



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



In the matter of:	)	
	)	
	)	ISCR Case No. 13-01142
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: Catie E. Young, Esquire

May 20, 2014

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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 December 6, 2010. On December 11, 2013, 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 after September 1, 2006.

Applicant acknowledged receipt of the SOR on January 6, 2014. He answered the SOR in writing through counsel on January 30, 2014, and requested a hearing before an Administrative Judge. The Defense Office of Hearings and Appeals (DOHA) received the request soon thereafter, and I received the case assignment on March 19, 2014. I granted Applicant’s request for a delay until the week of “21st-24th” of April 2014, in order for his counsel to be available. DOHA issued a notice of hearing on

March 31, 2014, and I convened the hearing as scheduled on April 22, 2014. The Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified on his own behalf, as did his fiancée, and submitted Exhibits (AppXs) A through Q which were received without objection. DOHA received the transcript of the hearing (TR) on May 2, 2014. I granted Applicant's request to keep the record open until May 7, 2014, to submit additional matters. On April 30, 2014, he submitted signed copies of AppXs E, G and H, and a supplement to AppX P, which were received without objection. The record closed on May 7, 2014. 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 Subparagraph 1.a. of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

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

Applicant is a 28 year-old employee of a defense contractor. (TR at page 21 line 13 to page 22 line 8, and GX 1 at page 6.) He received a security clearance sometime in 2011. (TR at page 21 line 13 to page 22 line 8.)

1.a. In August of 2013, Applicant and his fiancée were at a casino in Las Vegas, Nevada. He describes what happened in the following terms:

We met a couple at the Blackjack Table, and they invited us up [to their room] to a party later that evening. And later that evening, we went up there and just to check it out and to see - - just to mingle and to have fun in Vegas. Then I guess during the party, someone had marijuana. I don't know exactly who had it or brought it or when it was initially taken out and shown to the party. Then after that, it was passed around, and I regretfully took a couple of puffs. Not too long after that, we hung out a little bit longer and just talked to a couple of people and then we went back to our hotel room and went to sleep that night. That was pretty much it. (TR at page 24 line 12 to page 25 line 2.)

This is the only time Applicant has ever used an illegal substance. (TR at page 26 line 9 to page 27 line 17.) His fiancée's testimony corroborated that of Applicant, and she also admitted to smoking the marijuana. (TR at page 50 line 8 to page 57 line 23.)

Two weeks after this incident, Applicant verbally self-reported it to his security officer. (TR at page 29 line 6 to page 30 line 17, and page 40 line 5 to page 42 line 21.) This is corroborated by his security officer. (AppX P as supplemented.) Applicant later submitted the self-report in writing. (AppX H.) He also told his "brothers and sisters" of his transgression. (TR at page 32 line 1 to page 33 line 2.) Furthermore, Applicant has

submitted a signed statement of intent with automatic revocation should he “use illegal drugs again.” (AppX P at pages 1~2.)

## **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 August of 2013, 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.*” Applicant used marijuana at a party in Las Vegas. The only time he has ever used any illegal substance. He self-reported his transgression soon thereafter, 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.

### **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. Applicant has the unqualified support of those who know him in the workplace. (AppXs A~G.) The record evidence leaves me without questions or 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.

### **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

### **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.

Richard A. Cefola  
Administrative Judge