

KEYWORD: Drugs

DIGEST: Applicant is a 36-year-old senior computer scientist and technical architect employed by a federal contractor. He used illegal drugs from 1992 until 2004. Since then he has changed his lifestyle, married, anticipates starting a family, and changed jobs that no longer requires him to travel away from home for extended periods of time. He associates with drug-free people, and he is highly respected by his employer and his close friends. He successfully mitigated the security concern about drug involvement. Clearance is granted.

CASENO: 06-19801.h1

DATE: 06/30/2007

DATE: June 30, 2007

In re:	)	
	)	
-----	)	ISCR Case No. 06-19801
SSN: -----	)	
	)	
Applicant for Security Clearance	)	
	)	

**DECISION OF ADMINISTRATIVE JUDGE  
CHRISTOPHER GRAHAM**

**APPEARANCES**

**FOR GOVERNMENT**

Daniel F. Crowley, Esq., Department Counsel

**FOR APPLICANT**

Alan V. Edmunds, Esq.

**SYNOPSIS**

Applicant is a 36-year-old senior computer scientist and technical architect employed by a federal contractor. He used illegal drugs from 1992 until 2004. Since then he has changed his lifestyle, married, anticipates starting a family, and changed jobs that no longer requires him to travel away from home for extended periods of time. He associates with drug-free people, and he is highly respected by his employer and his close friends. He successfully mitigated the security concern about drug involvement. Clearance is granted.

## STATEMENT OF THE CASE

On November 12, 2004, Applicant submitted a Security Clearance Application (SF86). The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Executive Order 10865, *Safeguarding Classified Information Within Industry*, dated February 20, 1960, as amended, and Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program (Directive)*, dated January 2, 1992, as amended, DOHA issued a Statement of Reasons (SOR) on October 23, 2006, detailing the basis for its decision – security concerns raised under Guideline H (Drug Involvement) of the Directive. The President issued revised adjudicative guidelines (AG) on December 30, 2005. DoD implemented them on September 1, 2006. Pending official amendment/reissue of DoD Directive 5220.6, the AG are to be used in all cases when the SOR was issued on or after September 1, 2006. Because the SOR was issued after September 1, 2006, this case proceeds under the revised guidelines.

Applicant answered the SOR in writing on November 3, 2006, and elected to have a hearing before an administrative judge. The case was assigned to another administrative judge on January 10, 2007. It was transferred to me January 2, 2007, due to scheduling considerations. A Notice of Hearing was dated on February 16, 2007. I convened a hearing on March 9, 2007, to consider whether it is clearly consistent with the national interest to grant or continue Applicant's security clearance. The government offered four exhibits, marked as Exhibits 1-4. Applicant offered ten exhibits, marked as Exhibits A-J. All exhibits were admitted without objection. DOHA received the transcript (Tr.) on March 19, 2007.

## FINDINGS OF FACT

Applicant denied the allegations contained in the SOR. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 36-year-old senior computer scientist and technical architect employed by a federal contractor.<sup>1</sup> He was married in 2005, has no children,<sup>2</sup> and has a bachelor's degree in English.<sup>3</sup> He has no military service and this is his first security clearance application.<sup>4</sup>

Applicant purchased and used marijuana about 200 times, with varying frequency, from 1992 until August 2004. He purchased and used ecstasy about 30 times, with varying frequency, from

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<sup>1</sup>Tr. at 47-48.

<sup>2</sup>*Id.* at 48.

<sup>3</sup>*Id.* at 54.

<sup>4</sup>*Id.* at 77.

2000 to June 2004. He used psilocybin (mushrooms) and cocaine twice in 2003 and 2004.<sup>5</sup> He stopped all illegal drug use in August 2004.<sup>6</sup>

Prior to working for a government contractor, Applicant worked as a contractor for a large brokerage company. He was away from home a lot, with long work hours. That lifestyle was characterized as “work hard, play hard”, and there was a lot of drug usage around him.<sup>7</sup> Today, he and his wife are thinking about having children, his friends do not use drugs, and he lives a totally different lifestyle because he is not traveling with his job, and they do not associate with people who use drugs..<sup>8</sup>

An American foreign services officer testified that he and Applicant attended college together. He believed that Applicant was one of the more talented, determined, and fiercely loyal people that he has known. He believes Applicant is a patriot, and that his loyalty to the United States is absolute. He related a very emotional time for Applicant, while in college. His girlfriend broke up with him, and a sister, mother and father passed away within a short period of time. About five years ago, Applicant told him about his drug usage.<sup>9</sup> This friend then had a frank discussion with him about the necessity to clean up his act, especially if he wanted a job that required a security clearance. The only time Applicant used drugs in his presence was at a party in college and since that time he has never seen Applicant use drugs.

