



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



In the matter of: )  
 )  
 ) ISCR Case No. 13-01217  
 )  
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 Applicant for Security Clearance )

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

06/26/2014

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**Decision**

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WHITE, David M., Administrative Judge:

Applicant admitted to minor drug abuse on one occasion on his security clearance application. The evidence is sufficient to mitigate resulting security concerns. Based upon a review of the pleadings, testimony, and exhibits, eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted a security clearance application (SF 86) on July 19, 2013. On December 23, 2013, the Department of Defense (DoD) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H (Drug Involvement). 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 for Determining Eligibility for Access to Classified Information*, effective within the Department of Defense after September 1, 2006.

Applicant answered the SOR in writing (AR) on January 14, 2014, and requested a hearing before an administrative judge. Department Counsel was prepared to proceed on February 12, 2014. The case was assigned to me on February 18, 2014. The

Defense Office of Hearings and Appeals (DOHA) issued a Notice of Video Teleconference Hearing on March 11, 2014, and I convened the hearing, as scheduled, on March 27, 2014. Applicant and the court reporter attended the hearing in person. Department Counsel participated from DOHA Headquarters by video teleconference. The Government offered Exhibit (GE) 1, which was admitted without objection. Applicant offered Exhibit (AE) A, which was admitted without objection, and testified on his own behalf. I granted Applicant's request to leave the record open until April 10, 2014, for submission of additional evidence. DOHA received the transcript of the hearing (Tr.) on April 4, 2014. Applicant timely submitted AE B and AE C, which were admitted without objection, and the record closed as scheduled.

### **Findings of Fact**

Applicant is a 35-year-old employee of a defense contractor, where he has worked since June 2008. He is a mechanic in a test organization that works on both commercial and military contracts for his company. He is married, with two children, ages 6 and 3. He graduated from high school in 1997, and has some community college courses toward an associate's degree. He has no military service, and has not previously applied for or held a security clearance. (GE 1; Tr. 7-8.)

In his response to the SOR, Applicant admitted both allegations of drug use set forth in SOR ¶¶ 1.a and 1.b, with explanations. Applicant's admissions are incorporated in the following findings.

During June 2013, Applicant attended an overnight camp-out bachelor party for his brother-in-law that was held at a rock concert festival out in the country. He did not know most of the other attendees at the party, and at first declined their invitations to drink with them. Applicant has consumed alcohol on rare occasions in the past, but does not regularly consume alcohol or have any in his home. The others present pressured him to join them in "celebrating," and he finally agreed to drink alcohol to the point that he became inebriated. His judgment was affected by the alcohol, and when the other party goers passed around a marijuana pipe he used it one time. He felt no effect from the marijuana, and did not use it further. Later in the evening, someone in the group passed around hallucinogenic mushrooms and, again due to his inebriated state, Applicant ate one. He also reported feeling no effect from that drug. Applicant's only previous experience with any drug use was a one-time experimentation with marijuana during high school, which he also found unsatisfactory and never wanted to repeat. He does not smoke tobacco, and was unsure whether he actually inhaled the marijuana or "did it right." (AR; GE 1; Tr. 25-39.)

The month following the bachelor party, Applicant was informed that a coworker was going to retire and he had been selected to obtain a security clearance so he could replace the retiring mechanic on classified work. When completing his SF 86, he admitted that he had used the marijuana and the mushroom the previous month. He had told his wife about the party, but she was the only person not present at the party who knew what he had done until he completed the SF 86. (AR; GE 1; Tr. 36-38.)

Applicant provided a signed statement of intent not to abuse drugs in the future, offered to submit to random and scheduled testing, and agreed to immediate revocation of his clearance for any future drug abuse. (AE A.) A close friend and coworker described him as trustworthy, with a reputation for good integrity and dependability. He and Applicant have attended numerous other social events and concerts together, and he only saw Applicant take one drink of alcohol one time. On all other occasions, Applicant turned down offers of alcohol and drank soda. (AE B.)

Applicant's direct manager also submitted an unsolicited letter on his behalf, describing his trustworthiness, honesty, accountability, and excellent character. This manager is a retired Air Force officer who has held a security clearance and worked with classified and sensitive information for many years. He expressed absolute confidence in Applicant's suitability for a security clearance, and highly recommended that it be granted. (AE C.)

### **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 (DCs) and mitigating conditions (MCs), which are to be used 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an

applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The only DC supported by the evidence in this case is:

(a) any drug abuse.

Applicant admitted to use of marijuana by taking one puff from a marijuana pipe that was passed around during his brother-in-law's bachelor party during June 2013. He also admitted eating one hallucinogenic mushroom later that evening. Although marijuana use had been legalized in the state where this occurred, Applicant knew that it remained illegal under Federal law and did not try to make any excuse for what he recognized was wrongful conduct.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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;

- (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; and,
  - (4) a signed statement of intent with automatic revocation of clearance for any violation;
- (c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and,
- (d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant's self-admitted drug abuse was very minor and done under significant peer pressure, which he failed to resist due to his prior consumption of alcohol. This was Applicant's only incident of drug abuse since a one-time experimentation with marijuana almost 20 years earlier. It occurred among friends and associates of his new brother-in-law, most of whom he never associated with previously or since. He signed a statement of intent, and testified with great credibility that this conduct was completely out of character for him and would not recur. Applicant persuasively demonstrated his intent not to abuse drugs in the future, and that such behavior is unlikely to recur and does not cast doubt on his current reliability, trustworthiness, or good judgment. He accordingly established strong mitigation under AG ¶¶ 26(a) and (b). The other two mitigating conditions have no application under the facts of this case.

### **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 relevant 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 pertinent facts and circumstances surrounding this case. Applicant engaged in two minor incidents of drug abuse on one occasion. He did not seek out the drugs, but succumbed to peer pressure after consuming alcohol that he also tried to decline. He knew what he did was wrong, and admitted what had happened to his wife. This was the only time he abused drugs since a one-time experimentation with marijuana while in school almost 20 years ago. He is a mature and experienced individual who rarely drinks alcohol and convincingly testified that he has no intention of ever abusing drugs again. His credibility was strongly enhanced by his demeanor during testimony and by the fact that the only evidence of his drug use was his honest disclosure on his SF 86. He has established an excellent reputation for trustworthiness, integrity, and overall good character with his coworkers and supervisor. Overall, the record evidence creates no doubt as to Applicant's present eligibility and suitability for a security clearance.

### **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
Subparagraph 1.b:	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.

DAVID M. WHITE  
Administrative Judge