

KEYWORD: Drugs

DIGEST: Applicant is a 55-year-old computer specialist who has worked for a federal contractor for the past four years. He admitted that he has occasionally used marijuana from 1972 until May 2006, but does not intend to use it in the future. He failed to mitigate the security concerns raised by a history of drug abuse. Clearance is denied.

CASENO: 06-21348.h1

DATE: 03/28/2007

DATE: March 28, 2007

In re:)	
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SSN: -----)	ISCR Case No. 06-21348
)	
Applicant for Security Clearance)	
)	

**DECISION OF ADMINISTRATIVE JUDGE
SHARI DAM**

APPEARANCES

FOR GOVERNMENT

Robert E. Coacher, Esq., Department Counsel

FOR APPLICANT

Pro Se

SYNOPSIS

Applicant is a 55-year-old computer specialist who has worked for a federal contractor for the past four years. He admitted that he has occasionally used marijuana from 1972 until May 2006,

but does not intend to use it in the future. He failed to mitigate the security concerns raised by a history of drug abuse. Clearance is denied.

STATEMENT OF THE CASE

On March 8, 2004, Applicant completed a security clearance application (SF-86). On March 7, 2006, Applicant electronically submitted another application (e-QIP). The Defense Office of Hearings and Appeals (DOHA) declined to grant or continue a security clearance for Applicant. As required by Department of Defense Directive 5220.6 ¶ E3.1.2. (Jan. 2, 1992), as amended, DOHA issued a Statement of Reasons (SOR) on November 14, 2006, detailing the basis for its decision—security concerns raised under Guideline H (Drug Involvement) of the 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. Applicant answered the SOR in writing on December 28, 2006, and waived his right to a hearing before an administrative judge. However, on January 9, 2007, the Government requested a hearing. The case was assigned to me on January 26, 2007. DOHA issued a Notice of Hearing on February 8, 2007, setting the case for February 28, 2007.

At the hearing, Department Counsel introduced Government Exhibits (GX) 1 and 2 into evidence without objections. Applicant testified in his case and introduced Applicant Exhibit (AX) A into evidence without an objection. DOHA received the hearing transcript (Tr.) on March 12, 2007.

FINDINGS OF FACT

Based on the entire record, including Applicant's admissions in his Answer to the SOR and at the hearing, I make the following additional findings of fact:

Applicant is a 55-year-old computer networker for a federal contractor. He is divorced and has three grown children with whom he has a good relationship. He is a highly accomplished and successful computer specialist, who has worked in the field for many years. He began his present job as a consultant four years ago and was hired as an employee two years ago (Tr.15). This is his first position with a federal contractor (Tr. 18). He did not have any assistance or guidance from the company in completing either the SF-86 or e-QIP (Tr.37)

Applicant admitted that he has occasionally used marijuana since approximately January 1972 (GX 1 at 35). Up to May 2006, he used it with friends about two to three times a month (Tr.23). He used it after filling out the SCA in March 2004 and the e-QIP in March 2006, knowing illegal drug use was a concern to the Government (Tr.22-24). However, he has not smoked it since May 2006, about nine months ago, and does not intend to use it in the future (Tr. 27). He appreciates the seriousness of this situation (Tr. 28).

Applicant's supervisor for the past three years wrote a letter in support of Applicant. He considers Applicant very capable and someone who exhibits an "unusually high level of integrity." (AX A) He believes Applicant "has proven to be sober and steady in all the dealings I have had with him." (*Id.*)

POLICIES

"[N]o one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). As Commander in Chief, the President has "the authority . . . 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." *Id.* at 527. The President authorized the Secretary of Defense or his designee to grant applicants eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so." Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960). Each security clearance decision "must be a fair and impartial common sense determination based upon consideration of all relevant and material information and the pertinent criteria and adjudication policy." Directive ¶ 6.3. An applicant "has the ultimate burden of demonstrating that it is clearly consistent with the national interest to grant or continue his security clearance." ISCR Case No. 01-20700 at 3 (App. Bd. Dec. 19, 2002).

The revised Adjudicative Guidelines set forth potentially disqualifying conditions (DC) and mitigating conditions (MC) under each guideline. In evaluating the security worthiness of an applicant, the administrative judge must also assess the adjudicative process factors listed in ¶ 6.3 of the Directive. The decision to deny an individual a security clearance is not necessarily a determination as to the loyalty of the applicant. *See* Exec. Or. 10865 § 7. It is merely an indication the applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance.

CONCLUSIONS

Upon consideration of all facts in evidence and application of the appropriate adjudicative factors and legal standards, I conclude the following with respect to the allegations set forth in the SOR:

Guideline H: Drug Involvement

The security concern under Guideline H is that the 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.

Based on Applicant's admission that he has used marijuana from 1972 to May 2006, the Government established a disqualification under Drug Involvement Disqualifying Condition (DI DC) 25(a) (*any drug abuse*).¹

After the Government raised a security concern, the burden shifted to Applicant to mitigate or rebut the allegations. Four conditions can mitigate security concerns arising from drug involvement. After reviewing all of them, I conclude as follows:

(1) Drug Involvement Mitigating Condition (DI MC) 26(a) *the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment* does not apply because Applicant's has been smoking marijuana illegally for more than 30 years, which does cast doubt on his good judgment.

(2) Applicant provided some evidence of mitigation for SOR ¶ 1.b under DI MC 26(b) *a demonstrated intent not to abuse any drugs in the future*. In his response to the SOR, he stated, "My career and contributions to my employer hold a great deal more importance to me. I will 1) discontinue any and all use of marijuana and 2) submit to any substance abuse testing at any time." (Answer, dated January 3, 2007). This statement falls within the spirit of subparagraph (4) of 26 (b) *a signed statement of intent with automatic revocation of clearance for any violations*. The other three subparagraphs do not apply.

(3) DI MC 26(c) *abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended* is not applicable to the situation.

(4) DI MC 26(d) *satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional* is not applicable because Applicant did not participate in any program.

Whole Person Analysis

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is known as the "whole person" analysis. Directive ¶ E2.2. In evaluating the conduct of the applicant, an administrative judge should consider: (1) the nature, extent, and seriousness of the conduct; (2) the circumstances surrounding the conduct; (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 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.

I considered the totality of the evidence in view of the "whole person" concept, including Applicant's middle age, his demeanor while testifying, and very candid disclosures about his

¹AG 24(a) *Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds . . . (marijuana or cannabis).*

marijuana use for more than thirty years. Although I was rather surprised by his lack of awareness of the detrimental effect illegal marijuana use could have on his job, I took into account his expressed intention to stop using it, including a willingness to participate in a rehabilitation program if necessary. Given his present concern for his career, I believe he will initiate the steps necessary to resolve this situation in the future. However, at this time he did not mitigate the allegation under SOR ¶ 1.a, but did mitigate the allegation under ¶ 1.b. Accordingly, Guideline H is found against him.

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 as follows:

Paragraph 1: Guideline H (Drug Involvement)	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	For Applicant

DECISION

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

Shari Dam
Administrative Judge