Another acquaintance had hired Applicant when he graduated from college, and over the past two years has worked with him on a daily basis. He trusts Applicant and said that if Applicant had told him that he had not used drugs in number of years, he would believe him.<sup>10</sup> Next, a managing editor of a publication, who went to college with Applicant and has known him for 14 years testified. He sees Applicant socially once or twice per month. Applicant has always been forthright about his use of drugs and also forthright about the fact that he no longer wants drugs as a part of his life. He has great confidence in Applicant’s honesty, that he possesses high character, and is somebody who acts with respect and forthrightness in everything he does. He dated Applicant’s wife when they were in college, and stated she started dating Applicant around 2000, and married him in 2005.<sup>11</sup>

Applicant’s supervisor, a senior program manager, hired Applicant, and works with him daily. The supervisor has held a security clearance since 1965. He related how Applicant had been selected as the outstanding new employee his first year on the job.<sup>12</sup> Applicant disclosed his drug

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<sup>5</sup>Government Exhibit 1, *supra*, note 1, at 6.

<sup>6</sup>Tr.at 48.

<sup>7</sup>*Id.* at 49-50.

<sup>8</sup>*Id.* at 59-60, 64.

<sup>9</sup>Tr.at 18-22.

<sup>10</sup>*Id.* at 27-30.

<sup>11</sup>*Id.* at 33-38.

<sup>12</sup>*Id.* at 43.

use when his supervisor told him he was recommending him for a security clearance.<sup>13</sup> He stated, “I think he’s an absolute first rate employee. He has demonstrated to me on numerous occasions that he is honest, fully integrated in terms of his personal relationships with other people, and a decent and honorable man. I would have no qualms or reservations about issuing a top secret clearance to Applicant. I would trust him with custody of my most personal information.”<sup>14</sup>

Applicant’s wife talks about her husband’s dedication to his job. In her letter of recommendation, she noted “his openness and honesty are key components to his success; he doesn’t promise what he cannot deliver, and he will give everything he has to produce results. He has consistently been a trusted resource, fully dedicated to his clients and employers.”<sup>15</sup>

## POLICIES

In an evaluation of an applicant’s security suitability, an administrative judge must consider the “Adjudicative Guidelines for Determining Eligibility For Access to Classified Information” (Guidelines). In addition to brief introductory explanations for each guideline, the guidelines are divided into disqualifying conditions and mitigating conditions, which are used to determine an applicant’s eligibility for access to classified information.

These guidelines are not inflexible ironclad rules of law. Instead, recognizing the complexities of human behavior, an administrative judge should apply these guidelines in conjunction with the factors listed in the adjudicative process. Guidelines ¶ 2. An administrative judge’s overarching adjudicative goal is a fair, impartial and common sense decision. Because the entire process is a conscientious scrutiny of a number of variables known as the “whole person concept,” an administrative judge should consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.<sup>16</sup>

Specifically, an administrative judge should consider the nine adjudicative process factors listed at Guidelines ¶ 2(a): “(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) 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.”

Since the protection of the national security is the paramount consideration, the final decision in each case is arrived at by applying the standard that “[a]ny doubt concerning personnel being

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<sup>13</sup>*Id.* at 42.

<sup>14</sup>*Id.* at 40-44.

<sup>15</sup>Applicant’s Exhibit B (Letter of Recommendation, undated) at 1.

<sup>16</sup>Guidelines ¶ 2(c).

considered for access to classified information will be resolved in favor of national security.”<sup>17</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

In the decision-making process, facts must be established by “substantial evidence.”<sup>18</sup> The government initially has the burden of producing evidence to establish a case which demonstrates, in accordance with the Directive, that it is not clearly consistent with the national interest to grant or continue an applicant’s access to classified information. Once the government has produced substantial evidence of a disqualifying condition, the burden shifts to Applicant to produce evidence and prove a mitigating condition. Directive ¶ E3.1.15 provides, “The applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel, and [applicant] has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” The burden of disproving a mitigating condition never shifts to the government.<sup>19</sup>

A person who seeks access to classified information enters into a fiduciary relationship with the government predicated upon trust and confidence. It is a relationship that transcends normal duty hours and endures throughout off-duty hours as well. It is because of this special relationship the government must be able to repose a high degree of trust and confidence in those individuals to whom it grants access to classified information. Decisions under this Directive and the guidelines include, by necessity, consideration of the possible risk that an 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.

The scope of an administrative judge’s decision is limited. Nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism.<sup>20</sup>

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<sup>17</sup>Guidelines ¶ 2(b).

<sup>18</sup>“Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all the contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent [a Judge’s] finding from being supported by substantial evidence.” *Consolo v. Federal Maritime Comm’n*, 383 U.S. 607, 620 (1966). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>19</sup>*See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005). The Administrative Judge [considers] the record evidence as a whole, both favorable and unfavorable, evaluate[s] Applicant’s past and current circumstances in light of pertinent provisions of the Directive, and decide[s] whether Applicant ha[s] met his burden of persuasion under Directive ¶ E3.1.15.” ISCR Case No. 04-10340 at 2 (App. Bd. July 6, 2006).

