



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



In the matter of: )  
)  
) ISCR Case No. 14-05238  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

October 14, 2015

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the Drug Involvement and Personal Conduct security concerns. Applicant used marijuana, with varying frequency, from 1977 to February 2012, including use after receiving a position of public trust in 2010. He intentionally omitted the full extent of his illegal drug use on his May 2005 and October 2009 questionnaires for public trust positions. Eligibility for access to classified information is denied.

**Statement of the Case**

On July 5, 2012, Applicant submitted an electronic Questionnaires for Investigations Processing (e-QIP). On March 13, 2015, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 after September 1, 2006.

Applicant responded to the SOR (Answer) on April 11, 2015, and requested a hearing before an administrative judge. The case was assigned to me on July 16, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on July 21, 2015, and the hearing was convened as scheduled on August 18, 2015. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 through 4, which were admitted without objection. Applicant offered no exhibits. Applicant testified on his own behalf. DOHA received the hearing transcript (Tr.) on August 26, 2015.

### **Findings of Fact**

Under the guideline for Drug Involvement, SOR ¶ 1.a alleged that Applicant used marijuana, with varying frequency, from 1977 to at least February 2012. SOR ¶ 1.b alleged that he used marijuana after he applied for a position of trust in 2005, after he applied for a security clearance in 2009, and after he was granted a security clearance in 2010. In his Answer and during his testimony, Applicant admitted to SOR allegation ¶ 1.a, but denied ¶ 1.b.

Under the guideline for Personal Conduct, the SOR alleged that Applicant: falsified material facts relating to his police record on his October 2, 2009 e-QIP (¶ 2.a); falsified material facts relating to his illegal drug use on his October 2, 2009 e-QIP (¶ 2.b.); was arrested in July 2007 for driving under the influence of alcohol/drugs (¶ 2.c.); falsified material facts relating to his illegal drug use on his May 31, 2005 e-QIP (¶ 2.d.); and was cited for numerous traffic violations between 1987 and 1997 (¶ 2.e through 2.i.). Applicant's marijuana use, and use of it while holding a security clearance were also alleged as a concern under Personal Conduct (¶ 2.j.). Applicant admitted ¶¶ 2.c, 2.g, and 2.i. He denied ¶¶ 2.a, 2.b, 2.d, 2.e, 2.f, 2.h, and 2.j. (Answer; Tr. 9-12.)

Applicant is a 53-year-old employee of a government contractor. He has worked for his present employer for five years. He has worked for various defense contractors since 1993. He is married and has a total of eight adult children and step-children, and one minor child. (GE 1; GE 2; GE 3; Tr. 23-25, 33-34.)

Applicant testified he first used marijuana when he was in seventh grade. He said he used it occasionally on weekends at parties. He estimated at hearing that he used marijuana 20 to 30 times in his life. He claimed that he did not use marijuana for long periods, including 1980 to 1985, and 2001 to 2006. He used marijuana once in 2006, and then did not use it again until 2012. Applicant used marijuana on one occasion in February 2012, after his mother passed away. He testified that he will not use marijuana in the future. (Tr. 25-26, 35-37, 53.)

Applicant completed a Public Trust Position Application on May 31, 2005. On that form, he was asked in question 17, "In the last year, have you illegally used any controlled substance . . .?" and he answered, "No." He was granted a position of trust in approximately 2008. (GE 3.)

Applicant completed a Questionnaire for Public Trust Position on October 2, 2009. He was again asked if he had illegally used any controlled substances in the last year, and he answered, "No." That form also asked him, "In the last 7 years, have you been arrested for, charged with, or convicted of any offense(s)?" Applicant answered, "Yes," and disclosed in "July 2005" he was "arrested/fined" and listed the code section for DUIs in his state. He identified no other arrests or charges. (GE 2.)

When Applicant completed his e-QIP on July 5, 2012, Applicant answered the questions about his drug use and his criminal history differently. Under the question regarding illegal use of drugs or drug activity, he disclosed, "I used to Smoke Marijuana, and the last time I have smoked any was back in Feb[ruary] 2012." On the e-QIP, he identified that he first used marijuana in 1977 and "smoked only on the weekends, and it was about twice a month. I have stopped when my mother died in [February] of 2012." Under the section for Police Record, Applicant disclosed a July 2007 driving under the influence (DUI) conviction and a July 1990 burglary charge that was later reduced to a trespassing conviction. (GE 1.)

Applicant admitted, during an October 16, 2012 subject interview, to a total of five DUI arrests and convictions, four occurring in approximately 1985 to 1986, and the fifth occurring in 2007. As a result of four DUIs between 1985 and 1986, he served eight months in jail. He was then placed on probation for three years. While on probation, he was arrested and charged with burglary after he entered the wrong house drunk, and passed out. The burglary charge was reduced to trespassing and he was found guilty. He also received a concurrent two-year incarceration sentence for the violation of probation on his 4<sup>th</sup> DUI. He was incarcerated from July 1990 to February 1991, after having been released from jail early due to good behavior. He further disclosed a 1981 battery conviction. Applicant told the interviewing agent that he failed to list these arrests because he misunderstood the directions on the e-QIP.<sup>1</sup> (GE 4; Tr. 45-49.)

