

STATEMENT OF THE CASE

On February 16, 2007, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) stating that it was unable to find that it is clearly consistent with the national interest to grant or continue a security clearance.¹ The SOR, which is in essence the administrative complaint, alleged security concerns under Guideline H (Drug Involvement) of the revised Adjudicative Guidelines (AG) issued on December 29, 2005, and implemented by the Department of Defense effective September 1, 2006. The revised guidelines were provided to Applicant when the SOR was issued.

On March 12, 2007, Applicant submitted a notarized response to the SOR, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the government's written case on April 4, 2007. Applicant received a complete file of relevant material (FORM) on April 10, 2007, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the government's case.² The case was assigned to me on May 22, 2007. Applicant submitted additional information.

FINDINGS OF FACT

Applicant admitted the allegation in his SOR response under Guideline H.³ The admission is incorporated as a finding of fact. After a complete review of the evidence in the record and upon due consideration, I make the following additional findings of fact:

Applicant is a 36-year-old employee of a defense contractor. After graduation from high school in 1986, he served in the United States (U.S.) Navy from 1988 until his honorable discharge in August 2004. He also attended college courses until 2004. He has worked for his current employer since February 2005. Applicant is divorced with three children.⁴ He received a secret clearance in February 1990. On March 15, 2006, he completed a renewal security clearance (SF 86) application.⁵

Since November 1994, Applicant used marijuana with various friends. He acknowledged that he purchased his own marijuana sometimes or just used what his friends had at the time. He used a cigarette or pipe form. He approximates purchasing about \$20 worth of marijuana twice a year. He used it to diminish his stress. He did not use any other illegal drug. He does not consume alcohol.

Although, he has never been arrested for his illegal drug use, he was fired from a former employer for testing positive for drug use. Applicant maintains he had many friends at his last job

¹This action was taken under Executive Order 10865, dated February 20, 1960, as amended, and DoD Directive 5220.6, dated January 2, 1992, as amended and modified (Directive).

²The government submitted five items in support of its contentions.

³Item 3 (Applicant's Answer to SOR, dated March 12, 2007) at 1-4.

⁴Item 4 (Application for Security Clearance (SF 86), dated March 15, 2006) at 1-9.

⁵*Id.*

and smoked marijuana with a few of them. He takes full responsibility for failing the drug test at work, but believes he may have been set up. He states his intention to stop using marijuana in his recent response to the FORM. He admitted that he has gone for long periods in the past without using marijuana and that he could do that again for the sake of his employment.

Applicant enjoys his current position. He wants to contribute to its success as much as possible. He wishes to make a decent living for his family and is embarrassed by his loss of employment due to failing a drug test. He takes full responsibility for the use of marijuana and understands that it was stupid to jeopardize his job. He claims that his family's welfare is more important to him now than smoking marijuana. He states he will make a change in his lifestyle and apologizes for this mistake.⁶

POLICIES

The President has “the authority to . . . control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to occupy a position . . . that will give that person access to such information.”⁷ In Executive Order 10865, *Safeguarding Classified Information Within Industry* (Feb. 20, 1960), the President set out guidelines and procedures for safeguarding classified information and determining trustworthiness within the executive branch.

To be eligible for a security clearance or access to sensitive information, an applicant must meet the security guidelines contained in the Directive. The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. Additionally, each security decision must be a fair and impartial commonsense decision based on the relevant and material facts and circumstances, the whole-person concept, along with the adjudicative process factors listed in ¶ 6.3 of the Directive, and AG ¶ 2(a).

“The adjudicative process is an examination of a sufficient period of a person’s life to make an affirmative determination that the person is eligible for a security clearance.”⁸ An administrative judge must apply the “whole person concept,” and consider and carefully weigh the available, reliable information about the person.⁹ An administrative judge should consider the following factors: (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 voluntariness of participation; (6) the presence or absence of rehabilitation and other pertinent behavioral changes; (7) the motivation for the conduct; (8) the potential for pressure, coercion, exploitation, or duress; and (9) the likelihood of

⁶Letter from Applicant to Department Counsel, dated May 1, 2007.

⁷ *Department of the Navy v. Egan*, 484 U.S. 518, 527 (1988).

⁸ Directive, ¶ E2.2.1.

⁹ Directive, Revised Adjudicative Guidelines (AG) 2 (a)(1)-(9).

continuation or recurrence.¹⁰

Initially, the Government must present evidence to establish controverted facts in the SOR that disqualify or may disqualify the applicant from being eligible for access to classified information.¹¹ Thereafter, the applicant is responsible for presenting evidence to rebut, explain, extenuate, or mitigate the facts.¹² An applicant “has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance.”¹³ Any doubt as to whether access to classified information is clearly consistent with national security will be resolved in favor of the national security.¹⁴ The same rules apply to trustworthiness determinations for access to sensitive positions.

CONCLUSIONS

I have carefully considered all the facts in evidence and the legal standards. The government has established a *prima facie* case for disqualification under Guideline H of the revised Adjudicative Guidelines (AG) most pertinent to the evaluation of the facts in this case.

Guideline H (Drug Involvement) 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 judgement and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.*¹⁵

In this matter, the government provided substantial evidence that Applicant used marijuana for a period of more than 11 years on a social basis until 2006. He admits he was fired from employment in 2005 for failing a drug test. Consequently, Drug Involvement Disqualifying Condition (DI DC) AG ¶25(a) (*any drug use*), DI DC ¶25(b) (*testing positive for illegal drug use*) and DI DC ¶25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*) apply.

With the government’s case established, the burden shifts to Applicant to present evidence of refutation, extenuation, or mitigation to overcome the case against him. I considered the Drug Involvement Consideration Mitigating Condition (DIMC) AG ¶26 (a) (*the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment*). It does not apply because he was smoking marijuana in March 2006 when he completed his security application. Despite his loss of employment in 2005 for smoking marijuana, he continued.

¹⁰ *Id.*

¹¹ Directive, ¶ E3.1.14.

¹² Directive, ¶ E3.1.15.

¹³ ISCR Case No. 01-20700 at 3 (App. Bd. December 19, 2002).

¹⁴ Directive, ¶ E2.2.2.

¹⁵ AG ¶ 24.

Applicant provided insufficient evidence or explanation to support the DI MC AG ¶26 (b) (a *demonstrated intent not to abuse 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)*). In his response to the FORM, Applicant stated that he values his family and making a decent living is more important than smoking marijuana. Given his history of marijuana use for more than 11 years, and despite his recent firing, continued use of marijuana, I find an insufficient proof of a demonstrated intent.

Applicant apologizes for his mistake and states he has thought about his life and will not be influenced by peer pressure. However, Applicant has not mitigated the drug involvement security concern. The other mitigating conditions do not apply in this case.

Whole Person

In all adjudications, the protection of our national security is the paramount concern. The objective of the trustworthy determination process is the fair-minded, commonsense assessment of a person’s life to make an affirmative determination that the person is eligible for assignment to sensitive duties. Indeed, the adjudicative process is a careful weighing of a number of variables in considering the “whole person” concept. It recognizes that we should view a person by the totality of their acts, omissions, motivations and other variables. Each case must be adjudged on its own merits, taking into consideration all relevant circumstances, and applying sound judgment, mature thinking, and careful analysis.

I have considered all the evidence and the “whole person” in evaluating Applicant’s security clearance determination. Applicant’s recent involvement with drugs leaves doubt as to his trustworthiness. I have considered his desire to put this behind him, but I conclude it is premature to find in favor of Applicant.

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. Guideline H:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant

DECISION

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

Noreen A. Lynch
Administrative Judge