



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



In the matter of:)	
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)	ISCR Case No. 13-01189
Applicant for Security Clearance)	

Appearances

For Government: Alison O’Connell, Esq., Department Counsel
For Applicant: *Pro se*

02/07/2014

Decision

LEONARD, Michael H., Administrative Judge:

Applicant contests the Defense Department’s intent to deny his security clearance to work in the defense industry. The security concerns stemming from his irregular and limited marijuana use and his one-time misuse of a prescription drug are sufficiently explained and mitigated. Accordingly, this case is decided for Applicant.

Statement of the Case

On or about December 6, 2013, the Department of Defense (DOD) sent Applicant a statement of reasons (SOR), explaining it was unable to find that it was clearly consistent with the national interest to grant or continue access to classified information.¹ The SOR is similar to a complaint, and it detailed the reasons for the

¹ This case is adjudicated under Executive Order 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended, as well as Department of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992,

action under the security guideline known as Guideline H for drug involvement. Applicant answered the SOR on December 17, 2013. Neither Applicant nor Department Counsel requested a hearing, and so, the case will be decided on the written record.²

Thereafter, on January 22, 2014, Department Counsel submitted all relevant and material information that could be adduced at a hearing.³ This so-called file of relevant material (FORM) was mailed to Applicant, who received it January 31, 2014. He then notified Department Counsel he would not reply to the FORM and requested an expedited decision.⁴ The case was assigned to me February 5, 2014.

Findings of Fact

Applicant is a 23-year-old employee who is seeking to obtain a security clearance for the first time. He has never married and he has no children. He earned a bachelor's degree from a large state university, which he attended during 2009–2013. Like many recent college graduates, he is currently living with his parents.

Applicant is now working as an entry-level engineer with a federal contractor. As part of his employment, he completed a security clearance application in June 2013.⁵ He disclosed the following matters in response to Question 23 of the application:⁶

- Using marijuana about ten times during September 2007 to March 2013, when he was 16 to 22 years of age; and
- Misusing a prescription drug (Adderall)⁷ once in July 2012.

He explained that he had no intention to use any illegal drugs now that he had a career and other responsibilities. He further explained that he misused Adderall in order to stay awake after a work day. Other than his drug abuse, he reported no other matters of a

as amended (Directive). In addition, the *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information* (AG), effective within the Defense Department on September 1, 2006, apply here. The AG were published in the Federal Register and codified in 32 C.F.R. § 154, Appendix H (2006). The AG replace the guidelines in Enclosure 2 to the Directive.

² Directive, Enclosure 3, ¶ E3.1.7.

³ The file of relevant material consists of Department Counsel's written brief and supporting documents, some of which may be identified as evidentiary exhibits in this decision.

⁴ Department Counsel's e-mail, dated Jan. 31, 2014.

⁵ Exhibit 5.

⁶ Exhibit 5 at 30 and 31 of 35.

⁷ I understand that Adderall is a potent amphetamine psychostimulant and pharmaceutical drug commonly used in the treatment of ADHD and narcolepsy.

security concern (e.g., financial problems, alcohol-related incidents, or police record) in his application.

The SOR alleged the drug abuse as described above. Applicant admitted the allegations in his answer to the SOR. Concerning marijuana use, he stated that he was not a regular or consistent user of marijuana and his usage was not significant. Concerning misuse of Adderall, he stated that it was not recent (July 2012) and it was an isolated incident. He also pledged that he will not use any illegal drug or misuse a legal drug in the future.

Law and Policies

It is well-established law that no one has a right to a security clearance.⁸ As noted by the Supreme Court in *Department of Navy v. Egan*, “the clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”⁹ Under *Egan*, Executive Order 10865, and the Directive, any doubt about whether an applicant should be allowed access to classified information will be resolved in favor of protecting national security.

A favorable clearance decision establishes eligibility of an applicant to be granted a security clearance for access to confidential, secret, or top-secret information.¹⁰ An unfavorable decision (1) denies any application, (2) revokes any existing security clearance, and (3) prevents access to classified information at any level.¹¹

There is no presumption in favor of granting, renewing, or continuing eligibility for access to classified information.¹² The Government has the burden of presenting evidence to establish facts alleged in the SOR that have been controverted.¹³ An applicant is responsible for presenting evidence to refute, explain, extenuate, or mitigate facts that have been admitted or proven.¹⁴ In addition, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision.¹⁵ In *Egan*, the Supreme

⁸ *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988) (“it should be obvious that no one has a ‘right’ to a security clearance”); *Duane v. Department of Defense*, 275 F.3d 988, 994 (10th Cir. 2002) (no right to a security clearance).