Applicant also discussed his marijuana use during the October 16, 2012 subject interview. The report of investigation from that interview, which Applicant certified as accurate and complete on October 24, 2014, stated:

From 7/1977-2/2012 Subject smoked marijuana on weekends twice monthly. Subject would normally smoke marijuana with random friends at their houses. Subject does not want to provide their names or addresses as he no longer associates with them and does not want trouble for them. Subject would usually smoke a bowl from a pipe or bong each sitting and never purchased marijuana – his friends always had it. Source of the marijuana and the exact amounts is not known. Smoking marijuana made subject feel relaxed.

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<sup>1</sup> Falsification of his July 5, 2012 e-QIP is not alleged in the SOR. Hence, it will not be considered in an analysis of disqualifying conditions, but may be considered in the analysis of mitigating conditions and whole person.

Subject did not smoke marijuana while holding a security clearance. This is Subject's first security clearance. When confronted with a 2007 NAC and 2010 NACI, Subject still stated this was his first security clearance and he has never used marijuana while having a clearance. (GE 4.)

Applicant testified that when he spoke to the investigator for his subject interview, he was speaking about the frequency of his use when he started using marijuana. He did not offer clarifications when he adopted that statement because he was not paying attention to the details. (TR. 53-54.)

Applicant testified he has never possessed a security clearance. (Tr 24.) The Government's evidence only establishes that Applicant applied for a position of public trust in 2005 and 2009. There is no documentation in evidence to substantiate the claim that Applicant applied for a security clearance in 2009, and was granted it in 2010. He was, however, granted a position public of trust in 2008. (GE 1; GE 2; GE 3; GE 4.)

Applicant denied: the May 1997 charges of failure to stop at a stop sign, driving on a suspended license, and failure to appear (SOR ¶ 2.d); the May 1997 failure to stop at sign, driving on suspended license, and failure to appear (SOR ¶ 2.e); the September 1991 probation violation and leaving a vehicle on the side of roadway (SOR ¶ 2.f); the January 1990 speeding, leaving a vehicle on side of roadway, failure to disclose proper paperwork at a collision, and driving on a suspended license (SOR ¶ 2.h). Applicant testified he did not recall any such citations or arrests. The Government did not present any evidence to show that Applicant received these citations. (Tr. 43-44.)

After Applicant's 2007 DUI he attended alcohol related treatment. (GE 4.) He attends Alcoholics Anonymous meeting and Narcotics Anonymous meetings. He has been abstinent from alcohol, his main vice, since 2008. (Tr. 38-41.) He submitted no evidence concerning the quality of his performance, or the level of responsibility his duties entail. He provided no character references describing his judgment, trustworthiness, integrity, or reliability.

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), 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 access to classified information 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. Likewise, I have avoided drawing 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, “[t]he 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.” Section 7 of Executive Order 10865 provides: “[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.”

A person applying for access to classified information 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 access to classified information. 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 information.

## **Analysis**

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to 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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25, and the following are potentially applicable:

- (a) any drug abuse; and
- (g) any illegal use after being granted a security clearance.

The Government presented sufficient information to support the factual allegations under SOR ¶ 1.a. Applicant used marijuana from 1977 to at least February 2012, on weekends or approximately twice monthly. He did so after being granted a position of trust. Because Applicant did not possess a security clearance, only a position of trust, the letter of the law in AG ¶ 25(g) does not technically apply.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26, and the following 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) 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; (4) a signed statement of intent with automatic revocation of clearance for any violation.

More than three years have passed since Applicant's last use of an illegal substance. However, he claimed to have abstained from marijuana use for longer periods in the past. He was a mature adult who was married with children and held a position of public trust when he last used marijuana. I cannot find that future use is unlikely to occur. In this instance, an appropriate period of abstinence has not been demonstrated. The evidence does not support the application of AG ¶ 26(a).

AG ¶ 26(b) provides little mitigation. Applicant stated that he does not intend to use marijuana in the future. He testified that he participates in Narcotics Anonymous. However, the record is void of a signed statement of intent not to use illegal substances again. Applicant used marijuana in the past when the social situation made it available. Despite his assurances to not use drugs in the future, based on his past conduct and his age when he made those decisions, I am not confident he will comply. As noted above, Applicant has not demonstrated an appropriate period of abstinence from marijuana. Applicant has not provided sufficient evidence to meet his burden of proof to overcome the concerns raised by his poor judgment in using marijuana, as well as its use after being granted a position of trust.

