



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



In the matter of: )  
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 ----- ) ISCR Case No. 12-07878  
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 Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: William J. Bainbridge, Esquire

March 9, 2015

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**Decision**

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**Synopsis**

Applicant took one puff of a marijuana cigarette on one occasion in 2011, while holding a security clearance. With the exception of when he was a Freshman in college in 1996, this was the only other time that he ever used an illegal drug, and he self-reported it on his Security Clearance Application. He credibly testified and submitted a personal statement, stating that he did not intend to use any illegal substance in the future. Mitigation has been shown. Clearance is granted.

MOGUL, Martin H., Administrative Judge:

On July 2, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H for Applicant. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG), effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on August 7, 2014, and he requested that his case be decided by a hearing before an Administrative Judge. The case was initially assigned to another Administrative Judge on December 29, 2014, and DOHA issued a notice of hearing on that date. I received the case assignment on January 12, 2015. The hearing was convened as scheduled on January 23, 2015. At the hearing, the Government offered Exhibits 1 and 2, which were received without objection. Applicant testified on his own behalf, and submitted Exhibits A through C, which were also admitted without objection. Two additional witnesses testified on behalf of Applicant. DOHA received the transcript of the hearing (Tr) on February 2, 2015. Based upon a review of the pleadings, exhibits, and the testimony of Applicant and the two additional witnesses, eligibility for access to classified information is granted.

### **Findings of Fact**

In his RSOR, Applicant admitted the one SOR allegation, 1.a. The admitted allegation is incorporated herein as a finding of fact.

After a complete and thorough review of the evidence in the record, as reviewed above, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 36 years old. He is married, and he and his wife have one child with another one due shortly. Applicant received a Bachelor of Science degree in Physics in 2001. Applicant has been employed on a full-time basis by his present employer, a defense contractor, since 2001, and he seeks a DoD security clearance in connection with employment in the defense sector. (Tr at 50-54.)

### **Guideline H - Drug Involvement**

The SOR lists one allegation (1.a.) under Adjudicative Guideline H.

1.a. The SOR alleges, and Applicant admitted in his RSOR, that he, "used marijuana in April 2011, after being granted a Department of Defense Security Clearance." At the hearing, Applicant testified that in April 2011 he was at an outdoor music concert with some friends. Between acts at the concert some other acquaintances met up with Applicant and his friends. One of the individuals had a marijuana cigarette, and he offered it to the other people including Applicant. Applicant testified that he took one puff of the marijuana cigarette without really thinking about it, but after he took the drag, he thought to himself, "that was pretty stupid." When it was offered to him a second time, he declined to use the marijuana again. (Tr at 54-58, 64.)

Applicant conceded that he had also experimented with marijuana in 1996 or 1997, for one or two months when he was a Freshman in college. He estimated that he used it fewer than 10 times. After that brief period, he decided that he did not like associating with the people who used marijuana at school, and he never used marijuana again until the one occasion in April 2011. Applicant also testified that he never used any other illegal drug except marijuana. (Tr at 58- 63.)

Applicant testified credibly that he never used marijuana after that one occasion in April 2011. He also testified that he does not associate with any drug users, he intends never to use any illegal drug in the future. He explained that he could be sure he would never partake of an illegal substance in the future because of how important his wife and soon to be two children are to him, and he would never do anything in the future that would jeopardize their security or safety, nor would he want to jeopardize his security clearance in the future. (Tr at 54-58, 64-66.)

Applicant testified that he voluntarily revealed to the Government that he had used marijuana upon his own volition. He revealed his college usage on his first Security Clearance Application (SCA), and he revealed his 2011 marijuana usage on an updated SCA. (Tr at 58, 63.)

Applicant submitted a sworn statement signed by him under penalty of perjury, in which he wrote, "It is my firm intention to not use any narcotic, depressant, stimulant, hallucinogen (Including LSD and/or PCP), cannabis (Including marijuana and/or hashish). It is also my firm intention to not use any prescription drug without a valid prescription, misuse a drug prescribed to me, and/or misuse any over-the-counter medication in a manner for which it is not intended. I understand and agree that any violation of the forgoing will result in the automatic revocation of my clearance." (Exhibit C; Tab A.)

