

DATE: November 27, 2007

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In Re: )  
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----- ) ISCR Case No. 07-00932  
SSN: ----- )  
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Applicant for Security Clearance )  
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**DECISION OF ADMINISTRATIVE JUDGE  
KATHRYN MOEN BRAEMAN**

**APPEARANCES**

**FOR GOVERNMENT**

Eric H. Borstrom, Esquire, Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

Applicant failed to mitigate security concerns over her drug use with her history of recent marijuana use since 2002 to June 2007, including use after she completed her security questionnaire in 2006. While she claims no current use since July 2007 and plans to stop use if granted a security clearance, such a prospective promise does not sufficiently demonstrate she has mitigated concerns because of the recency of her past use and her maturity when she began use. As the evidence of current use and drug addiction is not established, the conditions that trigger the Smith Amendment have not been proven. However, security concerns persist over her recent drug use and her casual attitude towards illegal drug use. Clearance is denied.

**STATEMENT OF THE CASE**

The Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR)

to the Applicant on June 27, 2007. The SOR detailed reasons why the Government could not make the preliminary positive finding that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant.<sup>1</sup> The SOR alleged specific concerns over illegal drug use (Guideline H) in paragraph 1 based on the revised (“new”) Adjudicative Guidelines issued on December 29, 2005, and implemented by the Department of Defense, effective September 1, 2006. Applicant responded to these SOR allegations in a notarized Answer of July 23, 2007, where she admitted allegations 1.a., 1.b., and 1.c. in paragraph 1 and denied 1.d. She requested a decision without a hearing.

Department Counsel prepared a File of Relevant Material (FORM) on September 7, 2007, which was forwarded to the Applicant on September 14, 2007. Applicant was advised she had 30 days to respond to the FORM by submitting any objections or any additional information. Applicant received the FORM on September 18, 2007, but sent no response to the FORM, which was due on October 18, 2007. DOHA assigned this case to another judge on November 9, 2007, and to me on November 15, 2007.

### **FINDINGS OF FACT**

After a complete and thorough review of the evidence in the record, and upon due consideration of that evidence, I make the following Findings of Fact:

Applicant, 40 years old, began work for a defense contractor as an interaction designer in July 2004 to present. She completed an Electronic Questionnaire (SF-86) which she signed in March 2006. (Exhibit 3)

Applicant received a M.S. in design from a university in May 2003. She was married in August 1993. She has no military service. (Exhibit 3)

### **Drug Use**

Applicant admitted her illegal drug use in the last seven years in answer to Question 24 A on the electronic security form. She admitted using marijuana from December 2002 to December 2005. (Exhibit 3) However, when questioned in an interrogatory in June 2007, she admitted she disclosed additional use in a security interview in December 2006 where she admitted she first began smoking marijuana with her husband in December 2002. She estimated her use as five times a year, and she stated she used marijuana 25 times between December 2002 and December 2005. Since she completed her SF-86 security form she smoked marijuana an additional three or four times from March 2006 to November 2006. Despite her maturity in age, she expressed a casual attitude towards illegal drug use as she compared her use of marijuana to that of a person who has a glass of wine with dinner once per month. She would stop using marijuana if she was confronted at work about her use or if her company randomly tested employees for drug use. When asked to confirm the accuracy of the Report of Investigation (ROI) of the Personal Subject Interview, Applicant did not dispute any of the information in the report but provided supplemental information to provide the

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<sup>1</sup> This procedure is required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6, dated January 2, 1992 (Directive), as amended by Change 4, April 20, 1999.

context for her use and to clarify that the marijuana use “was/and is strictly recreational in nature.” Her husband purchases the marijuana for their mutual use. (Exhibit 4)

In response to the SOR she admitted marijuana use to June 2007. (SOR 1.a.) She also admitted she continued drug use after she had completed her security clearance application until June 2007. (SOR 1.b.) Finally, she acknowledged she previously stated she would stop using marijuana only if she was confronted at work about her drug use or if her company randomly tested employees for drug use. (SOR 1.c.)

In July 2007 she denied she was currently using unlawful drugs, but stated she only stopped drug use in July 2007 because of her concern over her company’s needs for her to have a security clearance. She denied she was ever addicted to marijuana use or diagnosed with drug dependence by a medical professional. She pledged not to use marijuana if she is granted a security clearance. (Answer, Exhibit 2) (SOR 1.d.) She provided no evidence of good character from her community or work place.

## POLICIES

Enclosure 2 of the Directive sets forth adjudicative guidelines to consider in evaluating an individual's security eligibility. The guidelines are divided into conditions that could raise a security concern and may be disqualifying and conditions that could mitigate security concerns. In deciding whether to grant or continue an individual's access to classified information, the mere presence or absence of any adjudication policy condition is not decisive.