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

The security concern for the Personal Conduct guideline 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 information. Of special interest is any failure to provide truthful

and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. 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 security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(e) personal conduct, or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

SOR ¶ 2.a alleged that Applicant falsified material facts in his e-QIP signed October 2, 2009, regarding his criminal history. First, Applicant completed a Questionnaire for Public Trust Position, not an e-QIP, on that date. Second, he answered the questions, "Yes," and he identified that he had a DUI arrest in July 2005. While he put an incorrect date for his arrest, this error was unintentional. He fully put the government on notice of his most recent DUI conviction. Applicant's answer to this question raises no security concern.

SOR ¶ 2.b alleged that Applicant falsified material facts in his e-QIP<sup>2</sup> signed October 2, 2009, regarding his marijuana use. Similarly, SOR ¶ 2.d alleged that Applicant falsified question 17 relating to his illegal drug use in his e-QIP<sup>3</sup> signed May 31, 2005. Applicant testified that he did not use marijuana from 2001 to 2006 and 2006 to 2012. He listed his marijuana use as twice monthly from 1977 to 2012 on his 2012 e-QIP, and discussed that same usage with the investigator. His statements are inconsistent. It is impossible to reconcile his claims of more limited usage, made during his testimony with his previous statements. Further, as alleged in SOR ¶ 2.j, Applicant's marijuana use while holding a position of public trust cast doubt on his good judgment and creates a vulnerability to exploitation, manipulation, or duress. Additionally, Applicant's 1987 DUI (SOR ¶ 2.i); his 1990 Trespassing conviction (SOR ¶ 2.g); and his July 2007 DUI (SOR ¶ 2.c), create additional vulnerability to exploitation, manipulation, or duress. The above disqualifying conditions raise a concern.

The Government failed to present any evidence of the May 1997 charges of failure to stop at a stop sign, driving on a suspended license, and failure to appear

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<sup>2</sup> Again, Applicant completed a Questionnaire for Public Trust Position, not an E-QIP, on that date.

<sup>3</sup> See, FN2.

(SOR ¶ 2.d); the May 1997 failure to stop at sign, driving on suspended license, and failure to appear (SOR ¶ 2.e); the September 1991 probation violation and leaving a vehicle on the side of roadway (SOR ¶ 2.f); the January 1990 speeding, leaving a vehicle on side of roadway, failure to disclose proper paperwork at a collision, and driving on a suspended license (SOR ¶ 2.h). They do not raise a security concern because they are unsubstantiated.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts;
- (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; and
- (e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant demonstrated a pattern of falsification that began in 2005 and continued throughout his testimony at the hearing. It could be argued that Applicant corrected the 2005 and 2009 falsifications concerning his marijuana use by disclosing it on his 2012 e-QIP. However, because his disclosure in 2012 was before being confronted with the facts, his it was not prompt or timely. Further, any mitigation created by Applicant's 2012 disclosure is negated by his subsequent dishonest statements about the frequency of his disclosed marijuana use. Applicant was dishonest when he falsified his public trust position applications in 2005 and 2009 and in his testimony at hearing. Although it was not alleged, he failed to fully disclose his alcohol-related convictions on his 2012 e-QIP. The evidence does not support the full application of AG ¶ 17(a).

Applicant failed to mitigate the concerns relating to his poor judgment and resulting vulnerability to coercion as a result of his marijuana use and criminal history. He failed to produce independent evidence that similar lapses in judgment are unlikely to occur, without the passage of more time or other evidence that demonstrates trustworthiness and good judgment. While he abstains from alcohol use, he has not provided evidence to indicate that risky, dishonest, or illegal conduct is unlikely to recur. The evidence does not support AG ¶¶ 17(c) and 17(d) as being applicable.

While Applicant deserves credit for abstaining from alcohol, he has presented little evidence of positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress. AG ¶ 17(e) is not supported by the record.

### **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):

(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 in light of all pertinent facts and circumstances surrounding this case. Applicant stated that he has not used marijuana since 2012. He divulged information about his drug use, although not in an expedient or completely honest manner. He testified that he will not use illegal substances in the future. He abstains from the use of alcohol. However, Applicant was a mature adult when he knowingly violated laws regarding marijuana use and made false statements on his applications for a position of trust. Not enough time has passed since Applicant's drug use in 2012 to permit a finding that drug abuse is unlikely to recur. Further, although he disclosed his marijuana use to the Government, he falsified his 2005 and 2009 public trust position applications regarding it.

Overall, the record evidence leaves me with serious questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Personal Conduct security concerns.

## Formal Findings

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	Against Applicant
Subparagraph 2.c:	Against Applicant
Subparagraph 2.d:	Against Applicant
Subparagraph 2.e:	For Applicant
Subparagraph 2.f:	For Applicant
Subparagraph 2.g:	Against Applicant
Subparagraph 2.h:	For Applicant
Subparagraph 2.i:	Against Applicant
Subparagraph 2.j:	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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Jennifer I. Goldstein  
Administrative Judge