



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



In the matter of: )  
)  
) ISCR Case No. 13-01281  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Caroline E. Heintzelman, Esq., Department Counsel  
For Applicant: Jeffrey S. Gard, Esq.

04/29/2014

**Decision**

NOEL, Nichole L., Administrative Judge:

Applicant contests the Defense Department’s intent to revoke his eligibility for a security clearance to work in the defense industry. Applicant mitigated the drug involvement concern raised by his history of drug use, which ended in 2010. However, he failed to mitigate the personal conduct concerns raised by the history of poor judgment he exhibited by using drugs after applying for a security clearance in 2001 and while holding a security clearance in 2009 and 2010. Clearance is denied.

**Statement of the Case**

On December 30, 2013, the Department of Defense (DOD) issued a Statement of Reasons (SOR) detailing security concerns under the drug involvement and personal conduct guidelines.<sup>1</sup> DOD adjudicators were unable to find that it is clearly consistent

<sup>1</sup> This case is adjudicated under Executive Order (EO) 10865, *Safeguarding Classified Information within Industry*, signed by President Eisenhower on February 20, 1960, as amended; as well as DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program*, dated January 2, 1992, 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 to this

with the national interest to grant or continue Applicant's security clearance. Applicant timely answered the SOR (Answer) and requested a hearing.<sup>2</sup> The case was assigned to me on February 12, 2014. The hearing took place on March 25, 2014. At hearing, I admitted Government's Exhibits (GE) 1 through 3 and Applicant's Exhibit (AE) A without objection. After the hearing the parties timely submitted additional documentation, which I admitted as GE 4 and AE B through E, without objection.<sup>3</sup> I received the transcript (Tr.) on April 9, 2014.

### **Findings of Fact**

Applicant, a 35-year-old software engineer, is an employee of a federal contractor. Applicant is unmarried, but has been in a relationship with his girlfriend for seven years. He does not have children.<sup>4</sup>

Applicant began using drugs recreationally while he was in high school. He used nitrous oxide three times between 1996 and 1997 and used LSD twice in 1997. While in college Applicant occasionally used marijuana and he used hallucinogenic mushrooms twice in 1998. In 2001, while he was still in graduate school, Applicant began working fulltime for a federal contractor and completed his first security clearance application. He disclosed his drug use on his security clearance application. Applicant continued to use drugs for at least two years after submitting his security clearance application. He also knew that his drug use violated his employer's zero-tolerance drug policy. Applicant smoked marijuana with varying frequency between 2001 and 2003. He also used hallucinogenic mushrooms once in 2003. Applicant was granted a top secret clearance in 2004. Applicant testified that his drug use was motivated by immaturity and a general lack of direction in his life. Applicant abstained from illegal drug use between 2004 and 2009.<sup>5</sup>

In the fall of 2009, Applicant's mother was diagnosed with cancer. She succumbed to the disease sometime in 2010. Applicant learned of his mother's illness the week he was scheduled to move to another state with his girlfriend. Instead, Applicant postponed his move to stay close to his mother and maintained a long-distance relationship with his girlfriend. Between January 2009 and June 2010, Applicant used marijuana five times. Applicant testified that he used the drug because he wanted to "relieve stress [and] maximize some fun in [his] life." Each time he used

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case. 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.

<sup>2</sup> The discovery letter Department Counsel sent to Applicant On February 10, 2014, and the letter from the Chief Administrative Judge regarding the Applicant's rights and obligations in a DOHA proceeding are appended to the record as Appellate Exhibit (AP E) I and II, respectively.

<sup>3</sup> The memoranda related to the parties' post-hearing submissions are appended to the record as Hearing Exhibit (HE) A.

<sup>4</sup> Tr. 15, 41; GE 1.

<sup>5</sup> Tr. 16, 18, 25, 28-29, 31-32, 54-55; GE 1-5; AE E; Answer.

the drug, Applicant contemplated the wrongfulness of his actions, but decided to use the drug anyway. He was trying to self-medicate the negative emotions he experienced about his mother's illness and death. After his mother died, Applicant realized that drugs and alcohol were not helping, so he stopped drinking and using marijuana. Applicant tried grief counseling in 2010, but he did not disclose his drug use. Applicant told his girlfriend about his drug use sometime in 2010. She did not approve of his conduct.<sup>6</sup>

In October 2010, Applicant completed another security clearance application in connection with a periodic re-investigation. He disclosed his 2009 and 2010 drug use on the application, but again decided not to report it directly to his employer. At that time, Applicant's career was in a transition phase and he felt he needed to keep all of his options open. Applicant believed that reporting his drug use to his employer would be detrimental to his career.<sup>7</sup>

In January 2012, Applicant moved across the country to reunite with his girlfriend. She does not use drugs and Applicant no longer associates with known drug users. She recognized that Applicant needed some help and recommended he go to counseling. Applicant continued to feel as if his life lacked direction. He also felt that he was still grappling with the loss of his mother. Applicant was unhappy and believed that he was underachieving professionally, so he agreed to return to therapy. Applicant's therapy sessions are dedicated to stress management and self-exploration and improvement. Applicant credits therapy with helping him find his voice and giving him the confidence to go after what he wants in life. Applicant testified that he has learned to use emotions and feelings productively rather than destructively. Applicant's therapist did not testify, but provided a letter describing Applicant's treatment and progress. The therapist lauded Applicant's work toward self-improvement over the last two years. The therapist, who is aware of Applicant's history of drug use, believes that Applicant has learned to feel and handle unpleasant emotions in addition to achieving personal goals related to work, relationships, and self-care.<sup>8</sup>

In preparation for the hearing, Applicant obtained a drug evaluation from a licensed addictions counselor (LAC). The LAC interviewed Applicant and evaluated him using several testing instruments. During the interview, Applicant disclosed his history of drug use. Based on her assessment, the LAC concluded that Applicant did not meet the diagnostic criteria for substance abuse or dependence. The LAC further concluded that Applicant did not require substance abuse counseling, but recommended that he continue counseling to further develop his stress-management skills.<sup>9</sup>

In 2012, Applicant began working for his current employer. He reported his history of drug use to his current supervisor before the hearing, but he did not disclose

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<sup>6</sup> Tr. 20-21, 35-36, 42-44; GE 3.