## **Mitigation**

As discussed above, two witnesses testified on Applicant's behalf. The first witness has known Applicant for nine years both at work and socially. She was informed by Applicant that "four years ago, he took a hit off a joint at a concert." The witness testified that Applicant was "very remorseful [and] he recognizes that it was a mistake." Applicant expressed to the witness that he does not intend to use drugs in the future, and based on her knowledge of Applicant, the witness was confident that Applicant would be successful. (Tr at 20-34.) The second witness, who also knows Applicant from his employment and socially, also became aware of Applicant's one time use of marijuana. He was confident that Applicant would not use any drug in the future. (Tr at 36-42.)

Additionally, Applicant submitted his Performance Evaluations from 2001 through 2013. (Exhibit A; Tabs A through M.) His evaluations have all been excellent, and his 2013 Performance Rating was "Far Exceeds Requirements."

Finally, Applicant submitted two extremely positive and laudatory character letters from individuals who know Applicant professionally. (Exhibit C; Tabs B and C.) He was described by an individual who is aware of Applicant's brief drug usage, "as a very responsible, hard-working, and conscientious person." The witness also wrote, "I know [Applicant] now recognizes and regrets his mistake and I believe him when he says he will never get involved with drugs again."

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful in evaluating an applicant's eligibility for access to classified information.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the factors listed in the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common-sense decision. According to AG ¶ 2(c), the entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all available, reliable information about the person, past and present, favorable and unfavorable, in making a decision.

The protection of the national security is the paramount consideration. AG ¶ 2(b) requires that "[a]ny doubt concerning personnel being considered for access to classified information will be resolved in favor of national security." 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.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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. . . ." The Applicant has the ultimate burden of persuasion as to obtaining a favorable security decision.

A person who seeks access to classified information enters into a fiduciary relationship with the Government predicated upon trust and confidence. This relationship transcends normal duty hours and endures throughout off-duty hours. The Government reposes a high degree of trust and confidence in individuals to whom it grants access to classified information. Decisions include, by necessity, consideration of the possible risk the 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.

Section 7 of Executive Order 10865 provides that decisions shall be "in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned." See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline H - Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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.

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, specifically the use of marijuana as recently as April 2011, while he was holding a security clearance, is of great concern, especially in light of his continued desire to have access to the nation's secrets. Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement ¶ 25(a) "any drug abuse," and (c) "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution." ¶ 25(g) is also applicable because of Applicant's "illegal drug use after being granted a security clearance."

However, I find credible his testimony and his written statement that he intends to abstain from using marijuana or any illegal drug in the future. I also considered that with the exception of brief usage in 1996 or 1997, Applicant used an illegal drug on only one occasion and that was almost four years ago. I also considered Applicant's honesty in revealing his drug usage to the Government on SCAs that he completed. Finally, I considered the positive and laudatory testimony of the two witnesses and the character letters, which make Applicant's stated intentions to never use illegal drugs again more credible and convincing. Therefore, I conclude that ¶ 26(a) is applicable since "the behavior . . . was so infrequent" and "happened under such circumstances that it is unlikely to recur." Also, ¶ 26(b) "a demonstrated intent not to abuse any drugs in the future," including (3) "an appropriate period of abstinence," and (4) "a signed statement of intent with automatic revocation of clearance for any violation," is applicable and mitigating.

In this case, the Government has met its initial burden of proving that Applicant has used illegal drugs under Guideline H. Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome the Government's case against him. Accordingly, Guideline H of the SOR is concluded for Applicant.

### Whole-Person Concept

Under the whole-person concept, the Administrative Judge must evaluate an Applicant's eligibility for a security clearance by considering the totality of the Applicant's conduct and all the circumstances. The Administrative Judge should consider the nine adjudicative process factors listed at AG ¶ 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) the 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.

Under AG ¶ 2(c), the ultimate determination of whether to grant eligibility for a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the mitigating conditions are applicable and controlling, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns.

### **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

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul  
Administrative Judge