



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-00488
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

October 24, 2013

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP) on September 2, 2012. On June 4, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E 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 after September 1, 2006.

Applicant acknowledged receipt of the SOR on June 12, 2013. He answered the SOR in writing on June 14, 2013, and requested a hearing before an Administrative Judge. DOHA received the request on June 17, 2013, and I received the case assignment on August 1, 2013. DOHA issued a notice of hearing on August 6, 2013, and I convened the hearing as scheduled on August 27, 2013. The Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified on his

own behalf and submitted Exhibit (AppX) A, which was received without objection. DOHA received the transcript of the hearing (TR) on September 4, 2013. I granted Applicant's request to keep the record open until September 27, 2013, to submit additional matters. On September 7, 2013, he submitted Exhibit B, which was received without objection. The record closed on September 27, 2013. Based upon a review of the pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in all the Subparagraphs of the SOR, with explanations.

### **Guideline H - Drug Involvement & Guideline E - Personal Conduct**

Applicant is 58 years of age, and has held a security clearance for "11 years." (TR at page 19 lines 23~25, and at page 21 lines 10~15.) Prior to the marijuana use at issue, he last used marijuana "in 1971," more than 40 years ago. (TR at page 21 line 16 to page 22 line 3.)

1.a., 1.b., 2.a. and 2.b. While in Amsterdam, the Netherlands, in May of 2012, Applicant purchased and used marijuana on one occasion. (TR at page 17 line 10 to page 21 line 9.) He did not view this one time usage as problematic, as the purchase and use of the drug was legal under Dutch law. (*Id.*) Although he did not report this usage upon his return to the United States, Applicant did disclose it four months later on his September 2012 e-QIP. (GX 1 at page 34.) Applicant now understands the concerns of the Government as to the use of marijuana. (TR at page 24 line 15 to page 25 line 13.) He has foresworn the abuse of any drugs in the future, and has signed a statement of intent acknowledging "automatic revocation of . . . [his] security clearance" for any future drug abuse. (TR at page 28 lines 8~12, and AppX B at page 2.)

### **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 commonsense decision. According to AG Paragraph 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. Paragraph 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 Paragraph E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive Paragraph 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 Paragraph 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 judgment and because it raises questions about a person’s ability or willingness to comply with laws, rules, and regulations.

The guideline also notes several conditions that could raise security concerns. Under Subparagraph 25(a), “*any drug abuse*” may be disqualifying. In addition, the

*“illegal . . . purchase . . .”* under Subparagraph 25(c), and *“any illegal drug use after being granted a security clearance”* under Subparagraph 25(g) may be disqualifying. Here, Applicant used marijuana once in 2012 after having been granted a security clearance.

These are countered, however, by the mitigating conditions found in Subparagraphs 26(a) and 26(b). Applicant’s *“behavior . . . happened under such unusual circumstances that it is unlikely to recur . . .”* Furthermore, he has shown *“a demonstrated intent not to abuse any drugs in the future, such as: (4) a signed statement of intent with automatic revocation of clearance for any violation.”* The Applicant purchased and used marijuana in Amsterdam where it was legal to do so, mistakenly thinking such use would not affect his security clearance. He now realizes that such conduct is not compatible with holding a security clearance, and has signed a letter of intent not to abuse any drugs in the future. I find his statement of intent to be credible and sincere.

### **Guideline E - Personal Conduct**

The security concern relating to the guideline for Personal Conduct is set out in Paragraph 15:

Conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual’s reliability, trustworthiness and ability to protect classified information.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(e)(2), *“personal conduct . . . that creates a vulnerability to exploitation, manipulation, or duress, such as . . . while in another country, engaging in any activity . . . that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group”* Here, Applicant used marijuana, which is legal under Dutch law, but illegal under U. S. Federal law. However, the countervailing Mitigating Condition 17(e) is applicable here, in that *“the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.”* Applicant has disclosed his one time drug abuse to the Government, and has eschewed any future usage.

### **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. Under AG Subparagraph 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.

The Administrative Judge should also consider the nine adjudicative process factors listed at AG Subparagraph 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.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. The Applicant has the unqualified support of those who know him in the workplace. (AppX A, and B at page 3). The record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For this reason, I conclude Applicant has mitigated the security concerns arising from his Drug Involvement and related Personal Conduct.

### **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:

Paragraph 1, Guideline H:	FOR APPLICANT
Subparagraph 1.a.:	For Applicant
Subparagraph 1.b.:	For Applicant
Paragraph 2, Guideline E:	For APPLICANT
Subparagraph 2.a.:	For Applicant
Subparagraph 2.b.:	For Applicant

## **Conclusion**

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

Richard A. Cefola  
Administrative Judge