



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



In the matter of: )  
)  
) ISCR Case No. 13-01306  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esq., Department Counsel  
For Applicant: Eric Eisen, Esq.

05/22/2014

**Decision**

CREAN, THOMAS M., Administrative Judge:

Based on a review of the pleadings, exhibits, and testimony, Applicant mitigated drug involvement security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) on June 23, 2013, to obtain a security clearance required for his employment with a defense contractor. The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On January 2, 2014, DOD issued Applicant a Statement of Reasons (SOR) detailing security concerns for drug involvement (Guideline H). 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 in the Department of Defense on September 1, 2006.

Applicant answered the SOR on February 21, 2014. He admitted the drug use allegations under Guideline H, with explanation. Department Counsel was prepared to proceed on March 25, 2014, and the case was assigned to me on March 27, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a Notice of Hearing on April 4, 2014, scheduling a hearing for May 6, 2014. I convened the hearing as scheduled. The Government offered two exhibits, which I marked and admitted into the record without objection as Government Exhibits (Gov. Ex.) 1 and 2. Applicant testified, and offered three exhibits which I marked and admitted into the record without objection as Applicant Exhibit (App. Ex.) A through C. I left the record open for Applicant to submit additional documents. Applicant timely submitted one document that I marked and admitted into the record without objection as App. Ex. D. Department Counsel had no objection to consideration of the document. (Gov. Ex. 3, e-mail, dated May 12, 2014) DOHA received the transcript of the hearing (Tr.) on April 18, 2014.

### **Procedural Issues**

Department Counsel moved to amend SOR allegation 1.c to read “You used hallucinogenic mushrooms in June 2009 and in June 2010.” The allegation is that Applicant used hallucinogenic mushrooms twice rather the over the period of a year. There was no objection to the amendment. I approved the amendment. (Tr. 10-12)

Department Counsel presented information on the drug Adderall. (Gov. Ex. 2, Medical Information, dated December 24, 2013) Applicant presented information on the use of Adderall by college students. (App. Ex. Article, dated July 31, 2005) I have taken administrative notice of this information as noted in my Findings of Fact below.

### **Findings of Fact**

After a thorough review of the pleadings, transcript, and exhibits, I make the following essential findings of fact.

Applicant is 23 years old. He lived at home with his parents until he left to attend college. He led a normal childhood. He attended college from 2009 until 2013. He started in a pre-med program but switched to mathematical economics. He received a bachelor’s degree magna cum laude with a major in mathematical economics and minor in chemistry. He worked while in college at various jobs and served as a tutor to other students. He is single. He has been employed by a defense contractor as a cost analysis for ten months. (Tr. 21-24; Gov. Ex. 1, e-QIP, dated June 25, 2013; App. Ex. B, Transcript, dated July 8, 2013)

The information concerning Applicant’s use and purchase of illegal drugs was provided by Applicant in response to drug abuse questions on his security clearance application. Applicant was open and honest about his prior use of illegal drugs. The SOR alleges, and Applicant admits, that he used marijuana while a high school senior and college student with varying frequency from July 2008 until January 2013. He also admits that he purchased marijuana and hallucinogenic mushrooms on various

occasions to approximately April 2012. He admitted he used hallucinogenic mushrooms once in June 2009 and once in June 2010. He also admitted misusing Adderall while in college from May 2009 until May 2013. He did not have a prescription for Adderall, but obtains the drug from college friends who had a valid prescription.

Applicant first used marijuana during his senior year of high school. His use was with friends in a social setting about once a month on weekends. He still has contacts with some of his friends that used marijuana with him in high school. These friends have matured and no longer use illegal drugs. Applicant's use of marijuana was more frequent during his first two years of college. As a college freshman and sophomore, he used mainly on weekends a few times a month. He spent the fall semester of his junior year abroad, so he did not use marijuana during that semester. After returning from his semester abroad, his use of marijuana tapered off and he used it no more than once a month until he stopped using marijuana altogether in January 2013. The marijuana was mainly supplied by his friends. He still sees these friends but they no longer use illegal drugs. He admitted purchasing marijuana on occasion when it was his turn to supply the drug. He did extremely well in college with demanding dual majors and maintained a 3.77 grade point average. He stopped using marijuana before he graduated from college. (Tr. 24-25, 27-28, 34-38)

Applicant admitted he used hallucinogenic mushrooms in June 2009 after graduating from high school when it was supplied by a friend. He used again in June 2010 at a concert when he purchased the illegal drug for he and his friends. His use was experimental. (Tr. 24-26)

Applicant used Adderall supplied by friends as a study aid during final exams. Adderall is a Scheduled II controlled substance amphetamine that acts to stimulate the central nervous system. It is an analeptic amphetamine used to treat Attention-Deficit Hyperactivity Disorder (ADHD) because it increases attention and decreases impulsiveness and hyperactivity. It is a controlled substance because it can be abused and lead to dependence. It is reported that as many as 20% of college students used Adderall to study, write papers, and take exams. Students are convinced that the drug will help them achieve academic success so abuse of the drug has increased among college students. It is viewed by students as a legitimate and even trendy way to get through the rigors of a hectic academic and social life. The college culture encourages students to use stimulants. Applicant's last use of Adderall was in May 2013 during final college examinations. (Gov. Ex. 2, Daily Med, Adderall, dated December 24, 2013; App. Ex. C Article, dated July 31, 2005)

