



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



In the matter of:	)	
	)	
	)	ISCR Case No. 12-04712
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: John Bayard Glendon, Esquire, Department Counsel  
For Applicant: *Pro se*

04/30/2013

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

Based on the record in this case,<sup>1</sup> Applicant’s clearance is granted.

On 7 December 2012, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant listing security concerns under Guidelines H, Drug Involvement, and E, Personal Conduct.<sup>2</sup> Applicant timely answered, requesting a hearing before the Defense Office of Hearings and Appeals (DOHA). DOHA assigned the case to me 7 February 2013, and I convened a hearing 9 April 2013.<sup>3</sup> DOHA received the transcript (Tr.) 16 April 2013.

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<sup>1</sup>Consisting of the transcript (Tr.), Government exhibits (GE) 1-4, and Applicant exhibits (AE) A-E. AE E was timely received post hearing.

<sup>2</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), as amended; DoD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DoD on 1 September 2006.

<sup>3</sup>At which, Department Counsel withdrew the Guideline E allegations (Tr. 15).

## Findings of Fact

Applicant admitted the SOR allegations. He is a 34-year-old tech support technologist employed by a defense contractor since July 2000. He seeks to retain the clearance he obtained in March 2005, the first he ever had.

Between 1996 and December 2008, Applicant used marijuana at varying frequencies, an estimated 3,000 times (SOR 1.a). Between October 2004 and October 2008, he purchased user amounts of marijuana (SOR 1.b). He also experimented with cocaine about four times between December 2004 and December 2006 (SOR 1.d). Cocaine made him ill each time he tried it. All the illegal drug use that occurred after March 2005 occurred while Applicant held a clearance (SOR 1.c, 1,e). Applicant fully disclosed his drug use on his January 2012 clearance application (GE 1).

Applicant began using marijuana in 1996, during his senior year in high school. He continued to use marijuana after high school, while in community college, and afterward.

Since June 1998, Applicant has been employed in computer support for several employers, each of whom are federal contractors. In May 1999, Applicant went to work for a computer support company, detailed to support his current employer, who hired him directly in July 2000. He has been employed there since, working exclusively in company-controlled buildings.

In September 2003, Applicant's company nominated him for a clearance, and Applicant completed his first clearance application (GE 4). He reported using marijuana numerous times between January 1997 and September 2003. He provided greater detail about his marijuana use on his January 2004 sworn statement, and stated an intent to refrain from marijuana use in the future because he had matured and was now focused on his career (GE 3).

Applicant received his clearance in March 2005, but the only change in Applicant's employment was that his company badge changed from yellow to red in color. He was assigned the same kind of work that he had been assigned since 2000, and did not have access to classified information.

In 2005, Applicant resumed using marijuana and began using it more frequently than he had previously, daily or nearly daily. During this time, he bought marijuana on occasion for his personal consumption. He mostly used marijuana at home, but occasionally he used with friends.

In July 2007, Applicant's father died. Applicant had worked part-time for his father's heating and air conditioning company since about October 2000. In 2008, Applicant began working on classified contracts for his company, and began having access to classified material. Applicant came to realize that he was putting both his job and classified information at risk by continuing to use marijuana, so he stopped using

marijuana in May 2008, except for a last celebratory—and admittedly stupid—time at a holiday party in December 2008. In January 2012, Applicant's clearance came up for periodic reinvestigation and for an upgrade in access, and he completed his second clearance application, again reporting all his drug involvement.

Applicant's performance appraisals the last four years (2009-2012) have been excellent (AE A). Since October 2008, Applicant has been recognized by his company 28 times for his work performance—six achievement awards for extraordinary contributions and 22 spot awards for outstanding performance (AE B). Spot awards come with a cash incentive payment. Applicant's security manager since August 2010, who nominated Applicant for two of his cash awards, noted both Applicant's outstanding computer support for him for the last two-plus years and his extreme remorse over his past drug use (AE C). In March 2013, Applicant voluntarily obtained a standard drug screen, which came back negative for any illegal drugs (AE D). Applicant has provided a signed statement of intent concerning future drug use as contemplated by the Directive (AE E).

Applicant has no ongoing contact with any of the people with whom he used illegal drugs. When he first stopped using illegal drugs, he was offered—and refused—marijuana, but over time he stopped seeing these people because he realized they were not going to change, and he did not want to be exposed to the risk of being associated with illegal drug users.

### **Policies**

The adjudicative guidelines (AG) list factors 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 issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial commonsense consideration of the factors listed in AG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against an applicant. However, specific adjudicative guidelines should be followed where 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 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, it establishes a baseline case against granting a clearance. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, an 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>4</sup>

### Analysis

The Government established a case for disqualification under Guideline H, by demonstrating Applicant’s extensive illegal drug abuse between 1996 and December 2008, during a time he used them while holding a clearance.<sup>5</sup> However, Applicant mitigated the security concerns. Without minimizing the security significance his illegal drug abuse, and drug abuse after being granted a clearance, the important fact is that Applicant had never had access to classified information, and thus did not fully recognize the risk to which he was exposing himself and classified information. When he was transferred to a job that required him to have access to classified information, he began to realize the risk that continued marijuana use subjected himself to, and he stopped his illegal marijuana use—except for one relapse at a Christmas party in December 2008.

Drug involvement mitigating conditions give substantial support to Applicant. His illegal drug abuse was frequent, and covered an extensive time period. However, his last illegal drug use was December 2008, over four years ago.<sup>6</sup> Further, he demonstrated intent to not abuse drugs in the future by abstaining altogether for more than four years, disassociating himself from drug using contacts and avoiding the environments where he used with friends, and stating a willingness to sign—and then signing—the statement of intent contemplated by the Directive.<sup>7</sup> I conclude Applicant is unlikely to abuse illegal drugs in the future. Accordingly, I resolve Guideline H for Applicant.

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<sup>4</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>5</sup>¶25 (a) any drug abuse ; (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; (g) any illegal drug abuse after being granted a security clearance;

<sup>6</sup>¶ 26 (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 [Emphasis supplied];

<sup>7</sup>¶ 26 (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; (4) a signed statement of intent with automatic revocation of clearance for any violation;

### **Formal Findings**

Paragraph 1. Guideline H:	FOR APPLICANT
Subparagraph a-e:	For Applicant
Paragraph 2. Guideline E:	WITHDRAWN

### **Conclusion**

Under 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.

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JOHN GRATTAN METZ, JR  
Administrative Judge