118 (Bond Amendment) applicable to this guideline.

<sup>3</sup> *Federal Controlled Substances Act* (title II of the Comprehensive Drug abuse Prevention and Control Act) 21U.S.C. 801 -971 (1970)

drugs while serving in the U.S. military. From 2012 to 2015, Applicant used marijuana with his wife on a weekly basis. (SOR 1.a) AG ¶ 25(a) applies. In order to use marijuana, Applicant had to possess the drug, invoking application of AG ¶ 25(c). Applicant's illegal use of marijuana occurred while he held a security clearance. AG ¶ 25(f) applies.

26. Conditions that could mitigate security concerns include:

(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.

Applicant's marijuana use for a six-month period in 1980 occurred in a college setting when he was exposed to peer group pressure. There is no evidence of any drug use for more than 30 years. However, in 2012, Applicant was over 50 years old and had a security clearance over 30 years. Resuming illegal drug use under those circumstances shows poor judgment and unreliability. AG ¶ 26(a) applies to Applicant's drug use in the 1980s. The mitigating condition does not apply to his illegal marijuana use in 2012-2015, because of the recency of the use and his deliberate falsifications of marijuana use in his November 1997 SCA and his January 2016 e-QIP.

Applicant admitted his drug misuse in the 1980s and in 2012-2015, with the purpose of preserving his personal integrity. However, given his most recent three-year drug use, Applicant has the burden of showing a pattern of abstinence. He has not explained how he has abstained from situations with his wife who used marijuana with him for three years. He has presented no evidence showing whether he has severed ties with his drug-supplying brother. Applicant's falsifications of his 1997 SCA and his 2016 e-QIP, reduce the weight given to his stated intention not to use marijuana in the

future. Regarding application of AG ¶ 26(b), Applicant receives some mitigation under AG ¶ 26(b)(2) even though the statement is unsigned and there is no acknowledgment that future drug involvement is grounds for a revocation of his security clearance.

## **Personal Conduct**

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. Of special interest is any failure to cooperate or provide truthful and candid answers during national security investigative or adjudicative processes. The following will normally result in an unfavorable national security eligibility determination, security clearance action, or cancellation of further processing for national security eligibility:

16. Conditions that could raise a security concern and may be disqualifying include:

(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;

Providing false information during a security clearance investigation raises a security concern because it shows that an applicant may not possess the necessary qualifications to safeguard classified information at all times and in all places. However, not every omission, concealment, or falsification of material information constitutes a falsification under AG ¶ 16(a). A falsification must be deliberate and committed with the intent to deceive.

When Applicant completed his e-QIP in January 2016, he did not disclose his illegal marijuana use that had stopped within the preceding year. He admitted in his September 2016 PSI that he did not disclose the drug use because he was embarrassed. In his answer to the SOR, he admitted that he falsified the January 2016 e-QIP because he wanted to speak to someone about his drug use rather than furnish information in an SCA. I conclude that Applicant deliberately concealed the drug use information with an intent to deceive the Government. AG ¶ 16(a) applies.

The following conditions under AG ¶ 17 are potentially applicable:

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

(c) the offense is 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, reliability, trustworthiness, or good judgment.

During the September 2016 PSI, Applicant voluntarily reported his drug use between 2012 and 2015, before he was confronted with the facts. Full disclosure of his drug use between 2012 and 2015 would normally afford Applicant full credit under AG ¶ 17(a). However, in the same PSI, Applicant did not disclose his illegal marijuana use in the 1980s until he was confronted with the 1998 PSI, and he falsified an SCA in 1997. The mitigating condition has only limited application.

AG ¶ 17(c) also has no application because Applicant concealed relevant information from the Government during his security clearance investigation. His dishonest conduct deprives the Government from making an informed decision regarding an applicant's security clearance qualifications. His illegal marijuana use did end until 2015, less than a year before he completed his e-QIP. His knowing decision to falsify information casts a cloud over his trustworthiness and judgment.

### **Whole-Person Concept**

Under the whole-person concept, the administrative judge must evaluate an appellant's eligibility for a security clearance by considering the totality of the appellant'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 guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions of the guidelines for drug involvement and personal conduct. I have also considered the facts and circumstances in the context of the nine factors or the whole-person concept.

Applicant, 60 years old, has been married since 1983, the same year he received a master's degree in English and his commission in the U.S. Army. He was an assistant professor at a military academy from 1992 to 1996. He has possessed a security clearance since 1981.

On the other hand, the evidence against Applicant's security clearance application is more substantial. He mitigated his marijuana use in the 1980s because of his age and the peer pressure present in college. However, he deliberately omitted his drug use on an SCA in 1997. Applicant resumed using marijuana on a weekly basis from 2012 to 2015, while holding a security clearance that he had since 1981. In the September 2016 PSI, even though he self-reported his most recent drug history, he did not divulge his 1980s drug use until confronted with his 1998 PSI. Further, in his 2016 PSI, he could not remember when he stopped using marijuana in 2015. More surprisingly is his inability to remember the average amount he ingested on a weekly basis when he used the drug at least 50 times a year for three years. Having weighed the evidence under the specific conditions and in light of the whole-person, Applicant's evidence is insufficient to mitigate the security concerns remaining under the drug involvement and personal conduct guidelines.

### **Formal Findings**

Guideline H (Drug Involvement):	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Guideline E (Personal Conduct):	AGAINST APPLICANT
Subparagraph 2.a:	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 security interests of the United States to grant Applicant eligibility for access to a security clearance. Eligibility for access to classified information is denied.

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Paul J. Mason  
Administrative Judge

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