



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 14-04453
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah A. Minster, Esquire  
For Applicant: *Pro se*

02/29/2016

**Decision**

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

Applicant’s use of illegal drugs through at least March 2014, after being granted a security clearance in October 2012, continues to pose security concerns under Guideline H. Applicant also failed to mitigate Guideline E security concerns related to his denial of drug use in a 2012 security clearance application (SCA). Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On March 27, 2015, 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). The action was taken under 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 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In an undated response, Applicant admitted all allegations set forth in the SOR and requested a determination based on the record. On July 21, 2015, the Government mailed Applicant a File of Relevant Material (FORM) that contained four attachments. Applicant timely responded to the FORM. The case was assigned to me on October 9,

2015. Based on my review of the case file and submissions, I find Applicant failed to mitigate drug involvement and personal conduct security concerns.

### **Findings of Fact**

Applicant is a 25-year-old male who was awarded a bachelor's degree in May 2012. He is currently employed by the security office of a defense contractor. He has never served in the United States military. He has never married and has no children. Applicant completed SCAs in May 2014 and September 2012. He denied ever having used illegal drugs in those SCAs. He was granted a security clearance in October 2012.

From 2005 until at least March 2014, Applicant purchased and used marijuana at various times. This started when he was in high school and ended after he graduated from college in mid-2012. In the interim, in March 2012, marijuana was discovered in a friend's collegiate apartment where Applicant was playing cards. The discovery led to disciplinary probation for one semester, which was completed without further incident.

Shortly after graduation, in September 2012, Applicant started work for a defense contractor. At this point Applicant stated he used marijuana quarterly. He was granted a security clearance in October 2012, after submitting a September 2012 SCA on which he "decided not to come forth with the right information" and denied having used illegal drugs in the preceding seven years. (Response to the FORM) Elsewhere, he wrote that he did not consider marijuana to be an illegal drug. (FORM, Item 4, at 10) He is sorry about not having been forthcoming originally. (Response to the FORM)

Applicant again denied having used drugs in the preceding seven years on his May 2014 SCA. On that same form, he also denied having used drugs since receiving a security clearance in October 2012. During a June 2014 interview, he declared his intent to not use illegal drugs in the future, although he noted he was unaware whether his associates still used illegal drugs. At least one of his friends still does. Applicant has never sought treatment for his drug abuse.

### **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(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. Likewise, I have not drawn inferences grounded on mere speculation or conjecture.

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. Decisions include, by necessity, consideration of the possible risk the applicant may deliberately or inadvertently fail to safeguard classified information.

Section 7 of Executive Order 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**

Use of an illegal drug or misuse of a prescription drug can raise questions about an individual’s reliability and trustworthiness, both because it may impair judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations. (AG ¶ 24) “Drugs” are defined as mood and behavior altering substances and include drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended, (*e.g.*, marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens) and inhalants and other substances. (AG ¶ 24(a)(1-2)) “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. (AG ¶ 24(b))

Here, Applicant admits using and purchasing illegal drugs for a protracted period of time, and to have used them while maintaining a security clearance. This is sufficient to raise Drug Involvement Disqualifying Conditions AG ¶ 25(a) (*any drug abuse*), 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*), and 25(g) (*any illegal drug use*

*after being granted a security clearance*). With disqualifying conditions raised, the burden shifts to Applicant to mitigate security concerns.

Applicant intentionally used and purchased illegal drugs until at least March 2014, less than two years ago. Little is known of his drug use between 2005 and 2014 in terms of circumstances, frequency, or amount. It is only explained that he used it quarterly shortly before he claims he quit using marijuana in March 2014. His only excuse for his illegal use of the drug was that he was unaware that marijuana was illegal. The paucity of information, especially when his period of abstinence is less than two years, makes it difficult to discern whether Applicant has sufficiently rehabilitated himself.

Moreover, there is no evidence Applicant has ceased contacts with his cohorts or stopped going to gatherings where illegal drugs are available or shared. At least one of his friends still uses marijuana. Furthermore, he showed poor judgment in not immediately disclosing his past drug use on his SCAs. Given these facts and the brevity of his period of abstinence, Drug Involvement Mitigating Conditions AG ¶ 26:

- (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) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence, and (4) a signed statement of intent with automatic revocation of clearance for any violation

do not apply.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining 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 information. Of special interest is any failure to provide and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

Applicant's continued drug involvement after being granted several security clearances demonstrates a lack of reliability and good judgment, implicating Personal Conduct Disqualifying Condition AG 16(e) (*personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress*).

AG ¶ 17 provides seven personal conduct mitigating conditions:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;
- (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;
- (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 caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress;
- (f) the information was unsubstantiated or from a source of questionable reliability; and
- (g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant has not mitigated Guideline E concerns. He withheld information about his drug use on his SCAs. To claim that he did not know marijuana was illegal stretches credulity. When, elsewhere in his documents, he admits he lied on his SCA, he exposes the high level of poor judgment he exercised at the time. The most rehabilitative thing he has done was come forward with the truth, albeit well after he completed his SCAs. Given these considerations and the scant evidence of record, I find none of the available mitigating conditions apply.

SOR allegation 2.b claims Applicant falsified facts on his September 2012 SCA when he denied using drugs while maintaining a security clearance. Applicant was not granted a security clearance until October 2012, one month later. Consequently, this allegation should be found in Applicant's favor.

## 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 at AG ¶ 2(a). 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 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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is a 25-year-old male who was awarded a bachelor's degree in May 2012. He is currently employed by a security office of a defense contractor. He is single and has no children. He completed SCAs in May 2014 and September 2012 in which he denied having used illegal drugs in the preceding seven years, despite the fact he used marijuana from 2005 until March 2014.

With regard to Applicant's drug involvement, the scant available information provides very little in terms of mitigating circumstances. Based on the information there is, Applicant failed to meet his burden in this case under Guideline H.

As for Guideline E, Applicant falsified material facts when he denied having used illegal drugs in the preceding seven years on his 2012 and 2014 SCAs. However, the September 2012 SCA was completed before Applicant was granted a security clearance in October 2012. Therefore, his answer on the 2012 SCA was correct, leading to a finding in favor of Applicant for SOR allegation 2.b. However, it is noted that he did falsify material facts when he denied using drugs while maintaining a security clearance when he completed his 2014 SCA. Consequently, drug involvement and personal conduct security concerns remain unmitigated. Security 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 H:	AGAINST APPLICANT
Subparagraphs 1.a-1.c	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a	Against Applicant
Subparagraph 2.b	For Applicant
Subparagraph 2.c	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 a security clearance. Eligibility for access to classified information is denied.

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Arthur E. Marshall, Jr.  
Administrative Judge