The responsibility for producing evidence initially falls on the Government to demonstrate that it is not clearly consistent with the national interest to grant or continue an applicant's access to classified information. Then the Applicant presents evidence to refute, explain, extenuate, or mitigate in order to overcome the doubts raised by the Government, and to demonstrate persuasively that it is clearly consistent with the national interest to grant or continue the clearance. Under the provisions of Executive Order 10865, as amended, and the Directive, a decision to grant or continue an applicant's security clearance may be made only after an affirmative finding that to do so is clearly consistent with the national interest.

In reaching the fair and impartial overall common sense determination, an administrative judge may draw those inferences and conclusions that have a reasonable and logical basis in the evidence of record. Section 7 of Executive Order 10865 specifically provides industrial security clearance 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.”<sup>2</sup> A decision to deny a security clearance does not determine allegiance, loyalty, and patriotism, rather it concludes the applicant has not met the strict guidelines the President and the Secretary of Defense established to issue a security clearance.

## CONCLUSIONS

### **Guideline H: Drug Use**

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<sup>2</sup>Executive Order No. 10865 § 7.

**24. *The Concern: 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.***

The government established security concerns under drug use disqualifying conditions as detailed in ¶ 25.(a), *any drug abuse* (Drugs listed in the Controlled Substances Act of 1970, as amended, e.g. marijuana or cannabis). Applicant admitted that use of illegal drugs can raise questions about an individual's trustworthiness and reliability. Nevertheless, she continued her infrequent marijuana use from 2002 to June 2007. Thus, under 25.(h) both in her interview in 2006 and in her interrogatories in June 2007, she indicated her "intent to continue illegal drug use." Even in July 2007 in her answer she failed to "clearly and convincingly commit to discontinue drug use." Her only reason for her recent decision to discontinue her marijuana use was because of her company's needs for her to have a security clearance. She continued to express a casual attitude towards illegal drug use as she personally believes such drug use is similar to having a glass of wine. She did not acknowledge the difference between illegal drug use and legal alcohol use.

However, the government failed to establish security concerns under SOR 1.d. under 10 U.S.C. 986 as there was no evidence that she continues to be an unlawful user of, or was addicted to, a controlled substance as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802).

With the government's case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against her. It is possible to mitigate security concerns under this guideline: ¶26. Conditions that could mitigate security concerns include: ¶26.(a) *the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.* Her recent use to June 2007 does not meet this test. Applicant only took steps on the path to remain drug free in July 2007. This recent statement of intent does not yet meet the test under MC ¶26.(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.*

One cannot yet conclude with certainty that her illegal drug use is unlikely to recur as she is still married to her husband with whom she used marijuana, she has not changed the environment where she used drugs, and neither has there been an "appropriate" period of abstinence. While the term "appropriate" is ambiguous, a commitment of very short duration since July 2007 clearly cannot meet the appropriate test. While she claims an intent not to use illegal drugs in the future, such a promise does not meet the technical requirements of MC ¶ 26.(b)(4). Thus, doubt does persist over her reliability, trustworthiness, or good judgment. While she asks for consideration for her honesty and candor, her persistence in continuing her drug use even after she was alerted to security concerns over drug use shows poor judgment in a person with her maturity and education.

### **Whole Person Analysis**

In evaluating her under the “whole person” standard, I note she provided no supplemental information on her employment record or community involvement, nor did she provide any character reference letters. However, she is a highly educated women with a master’s degree and of an age where she can be held responsible for her decisions to engage in illegal drug use on a repeated basis from 2002 to 2007 and continued her illegal drug use during the period that she was seeking a security clearance. She continues her ties to her husband with whom she used drugs.

Consequently, after looking at her as a whole person and considering the Adjudicative Process factors and the Adjudicative Guidelines, I rule against Applicant on subparagraphs 1.a, 1.b., and 1.c., but for Applicant on subparagraph 1.d. under SOR Paragraph 1.

### **FORMAL FINDINGS**

After reviewing the allegations of the SOR in the context of the Adjudicative Guidelines in Enclosure 2 and the factors set forth under the Adjudicative Process section, I make the following formal findings:

Paragraph 1. Guideline H:	AGAINST APPLICANT
Subparagraph 1.a.:	Against Applicant
Subparagraph 1.b.:	Against Applicant
Subparagraph 1.c.:	Against Applicant
Subparagraph 1.d.:	For Applicant

### **DECISION**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue a security clearance for the Applicant. Clearance is denied.

Kathryn Moen Braeman  
Administrative Judge