



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 17-03552

**Appearances**

For Government: Carroll J. Connelley, Esq., Department Counsel  
For Applicant: *Pro se*

08/10/2018

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

**Statement of the Case**

On January 18, 2018, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline E (Personal Conduct).<sup>1</sup> In a response signed on February 5, 2018, he admitted all allegations and requested a determination based on the written record. On April 16, 2018, the Government issued a File of Relevant Material (FORM) with three attachments ("Items"). Applicant offered no response to the FORM. The case was assigned to me on July 26, 2018. Based on my review of the case file and submissions, I find Applicant failed to mitigate security concerns.

**Findings of Fact**

Applicant is a 24-year-old pipe designer who, following several months of unemployment, has worked for the same defense contractor since June 2016. He graduated from high school in 2013. Applicant is presently single and has no children.

Applicant admitted that he used marijuana, an illegal drug, for a period of about five years. He started using the drug as a teen in about 2011. He found the drug to be

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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 June 8, 2017.

calming, relaxing, and something to do when he was bored. (FORM, Item 3, Interview at 6) In April 2014, the year after he graduated from high school, he was fired from a fast food restaurant for smoking marijuana while on a break from work.

Applicant also admitted buying marijuana with varying frequency from about 2011 to 2015. He always purchased the drug from friends, usually in amounts costing about \$20. He generally used the drug with friends or his brother. Applicant's marijuana use was known by his parents, family, and friends. (FORM, Item 3, Interview at 6)

In his SOR Response, (at FORM, Item 1) Applicant wrote that he quit using the drug after this 2014 incident; elsewhere (at FORM, Item 3, Interview) it is noted that he told an investigator that he ceased using the drug in "late 2015." He quit using marijuana as he began thinking about his future. He told an investigator in September 2017 that he has no intention of using the drug again.

The facts concerning his marijuana use became further complicated when he completed his March 2016 security clearance application (SCA). In that document, Applicant answered "no" in response to:

**Section 13C – Employment Record** – Have any of the following happened to you **in the last 7 years** at employment activities that you have not previously listed . . . . Fired from a job? Quit after being told you would be fired? Have you left a job by mutual agreement following charges or allegations of misconduct? Left a job by mutual agreement notice of unsatisfactory performance? Received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as a violation of security policy?

**Section 23 – Illegal Use of Drugs or Drug Activity: Illegal Use of Drugs or Controlled Substances** – **In the last 7 years**, have you illegally used any drugs or controlled substances? Use of a drug or controlled substance includes injecting, snorting, inhaling, swallowing, experimenting with or otherwise consuming any drug or controlled substance?

**Section 23 – Illegal Use of Drugs or Drug Activity: Illegal Drug Activity** – **In the last seven (7) years**, have you been involved in the illegal purchase, manufacture, cultivation, trafficking, production, transfer, shipping, receiving, handling or sale of any drug or controlled substance?

Applicant did not report his marijuana use on his March 2016 SCA for two reasons. First, he thought "it was no big deal" and because "marijuana use is now legal in [his home state] and was decriminalized." (FORM, Item 3, Interview at 6) Second, he "feared his past drug use would disqualify him from employment opportunities." (FORM, Item 3, Interview at 6)

## **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 for evaluating an applicant's eligibility.

These guidelines are not inflexible rules of law. They are to be applied in conjunction with the factors listed in the adjudicative process. The adjudicative goal is a fair, impartial, and commonsense decision. Under the AG, the entire process is a conscientious scrutiny of variables comprising the "whole-person concept." All available, reliable information about the person in making a decision must be considered. The protection of the national security is the paramount consideration. Any doubt concerning a candidate will be resolved in favor of the national security.

Under the Directive, the Government must present evidence to establish controverted facts alleged in the SOR. 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 seeking access to classified information enters into a fiduciary relationship with the Government based on trust and confidence that transcends beyond normal duty hours. The Government reposes a high degree of trust and confidence in those to whom it grants access to classified information. Decisions include consideration of the possible risk the applicant may fail to safeguard such information.

## **Analysis**

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 security concerns and may be disqualifying. Here, Applicant admitted he used and purchased marijuana with varying frequency from approximately 2011 to 2015. He also admitted that he was terminated from a job in about April 2014 for smoking marijuana on a work break. Moreover, he admitted concealing his past drug use by answering "no" to three SCA questions inquiring about his employment record and past illegal drug use occurring in the preceding seven years. Therefore, the following disqualifying condition applies:

AG ¶ 16(a) deliberate omission, concealment or falsification of relevant facts from any personnel security questionnaire, personal history statement, or form used to conduct investigations, determine employment

qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities.

Under AG ¶ 17, conditions that could mitigate security concerns include:

AG ¶ 17(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;

AG ¶ 17(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by advice of legal counsel or of a person with professional responsibilities for advising or instructing the individual specifically concerning security processes. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

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, trustworthiness, or good judgment;

AG ¶ 17(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; and

AG ¶ 17(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

The disqualifying condition potentially applicable here would be AG ¶ 17(c), AG ¶ 17(d), and AG ¶ 17(e). Here, AG ¶ 17(c) does not apply because the use of an illegal drug is a serious matter. Applicant's past drug use might have been mitigated and dismissed as a youthful indiscretion. However, the fact that he does not remain consistent as to his quit date for drug use is particularly troubling, as is the fact that he purposefully endeavored to conceal his past drug use as recently as his 2017 investigative interview. Such issues sustain doubts related to his reliability, trustworthiness, and good judgment. The fact Applicant failed to provide documentary evidence of counseling or other positive steps taken to help assure that he remains drug-free going forward obviates application of AG ¶ 17(d). At best, AG ¶ 17(e) applies in part because Applicant now seeks to correct and amend the record by providing the truth regarding the allegations raised.

## **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 relevant circumstances. The administrative judge should consider the

nine adjudicative process factors listed in the AG. 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 incorporated my comments under the guideline at issue in my whole-person analysis. Applicant is a 24-year-old high school graduate currently working as a pipe designer. A bachelor with no children, he started using marijuana in secondary school. A year after high school graduation, he was fired from a service industry position after he was caught using marijuana on a work break. He sought to conceal both his dismissal and his drug use when answering relevant questions on his March 2016 SCA. As well, he has provided inconsistent answers indicating that he stopped using the drug either after his 2014 dismissal or in late 2015.

Had Applicant honestly volunteered the truth regarding his firing and drug use, this decision may have ended differently. Under these circumstances, however, insufficient time has passed for him to demonstrate his ability to abstain from drugs. Moreover, in light of the evidence offered, insufficient time has passed to demonstrate the appropriate candor and reliability expected from one granted a security clearance. Personal conduct security concerns remain unmitigated.

### **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
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Subparagraphs 1.a-1.f:	Against Applicant
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### **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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Arthur E. Marshall, Jr.  
Administrative Judge