

DATE: November 29, 2007

---

In Re: )  
 )  
 )  
 ----- ) ISCR Case No. 06-18096  
 SSN: ----- )  
 )  
 Applicant for Security Clearance )  
 )  
 )

---

**DECISION OF ADMINISTRATIVE JUDGE  
JOHN GRATTAN METZ, JR**

**APPEARANCES**

**FOR GOVERNMENT**

Ray T. Blank, Jr., Department Counsel

**FOR APPLICANT**

*Pro Se*

**SYNOPSIS**

\_\_\_\_\_Applicant's use of marijuana between July 2005 and December 2006 was mitigated by the circumstances and infrequency of the use, and his demonstrated intent not to abuse any drugs in the future. Clearance granted.

**STATEMENT OF THE CASE**

Applicant challenges the 31 August 2007 Defense Office of Hearings and Appeals (DOHA) Statement of Reasons (SOR) recommending denial or revocation of his clearance because of illegal drug use.<sup>1</sup> He answered the SOR 17 September 2007, and requested a hearing. DOHA assigned the

---

<sup>1</sup>Required by Executive Order 10865 and Department of Defense Directive 5220.6, as amended—most recently in August 2006 (Directive).

case to me 10 October 2007, and I convened a hearing 14 November 2007. DOHA received the transcript 21 November 2007.

### **FINDINGS OF FACT**

Applicant admitted the allegations of the SOR. Accordingly, I incorporate the admissions as findings of fact.

Applicant—a 23-year-old electrical engineer employed by a defense contractor since June 2006—seeks access to classified information. He has not previously held a clearance.

Applicant has used marijuana five times between July 2005 and December 2006: thrice with college friends between July and August 2005, once with these same friends in April 2006 to celebrate graduating from college and getting a job, and once in December 2006 while home visiting one of these friends. Each of these uses occurred in social settings, usually in someone's home. The April 2006 incident occurred in the woods. Marijuana was always offered to him. He never purchased or sold it. After his last marijuana use in December 2006, Applicant realized he made a bad decision using marijuana, and felt guilty about his use. He realized he had a lot to lose by continuing to use, and resolved to cease.

Applicant was offered a job by his current employer in December 2005, and he accepted. He applied for a security clearance in March 2006 (G.E. 1), having executed the signature page and releases in February 2006, before graduating from college. He fully disclosed his marijuana use in July and August 2005. He was hired by his current employer, in another state from where he went to college, into a professional development program in June 2006. He performed so well in this program that his supervisor recommended him for a permanent position, which was subsequently offered, and accepted by Applicant in September 2007 (A.E. A). His supervisor finds him honest, courteous, and forthright. He has received excellent performance ratings (A.E. B). He is currently pursuing his master's degree in electrical engineering, and has achieved high marks in his courses (A.E. C). In October 2007, he obtained at his own expense, and passed, a drug screen for the normal range of illegal drugs, including marijuana (A.E. D).

Applicant was interviewed as part of his background investigation in May 2007. He discussed the details of his July-August 2005 marijuana usage, disclosed without prompting his April and December 2006 marijuana usage, and stated his intent to remain drug-free (G.E. 2).

Applicant testified at hearing. I found his testimony credible, and I believe it. He described how stupid he felt in December 2006, when he realized what he was risking by continuing his marijuana use. He reiterated his intent to abstain from marijuana use in the future.

### **POLICIES AND BURDEN OF PROOF**

The Directive, Enclosure 2 lists adjudicative guidelines to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each adjudicative issue fairly raised by the facts and

circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in Section 6.3. of the Directive. The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed whenever a case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline H (Drug Involvement).

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 something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then 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 requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>2</sup>

## CONCLUSIONS

The government failed to establish a case for disqualification under Guideline H. While the government established that Applicant used marijuana five times between July 2005 and December 2006,<sup>3</sup> this level of drug abuse is insufficient to be disqualifying or raise a significant security concern. Further, even if I gave the government the benefit of the doubt on the disqualifying condition, Applicant mitigates the security concerns, by demonstrating that the use was infrequent and under circumstances unlikely to recur,<sup>4</sup> and further demonstrating intent to not abuse drugs in the future.<sup>5</sup> His marijuana use was confined to his college friends in his home town. It was casual and infrequent. Although he last used marijuana while home on vacation, six months after starting his job, he quickly realized that marijuana use was inconsistent with his professional career, and knew it was time to put away childish things. While Applicant's use is fairly characterized as "recent," this term has less meaning under the new adjudicative criteria, where the corresponding language "the behavior happened so long ago. . ." [¶ 26.(a)], is used in the disjunctive with language

---

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

<sup>3</sup>Any drug abuse [§ 25.(a)];

<sup>4</sup>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 [¶ 26.(a)][Emphasis supplied];

<sup>5</sup>A demonstrated intent not to abuse any drugs in the future, such as: . . . (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; . . . [¶ 26.(b)].

that clearly applies to Applicant. Further, while his abstention from marijuana use since December 2006 might not necessarily constitute an appropriate period of abstinence, given the minimal marijuana use by Applicant and his change in environment—both physical (new state) and psychological (career versus school)—I conclude that this abstinence is appropriate [¶ 26.(b)]. On this record, it is extremely unlikely that Applicant would return to illegal drug use. Further, denying a clearance for a 23-year-old who used marijuana five times defies common sense. Accordingly, I resolve Guideline H for Applicant.

**FORMAL FINDINGS**

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph a: For Applicant

Subparagraph b: For Applicant

**DECISION**

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

**John Grattan Metz, Jr.  
Administrative Judge**