<sup>7</sup> Tr. 32-33, 49; GE 1.

<sup>8</sup> Tr. 21-23, 33-34, 38-39, 43-47, 50-52; AE C-D.

<sup>9</sup> Tr. 23-24, 61-86; AE A-B.

that he continued to use drugs while holding a security clearance. Applicant states that he has no intention of using drugs in the future.<sup>10</sup>

## **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 used in evaluating an Applicant's eligibility for access to classified information.

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." 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 to obtain 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 classified information. Such decisions entail a certain degree of legally permissible extrapolation of 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**

### **Drug Involvement**

Use of an illegal 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 willing to comply with laws, rules, and regulations.<sup>11</sup> Applicant

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<sup>10</sup> Tr. 41, 57-60.

<sup>11</sup> AG ¶ 24.

is not drug dependent or a drug abuser; however, his history of recreational illegal drug use, which continued after being granted a security clearance, is disqualifying.<sup>12</sup>

Applicant has presented sufficient evidence to mitigate the drug involvement concern. Applicant's last use occurred almost four years ago. Since then, Applicant has made changes to support sobriety and improve his stress-management skills. His drug use is mitigated by the passage of time.<sup>13</sup> Applicant recognized the destructive nature of his use of drugs to deal with his problems and decided to abstain from them. He now lives with his long-time girlfriend, who seems to be the backbone of his support system and an external check on his behavior and emotional wellbeing. Most important, Applicant has spent the last two years in counseling, working on improving his mental and emotional health, as well as developing stress management tools. Given this support system, it is unlikely that Applicant's drug use will recur. Applicant's commitment to ongoing self-improvement with the help of a therapist also demonstrates his intent not to use drugs in the future.<sup>14</sup>

### **Personal Conduct**

While Applicant's past drug use is mitigated, the personal conduct concern raised by his history of illegal drug use remains. Because Applicant disclosed his drug use to his girlfriend, his therapist, his current supervisor, and the Government, it is not a potential source of vulnerability or exploitation for him. However, his decision to use illegal drugs while holding a security clearance in 2009 and 2010, supports a whole-person assessment of questionable judgment, untrustworthiness, reliability, lack of candor, and an unwillingness to comply with rules and regulations, or other characteristics indicating that he may not properly safeguard classified information.<sup>15</sup> Applicant's failure to report his drug use to his former employer contributes to the negative whole-person assessment.

Applicant's has demonstrated a history of poor judgment that cannot be considered minor. Applicant's use of drugs was primarily motivated by a general malaise he felt as he transitioned from student to working professional. These feelings, which lingered into Applicant's late 20s, were compounded in 2009 and 2010 by the death of his mother. However, Applicant, an educated, working professional, had better resources at his disposal to assist him in navigating these difficulties than using illegal drugs. He chose not to use them. Instead, Applicant repeatedly engaged in an activity he knew to be in direct contravention of federal law, his employer's drug policy, and his responsibilities as an individual holding a security clearance. Applicant's behavior showed a disregard for the law, regulations, and the fiduciary relationship he voluntarily entered into with the Government when he was granted access to classified information.

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<sup>12</sup> AG ¶¶ 24(a) and (g).

<sup>13</sup> AG ¶ 26(a).

<sup>14</sup> AG ¶ 25 (b).

<sup>15</sup> AG ¶ 16(c).

Applicant hid his drug use from his former employer because he feared the consequences of reporting it. Applicant has repeatedly chosen to protect his self-interest, preserving his reputation and job status, over his duty to report adverse information. Willingness to self-report adverse information, even at the risk of detriment to reputation and career, are essential. Applicant's behavior raises doubts about his ability to willingly self-report information that could lead to personal consequences. None of the personal conduct mitigating conditions apply.

### **Whole Person Concept**

Based on the record, I have doubts about Applicant's judgment and trustworthiness. I have also considered the whole-person factors at AG ¶ 2. The federal government must be able to repose a high degree of trust and confidence in persons granted access to classified information.<sup>16</sup> Security clearance decisions are not an exact science, but rather are predictive judgments about a person's security suitability in light of that person's past conduct and present circumstances.<sup>17</sup> Applicant's past conduct shows he will place his self-interest above that of his obligations to his employer and the Government. Ultimately, Applicant does not possess the good judgment or trustworthiness required of an individual given access to classified information. Clearance is denied.

### **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, Drug Involvement:	For Applicant
Subparagraphs 1.a – 1.e:	For Applicant
Paragraph 2, Personal Conduct:	Against Applicant
Subparagraph 2.a	Against Applicant

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<sup>16</sup> *Snepp v. United States*, 444 U.S. 507, 511 n.6 (1980).

<sup>17</sup> *Department of Navy v. Egan*, 484 U.S. 518, 528-29 (1988).

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national security to grant Applicant eligibility for a security clearance. Clearance is denied.

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Nichole L. Noel  
Administrative Judge