<sup>20</sup>Executive Order 10865, § 7.

## CONCLUSIONS

The concern about the use of illegal drugs is found in Guidelines ¶ 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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances.

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

Guidelines ¶ 25. Conditions that could raise a security concern and may be disqualifying include:

(a) any drug abuse (see above definition); and

c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant admitted his drug use and purchase from 1992 to 2004. The government established its case under Guideline ¶ 25(a) and (c).

Guidelines ¶ 26. Conditions that could mitigate security concerns include:

(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;

(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; or
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant has been drug free for nearly three years. The Directive does not define "recent." In ISCR Case No. 04-12648 at 9 (App. Bd. Oct. 20, 2006), the Appeal Board:

declined to set any "bright-line" rule as to what constitutes "recent" under the Directive regarding illegal drug use. *See, e.g.,* ISCR Case No. 02-10454 (November

23, 2004) at p. 4. The Board has indicated the matter requires an Administrative Judge to evaluate the record evidence as a whole and reach a reasonable conclusion as to the recency of an applicant's conduct. *See, e.g.*, ISCR Case No. 02-22173 (May 26, 2004) at p. 4. The application of a mitigating condition like Guideline H Mitigating Condition 1 can depend upon a number of factors in addition to the simple passage of time. *See, e.g.*, ISCR Case No. 98-0611 (November 1, 1999) at p. 2. The interval of time presented in this case, slightly less than two and a half years, must be evaluated in light of other factors in the case.<sup>21</sup>

Applicant's lifestyle has changed. He is now a family man, planning to have children, and he has been given significant responsibilities by his employer. His friends have changed. His long-standing friends and his coworkers and supervisors believe he is a changed person. His wife thinks he is a different person. All of these factors work together to convince me that his drug use is not recent, and support his stated intent not to use drugs in the future. He has made the changes necessary in his life to mitigate his prior drug involvement. I conclude guideline H for Applicant.

### **Whole Person Analysis**

“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.”<sup>22</sup> “Available, reliable information about the person, past and present, favorable and unfavorable, should be considered in reaching a determination.”<sup>23</sup> In addition to the disqualifying and mitigating conditions, I considered the “whole person” concept in evaluating Applicant's risk and vulnerability in protecting our national interests.<sup>24</sup> I considered his age (36), his education, his employment, and what might motivate him to stop his drug abuse. Candor with the government about a person's negatives is important in a trustworthiness determination. If a person discloses the adverse information about himself, he may be more likely to put the government's interests ahead of his own to protect classified information. Applicant was completely truthful about his drug use, disclosing it on his security clearance application and admitting his usage in his testimony.

The illegal use of drugs raises questions regarding an individual's willingness or ability to protect classified information. Moreover, impaired ability while under the influence of illegal drugs increases the risk of an unauthorized disclosure of classified material. His drug use extended over a twelve-year period. Applicant's motivation to use drugs was peer pressure and a desire to be sociable. He worked away from home and worked long hours. Drug use was a way that he and coworkers relieved stress. In the last three years, Applicant has made significant changes in his life. He married in 2005. He discontinued use of marijuana in 2004. He no longer works for a high-pressure brokerage firm. He doesn't work out of town. His competence and commitment to his

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<sup>21</sup>ISCR Case No. 03- 02374 at 4 (App. Bd. Jan. 26, 11 2006) (Judge did not err by concluding drug use not recent with passage of slightly less than two and a half years between last use and hearing) (citing ISCR Case No. 02-10454 at 4 (App. Bd. Nov. 23, 2004)). *See* ISCR Case No. 98-0611 at 2 (App. Bd. Nov. 1, 1999) (not error for Judge to find that last marijuana use nine months before close of record was not recent).

<sup>22</sup>Directive ¶ E.2.2.1.

<sup>23</sup>*Id.*

<sup>24</sup>*Id.*



current employer won him new employee honors.. Applicant is now 36 and is a more mature decision-maker. He stated an intent not to use drugs in the future.

I have carefully weighed the mitigating factors, the totality of the circumstances surrounding his decision to use drugs until 2004, his honesty in revealing this information, his work ethic, his recent conduct, and his change in attitude against the seriousness of his misconduct. I have concluded that he would not act in a manner which would harm the government. There is little likelihood he could be pressured, coerced, exploited, or subjected to duress for his past conduct. I observed Applicant during the hearing, and especially during his testimony. I found him to be a sincere and credible witness, because he answered questions directly, completely, and honestly. I believe Applicant will remain drug free in the future. He has overcome the reasonable doubts about his willingness and ability to protect classified information, and to exercise the requisite good judgment and discretion expected of one in whom the government entrusts its interests. I conclude it is clearly consistent with the national interest to grant or continue Applicant's security clearance.

### **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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant

### **DECISION**

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

Christopher Graham  
Administrative Judge