⁹ 484 U.S. at 531.

¹⁰ Directive, ¶ 3.2.

¹¹ Directive, ¶ 3.2.

¹² ISCR Case No. 02-18663 (App. Bd. Mar. 23, 2004).

¹³ Directive, Enclosure 3, ¶ E3.1.14.

¹⁴ Directive, Enclosure 3, ¶ E3.1.15.

¹⁵ Directive, Enclosure 3, ¶ E3.1.15.

Court stated that the burden of proof is less than a preponderance of the evidence.¹⁶ The DOHA Appeal Board has followed the Court's reasoning, and a judge's findings of fact are reviewed under the substantial-evidence standard.¹⁷

The AG set forth the relevant standards to consider when evaluating a person's security clearance eligibility, including disqualifying conditions and mitigating conditions for each guideline. In addition, each clearance decision must be a commonsense decision based upon consideration of the relevant and material information, the pertinent criteria and adjudication factors, and the whole-person concept.

The Government must be able to have a high degree of trust and confidence in those persons to whom it grants access to classified information. The decision to deny a person a security clearance is not a determination of an applicant's loyalty.¹⁸ Instead, it is a determination that an applicant has not met the strict guidelines the President has established for granting eligibility for access.

Discussion

Under Guideline H,¹⁹ the security concern is that the use of an illegal drug, or misuse of a prescription drug, raises questions about a person's judgment, reliability, and trustworthiness. In this context, the term drug abuse means "the illegal use of a drug or use of a legal drug in a manner that deviates from the approved medical direction."²⁰ The guideline also expresses a concern that drug involvement may call into question a person's ability or willingness to follow laws, rules, and regulations.

Here, the evidence is sufficient to establish a security concern based on Applicant's history of drug abuse.²¹ The evidence shows he engaged in drug abuse by using marijuana about ten times while in high school and college. During the same period, he misused a prescription drug on one occasion. His drug abuse reflects negatively on his judgment, reliability, trustworthiness, and willingness to follow laws, rules, and regulations.

There are four mitigating conditions to consider under Guideline H.²² In light of the evidence here, AG ¶ 26(b) is most pertinent because I am persuaded that Applicant

¹⁶ *Egan*, 484 U.S. at 531.

¹⁷ ISCR Case No. 01-20700 (App. Bd. Dec. 19, 2002) (citations omitted).

¹⁸ Executive Order 10865, § 7.

¹⁹ AG ¶¶ 24–26 (setting forth the security concern and the disqualifying and mitigating conditions).

²⁰ AG ¶ 24(b).

²¹ AG ¶ 25(a).

²² AG ¶ 26(a)–(d).

has demonstrated an intent not to abuse any drugs in the future. I reach that conclusion for the following reasons: (1) his misuse of Adderall was a one-time isolated incident; (2) his use of marijuana (ten times while in high school and college) was irregular and limited; (3) he has not engaged in drug abuse since March 2013, which was before completing college and before beginning his job with a federal contractor; and (4) he has pledged, in both his security clearance application and his answer to the SOR, that he will not engage in drug abuse in the future. In addition, he receives credit for disclosing his drug abuse in his security clearance application and during the security clearance process. By doing so, he did what is expected of a person seeking access to classified information. In summary, viewing the evidence as a whole, I am persuaded that his drug abuse has ended and it will not occur again.

Applicant's history of drug abuse does not justify current doubt about his judgment, reliability, trustworthiness, and ability to protect classified information. In reaching this conclusion, I considered the whole-person concept.²³ I also weighed the evidence as a whole and considered if the favorable evidence outweighed the unfavorable evidence or *vice versa*. Accordingly, I conclude he has met his ultimate burden of persuasion to show that it is clearly consistent with the national interest to grant him eligibility for access to classified information.

Formal Findings

The formal findings on the SOR allegations are:

Paragraph 1, Guideline H:	For Applicant
Subparagraphs 1.a and 1.b:	For Applicant

Conclusion

In light of the record as a whole, it is clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Michael H. Leonard
Administrative Judge

²³ AG ¶ 2(a)(1)–(9).