Applicant presented five letters of recommendation. Applicant's mother wrote that her son came from a stable, family-oriented community. He maintains a close relationship with his parents and sibling. Applicant placed a lot of pressure on himself to succeed, and that is probably the reason he used Adderall on limited occasions. She understands her son is maturing and learning. He is capable, trustworthy and honest. A close family friend wrote that he has known Applicant socially since he was a close friend of his son. Applicant had a good family life and upbringing. He is committed to

academics and academic success. He is a good athlete who values conditioning and mental toughness. He highly recommends Applicant. Two of Applicant's friends wrote that they have known Applicant for many years. They find him responsible, respectful and of high moral character. He is a responsible individual and a dependable friend. Applicant's project lead for their employer wrote that Applicant's work ethic and product are excellent. He takes his job seriously and always carries himself professionally and ethically. He has no hesitation in recommending Applicant for eligibility for access to classified information. (App. Ex. A, Letters, various dates)

Applicant testified he has been open and candid about his use of marijuana, hallucinogenic mushrooms, and Adderall while in college. Applicant provided the information that led to the drug abuse allegations. Applicant now has matured and realizes that he is working in an adult world and must behave as an adult. He still plays sports and tutors others. He has been concentrating on his work and has performed well. He has continually stated his intent not to use drugs in the future, and has executed a document that he will not use illegal drugs and if he does his security clearance will be revoked. (Tr. 18-22; App. Ex. D, Statement, dated May 7, 2014)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Administrative Guidelines. 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 common sense decision. According to AG ¶ 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. 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." 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, 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 burden of persuasion 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.

## **Analysis**

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

The use of an illegal drug or misuse of a prescription drug can raise questions about an individual's reliability and trustworthiness, because it may impair judgment and raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. Drugs are defined as mood and behavior altering substances, including drugs material and other chemical compounds identified and listed in the Controlled Substances Act of 1970. Marijuana or cannabis and hallucinogenic mushrooms are included on this list. (AG ¶ 24)

Applicant admits using marijuana with varying frequency starting as a high school senior in 2009 until he was a college senior in January 2013. He admits he used hallucinogenic mushrooms once in June 2009 and once in June 2010. Applicant also admits to misusing the prescription drug Adderall at various times from May 2009 through May 2013. He admits to purchasing illegal drugs during his college career. Applicant's use and purchase of marijuana, hallucinogenic mushrooms, and misuse of a prescription drug raise Drug Involvement Disqualifying Condition AG ¶ 25(a) (any drug use); and AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacturing, purchase, sale, or distribution; or possession of drug paraphernalia) .

Adderall is a prescription controlled substance. Many college students have valid prescriptions for Adderall which is used to treat Attention Deficit Disorders. The drug increases the takers awareness and sharpens their senses. It is common for college students to use the drug at examination time to be able to concentrate better and study longer. Applicant misused the drug since he does not have a prescription for the drug. He obtained the drug from college friends who had a valid prescription.

I considered Drug Involvement Mitigating Conditions AG ¶ 26(a) (the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's

current reliability, trustworthiness, or good judgment); and AG ¶ 26(b) (a demonstrated intent not to abuse 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; (4) a signed statement of intent with automatic revocation of clearance for any violation).

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of drug involvement, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

These mitigating conditions apply. Applicant admits to intermittent use and purchase of marijuana as a high school and college student. He admits to using hallucinogenic mushrooms twice, once in June 2009 and once in June 2010. He also admits to misuse of the prescription drug Adderall a few times in college during final exams. He has not used marijuana since January 2013, hallucinogenic mushrooms since June 2010, and Adderall since May 2013. Applicant provided the information about his use of illegal drugs in response to drug abuse questions on his security clearance application. He was honest and forthright in reporting his drug use against his own self-interest.

Applicant has not used marijuana in over a year or hallucinogenic mushrooms in almost four years. His last use of Adderall was a year ago. While a year to 18 months of not using illegal drugs is not initially a long time ago, Applicant realizes he is now an adult and must behave as an adult and not use illegal drugs. He stated his clear intent not to use illegal drugs in the future. His present friends do not use drugs. His use of marijuana and Adderall were infrequent, and happened under the circumstances of college student acceptance and culture and unlikely to recur. He is now mature and aware of his adult responsibilities. Applicant demonstrated intent not to use drugs in the future, has changed his environment from college life to professional life, and has friends who do not use drugs. There has been an appropriate period of abstinence, and a change in lifestyle and circumstance. Applicant mitigated security concerns for drug involvement.

### **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. 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 the facts and circumstances surrounding this case. I considered that Applicant is an excellent worker who is considered reliable, honest, and trustworthy.

Applicant admitted using marijuana with varying frequency while a high school senior and a college student. He has not used marijuana since January 2013 and since graduating from college. He has not used mushrooms in over four years, and last misused Adderall during his final college exams in May 2013. His misuse was limited, and he has shown that his use of illegal drugs will not happen again and that he is matured, reformed, and rehabilitated. I conclude that Applicant mitigated the security concern for drug involvement. He established that he is reliable, trustworthy and candid. Overall, the record evidence leaves me without questions and doubts as to Applicant's judgment, reliability, and trustworthiness.

### **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

Subparagraphs 1.a - 1.d: 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.

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THOMAS M. CREAN  
Administrative Judge