



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



In the matter of:

Applicant for Security Clearance

)  
)  
)  
)  
)

ISCR Case No. 14-05513

**Appearances**

For Government: Adrienne M. Strzelczyk, Esq., Department Counsel  
For Applicant: Justin Holbrook, Esq.

12/04/2015

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department's intent to revoke his eligibility for a security clearance to work in the defense industry. Applicant mitigated the drug involvement concerns related to his one-time marijuana use in July 2013, his past practice of gifting marijuana to his friends on a few occasions between 2011 and 2013, and his ongoing association with his parents who legally use, grow, and distribute marijuana under the laws of their state of residency. He has demonstrated an intent not to use or distribute drugs in the future. Clearance is granted.

**Statement of the Case**

On December 24, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the drug involvement guideline.<sup>1</sup>

---

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply to this

DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue Applicant's security clearance and recommended that the case be submitted to an administrative judge for a determination whether to revoke or deny Applicant's security clearance.

Applicant timely answered the SOR and requested a hearing.<sup>2</sup> At the hearing, convened on August 12, 2015, I admitted Government's Exhibits (GE) 1 and 2 Applicant's Exhibits (AE) A through D, without objection. After the hearing, Applicant submitted AE E through F, which were also admitted without objection.<sup>3</sup> I received the transcript (Tr.) on August 21, 2015.

### **Findings of Fact**

Applicant, 25, is a software engineer. A gifted student, Applicant graduated from college at 20 years old and began his professional career. After graduation, he worked for his alma mater before accepting a software developer position at a technology company located in the same town. Applicant began working for a federal contractor in August 2013. Before starting this position, he did not know about security clearances and had not previously anticipated having access to classified information. On his security clearance application, dated February 2014, Applicant disclosed one-time marijuana use in July 2013. He also disclosed that on four to six occasions between 2011 and 2013 that he gave marijuana as gifts to friends. The ensuing investigation also revealed that Applicant's parents legally use medicinal marijuana and operate a medical marijuana dispensary.<sup>4</sup>

Medical marijuana became legal in Applicant's home state in 1999. Growing up, Applicant's mother discouraged him from all use of drugs. When Applicant was in college, his mother, who has long suffered chronic pain, discussed with him the possibility of her using medicinal marijuana. It was important to her, given the policy she adopted while raising Applicant, that he did not object. Applicant's mother received a license to use medicinal marijuana in 2009. His stepfather received a license for medical marijuana shortly thereafter. In 2010, Applicant's parents received their license to operate a medical marijuana dispensary, which they operate on the grounds of their home.<sup>5</sup>

Between 2011 and 2013, Applicant admits that he gifted marijuana mostly in the form of comestibles to friends. He took the marijuana from his parent's dispensary. He

---

case. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

<sup>2</sup> The pre-hearing order issued to the parties and the Government's discovery letter, dated October 15, 2014, are appended to the record as Hearing Exhibits (HE) I and II, respectively.

<sup>3</sup> The e-mails regarding the admissibility of the Applicant's exhibits are included in the record as HE IV.

<sup>4</sup> Tr. 24-27, 56, 62-63; GE 1.

<sup>5</sup> Tr. 32-34, 44-47.

did not ask permission to do so, but they were aware of his actions. Although his friends would oftentimes use the marijuana in his presence, Applicant did not partake. In July 2013, while between jobs, Applicant decided to try marijuana. He smoked the drug at his parent's home, an environment where he felt safe, using a vaporizer. He also ate half of a marijuana brownie. Afterward, Applicant realized he did not particularly care for the effects of marijuana. He decided that further use of marijuana was incompatible with his personal goals. Under the terms of his parents' marijuana licenses, Applicant knows that his use of marijuana, medical or recreational, and his distribution of the drug was illegal under his state's laws at the time.<sup>6</sup>

Applicant moved to another state when he began his current position. Other than his parents, he does not knowingly associate with people who use marijuana or other drugs. Applicant's employer has a drug-free policy, which Applicant respects and abides. In 2015, Applicant received a low-level security clearance from another government agency.<sup>7</sup> Now a clearance holder, Applicant understands the strict prohibition against any use of illegal drugs. He has not used marijuana since July 2013 and has no plans to use it in the future. Applicant has submitted a signed statement of intent to that effect.<sup>8</sup>

### **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 and mitigating conditions, which are used in evaluating an Applicant's eligibility for access to classified information.

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." Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, the applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." The applicant 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. 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

---

<sup>6</sup> Tr. 31, 34-36, 40, 47-58, 63-66; GE 2.

<sup>7</sup> Both parties agree there is no reciprocity issue raised in this adjudication. The position of the parties regarding the issue is appended to the record as HE III.

<sup>8</sup> Tr. 30, 40-43, 53, 55-56, 58-62, 67-71; GE E-F.

the possible risk the applicant may deliberately or inadvertently fail to protect classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of 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**

Use of an illegal drug raises concerns about a person’s ability or willingness to comply with laws, rules, and regulations.<sup>9</sup> Applicant admitted disqualifying conduct under the drug involvement guideline; specifically, using marijuana in July 2013 and illegal drug possession and distribution effected by gifting marijuana to his friends on several occasions between 2011 and 2013. Also of concern is Applicant’s relationship with his parents who use, grow, and sell marijuana.<sup>10</sup> Given the federal prohibition on these activities, it is appropriate to examine whether this association adversely impacts Applicant’s security worthiness. I find that it does not. Applicant has submitted sufficient evidence to mitigate the drug involvement concerns in the SOR.

Applicant’s one-time use of marijuana was experimental and not indicative of habits or behaviors that indicate an inability to properly handle or safeguard classified information. His past acts of gifting marijuana to friends were those of an immature young man, trying to fit in with his older peers. At hearing, Applicant appeared more self-possessed and confident. It is unlikely that he will seek validation from his peers in a similar manner in the future.<sup>11</sup> While Applicant is not expected to terminate his relationship with his parents, this relationship will continue to expose Applicant to activities illegal under federal law, though they are legal under the laws of state where Applicant’s parents reside. However, I find that this relationship does not reflect negatively on Applicant’s security worthiness. Applicant now lives in an environment with strict prohibitions on any drug use. He appreciates the differences between the environment in which he grew up and the one he inhabits now as an employee of a federal contractor. He understands the permissive attitude of the former is not appropriate in the latter. Applicant has also submitted a signed, statement of intent with automatic revocation of his clearance for any violation.<sup>12</sup>

Based on the record, I have no doubts about Applicant’s judgment and trustworthiness. I have also considered the whole-person factors at AG ¶ 2. Throughout this adjudication, Applicant has openly discussed his history with marijuana, including

---

<sup>9</sup> AG ¶ 24.

<sup>10</sup> AG ¶¶ 25(a) and (c).

<sup>11</sup> AG ¶ 26(a).

<sup>12</sup> AG ¶ 26(b).

revealing adverse information despite the potential consequences to himself or his family members. His ability to provide full, frank, and candid answers is an indication that Applicant understands the gravity of the fiduciary relationship he seeks to enter into with the Government. He also demonstrated that he understands the restrictions on personal behaviors attendant to the privilege of having access to classified information.

### **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, Drug Involvement:	FOR APPLICANT
Subparagraphs 1.a – 1.c:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Clearance is granted.

---

Nichole L. Noel  
Administrative Judge