

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

In the matter of: )  
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XXXXXXXXXXXXXXXXXXXX ) ISCR Case No. 20-01127  
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Applicant for Security Clearance )

**Appearances**

For Government: Aubrey M. DeAngelis, Esquire, Department Counsel  
For Applicant: *Pro se*

01/04/2022

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**Decision**

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METZ, John Grattan, Jr., Administrative Judge:

Based on the File of Relevant Material (FORM), Items 1-6, I deny Applicant's clearance.

On 15 August 2020, the Department of Defense (DoD) sent Applicant a Statement of Reasons (SOR) raising security concerns under Guideline H, Drug Involvement and Guideline E, Personal Conduct.<sup>1</sup> Applicant timely answered the SOR, requesting a decision without hearing by the Defense Office of Hearings and Appeals (DOHA). The record in this case closed 3 May 2021, when Department Counsel stated no objection to Applicant's response to the FORM. Applicant provided a 30 April 2021 drug screening, testing negative for the six listed drugs. DOHA assigned the case to me 24 June 2021.

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<sup>1</sup>DoD acted under Executive Order 10865, *Safeguarding Classified Information Within Industry* (February 20, 1960), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and Security Executive Agent Directive 4, effective on 8 June 2017.

## Findings of Fact

Applicant admitted SOR allegations 1.a and 1.b. He denied falsifying his April 2009 clearance application by omitting his drug use. Applicant is a 34-year-old mechanical engineer employed by a defense contractor since July 2008. He has held an industrial clearance since approximately June 2009, based on an April 2009 clearance application (Item 4). In May 2008, he graduated from a prestigious U.S. university with a degree in mechanical engineering. He married in June 2015 (Item 5); he and his wife adopted a shelter dog in mid-2017, and had a daughter in May 2019 (Item 3).

Applicant disclosed no substance abuse on his April 2009 clearance application (Item 4). On his March 2019 clearance application (Item 5), he stated that he used marijuana about once or twice per year from about September 2004 to July 2018, on special occasions. He also stated his intent to continue to use marijuana in the future, as its use was legal in his state of residence and he could not categorically forswear future use. He reiterated this drug history and intent during a June 2019 interview with a Government investigator, stating that he enjoyed marijuana and it did not affect his work.

Applicant now forswears future drug abuse, both because of his employment and because of the changes in his personal life. However, he also noted that he had used marijuana with his wife (without clarifying whether they were married at the time). He has also drastically edited the extent of his drug use, stating that he did not really remember the number of occasions he used marijuana, and gave the September 2004 start date to coincide with his entry to college out of an abundance of caution (Answer, Item 3). However, he currently counts only two specific instances of drug use.

Applicant's Answer includes a November 2020 drug screen with negative results, employment evaluations and awards attesting to an otherwise exemplary work history from 2008 to 2019, and a November 2020 statement of intent abjuring future drug use consistent with the directive—along with a commitment to regular drug screens for at least the next two years (Item 3).

Aside from his employment evaluations and company awards, Applicant submitted no work or character references, and provided no evidence of any community involvement. Applicant's Answer contains many self-serving assertions that require me to accept his inferences that (1) he was unaware of Federal law proscribing marijuana use, regardless of state law, that (2) he was oblivious to the obvious proscription implied by the drug abuse question on the clearance application, that (3) he was unaware of any company policy regarding drug use, and that (4) despite his meticulous answers to detailed questions on his clearance applications, and the precision required by his employment and his profession, he was unable to more precisely pinpoint the extent of his drug use on his 2019 clearance application and during his 2019 subject interview.

## Policies

The AG list factors to evaluate a person's suitability for access to classified information. Administrative judges must assess disqualifying and mitigating conditions under each issue fairly raised by the facts and situation presented. Each decision must also show a fair, impartial, and commonsense consideration of the factors listed in AG § 2(d). The applicability of a disqualifying or mitigating condition is not, by itself, conclusive. However, specific guidelines should be followed when a case can be measured against them, as they are policy guidance governing the grant or denial of a clearance. Considering the SOR allegations and the evidence as a whole, the relevant adjudicative guidelines are Guideline H (Drug Involvement) and Guideline E (Personal Conduct).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an applicant's security clearance. The Government must prove, by substantial evidence, controverted facts alleged in the SOR. If it does, the burden shifts to applicant to refute, extenuate, or mitigate the Government's case. Because no one has a right to a security clearance, the applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the Government based on trust and confidence. Therefore, the Government has a compelling interest in ensuring each applicant possesses the required judgment, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels deciding any reasonable doubt about an Applicant's suitability for access in favor of the Government.<sup>2</sup>

## Analysis

The Government established a case for disqualification under Guideline H, by demonstrating Applicant's illegal drug abuse between at least June 2009, when his clearance was granted, and July 2018, and his previously-stated intent to continue his use. Applicant did not mitigate the security concerns.<sup>3</sup> Applicant used marijuana for as many as nine years, and did so while having access to classified information. His use was illegal under Federal law at all times. Applicant only stated an unequivocal intent to cease his marijuana use, despite his knowledge of its illegality under Federal law, and its inconsistency with access to classified information, after he received the SOR.

Drug involvement mitigating conditions give little support to Applicant. His illegal drug abuse was recent, regular, and apparently frequent, and the facts do not support circumstances unlikely to recur.<sup>4</sup> The record contains no evidence to document a

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>§25(a) any substance misuse; (c) illegal possession of a controlled substance. . .; (x) illegal use while having access to classified information.

<sup>4</sup>§26(a) the behavior happened so long ago, was so infrequent, or happened under such circumstances

pattern of abstinence, and no evidence of disassociation any marijuana-using associates. Finally, his disavowal of future use, and his statement of future intent within the guidelines, occurred under circumstances entitled to little weight.<sup>5</sup> Under the circumstances, I cannot conclude Applicant is unlikely to abuse illegal drugs in the future. Accordingly, I resolve Guideline H against Applicant.

The Government failed to establish a case for disqualification under Guideline E. Applicant's conflicting statements about the date of his first marijuana use are sufficiently confusing, and insufficiently tested on the current record, to conclude that he deliberately falsified his drug use on his April 2009 clearance application.<sup>6</sup> Accordingly, I resolve Guideline E for Applicant.

### Formal Findings

Paragraph 1. Guideline H:	Against Applicant
Subparagraphs a-b:	Against Applicant
Paragraph 2. Guideline E:	For Applicant
Subparagraph a:	For Applicant

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that it is unlikely to recur **or** does not cast doubt on the individual's current reliability, trustworthiness, or good judgment [Emphasis supplied];

<sup>5</sup>§26(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 abstinence, 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) 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;

<sup>6</sup>§16(a) deliberate omission, concealment, or falsification of relevant and material facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, [or] determine security clearance eligibility or trustworthiness. . . ;

## **Conclusion**

Under 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 Applicant. Clearance denied.

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JOHN GRATTAN METZ, JR  
Administrative Judge