



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. 17-02438

**Appearances**

For Government: Chris Morin, Esquire, Department Counsel

For Applicant: *Pro se*

December 26, 2018

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**Decision**

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ROSS, Wilford H., Administrative Judge:

On September 20, 2016, Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP). (Item 3.) On August 4, 2017, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement and Substance Misuse). (Item 1.) 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 within the Department of Defense on June 8, 2017.

Applicant answered the SOR in writing (Answer) on August 21, 2017, and requested his case be decided on the written record in lieu of a hearing. (Item 2.) A complete copy of the file of relevant material (FORM) prepared by Department Counsel,

consisting of Items 1 to 4, was provided to Applicant on September 7, 2017. Applicant received received the file on September 25, 2017.<sup>1</sup>

Applicant was given 30 days from receipt of the FORM to file objections and submit material in refutation, extenuation, or mitigation. He submitted additional information in approximately November 2017. Department Counsel had no objection and the information is marked and admitted into evidence as Applicant Exhibit A. The case was assigned to me on January 17, 2018. Based upon a review of the pleadings and exhibits, national security eligibility for access to classified information is denied.

### **Findings of Fact**

Applicant is 25 and single. He has a bachelor's degree and has been employed by a defense contractor since 2015. This is his first application for a security clearance. He seeks to obtain national security eligibility for access to classified information in connection with his employment. (Item 3 at Sections 12, 13A, and 25.)

#### **Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he has used illegal drugs. Applicant admitted all the allegations under this paragraph.

1.a. Applicant began using marijuana as a sophomore in college in November 2012. He used it at least monthly until March 2017, two years after he began working for a defense contractor. Applicant purchased marijuana during the period he was using it. Applicant stated in his Answer and in Applicant Exhibit A that he last used marijuana in March 2017. (See Item 3 at Section 23.)

Applicant stated in Applicant Exhibit A that he has remained friends with people he used marijuana with in the past. He stated, "I believe I can still see these guys on an occasional basis and not use drugs again."

1.b. Applicant admitted using cocaine twice in his life. The first time was in 2012, and the second time was in 2015 about a month before he graduated from college. He

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<sup>1</sup> Department Counsel submitted four Items in support of the SOR allegations. Item 4 is inadmissible. It is the summary of an unsworn interview of Applicant conducted by an interviewer from the Office of Personnel Management on March 24, 2017. Applicant did not adopt the summary as his own statement, or otherwise certify it to be accurate. Under Directive ¶ E3.1.20, this Report of Investigation (ROI) summary is inadmissible in the Government's case in chief in the absence of an authenticating witness. (See Executive Order 10865 § 5.) In light of Applicant's admissions, Item 4 is also cumulative. Applicant is not legally trained and might not have understood Department Counsel's FORM footnote 1, which described the potential admissibility of Item 4. I therefor reviewed Item 4 for any potentially mitigating information that Applicant might have thought would be considered. Any such mitigating information will be discussed later in this decision.

stated that he has not used cocaine since 2015, and does not intend to use cocaine in the future. (Answer; Item 3 at Section 23.)

1.c. Applicant admitted using hallucinogenic acid on a single occasion in approximately June 2016. This was about a year into his employment in the defense industry. He stated that he was offered some acid at a music festival and used it on an experimental basis. He does not intend to use acid in the future. (Answer; Item 3 at Section 23.)

1.d. Applicant stated in Item 3 at Section 23 that he intended to continue to use marijuana into the future. He also stated:

I never had any intention of using marijuana after graduating college because of my career goals. For about the first year of being employed I didn't use any drugs.<sup>2</sup> Now that attitudes in the nation are changing towards marijuana use I haven't really seen an issue in continuing smoking weed. If having a security clearance would require me to stop then I definitely would.

In his Answer, Applicant admitted making this statement. He further stated, "However, since March of 2017, I have not used marijuana and I do not intend to use marijuana while under consideration for and if granted a security clearance."

Finally, in Applicant Exhibit A Applicant wrote, "I would like to formally state that I do not intend to use illegal drugs while under consideration for and in possession of a security clearance."

Applicant did not submit any evidence concerning the quality of his job performance. He submitted no character references or other evidence tending to establish good judgment, trustworthiness, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **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 useful in evaluating an applicant's eligibility for access to classified information.

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<sup>2</sup> Applicant also stated in Section 23 that he was using marijuana on a monthly basis up to September 20, 2016, the date he completed the e-QIP. He did not reconcile this discrepancy.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, the administrative judge applies the guidelines 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(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, "Any doubt concerning personnel being considered for national security eligibility 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.

According to 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 the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 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.

Finally, as emphasized in Section 7 of EO 10865, "Any 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." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Paragraph 1 (Guideline H – Drug Involvement and Substance Misuse)

The security concern relating to Drug Involvement and Substance Misuse is set forth in AG ¶ 24:

The illegal use of controlled substances, to include the misuse of prescription and non-prescription drugs, and the use of other substances that cause physical or mental impairment or are used in a manner inconsistent with their intended purpose can raise questions about an individual's reliability and trustworthiness, both because such behavior may lead to physical or psychological impairment and because it raises questions about a person's ability or willingness to comply with laws, rules, and regulations. *Controlled substance* means any "controlled substance" as defined in 21 U.S.C. §802. *Substance misuse* is the generic term adopted in this guideline to describe any of the behaviors listed above.

I have examined the disqualifying conditions under AG ¶ 25 and especially considered the following:

- (a) any substance misuse (see above definition);
- (c) illegal possession of a controlled substance, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia, and;
- (g) expressed intent to continue drug involvement and substance misuse, or failure to clearly and convincingly commit to discontinue such misuse.

Applicant has a history of using illegal drugs both before and after beginning work in the defense industry. Applicant admitted using marijuana for about five years. He also used cocaine and acid on an experimental basis.

I have examined the mitigating conditions under AG ¶ 26 and especially considered the following:

- (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) the individual acknowledges his or her drug involvement and substance misuse, provides evidence of actions taken to overcome this

problem and has established a pattern of abstinences, including, but not limited to:

- (1) disassociation from drug-using associates and contacts;
- (2) changing or avoiding the environment where drugs were used;  
and
- (3) providing a signed statement of intent to abstain from all drug involvement and substance misuse, acknowledging that any future involvement or misuse is grounds for revocation of national security eligibility.

Applicant allegedly last used marijuana less than a year before the record closed in this case. While he stated twice that he would abstain from drug use in the future if required for national security eligibility, he continues to socialize with the friends with whom he used multiple illegal drugs. There is no evidence from which to determine his reputation for truthfulness, or even that his employers know of his drug use history. Applicant has not mitigated the security significance of his recent drug use. Paragraph 1 is found against Applicant.

### **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(d):

- (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 national security eligibility and 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 facts and circumstances surrounding this case. Overall, the record evidence as described above leaves me with questions and substantial doubts as to Applicant's eligibility and suitability for a security clearance. Insufficient time has passed since he

last used marijuana, and the likelihood of recurrence remains significant. For all these reasons, I conclude Applicant did not mitigate the security concerns arising under the guideline for Drug Involvement and Substance Misuse.

### **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:	Against Applicant
Subparagraph 1.c:	Against Applicant
Subparagraph 1.d:	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 national security eligibility and a security clearance. Eligibility for access to classified information is denied.

WILFORD H. ROSS  
Administrative Judge