



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



In the matter of:	)	
	)	
	)	ISCR Case No. 14-00041
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg A. Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

07/28/2014

**Decision**

WHITE, David M., Administrative Judge:

Applicant made various admissions concerning his drug abuse and distribution between 2005 and 2012. Resulting security concerns were not mitigated. Based on a review of the pleadings and exhibits, eligibility for access to classified information is denied.

**Statement of the Case**

Applicant submitted a security clearance application (SF-86) on June 27, 2013.<sup>1</sup> On February 28, 2014, the Department of Defense Consolidated Adjudications Facility (DoD CAF) issued a Statement of Reasons (SOR) to Applicant, detailing security concerns under Guideline H (Drug Involvement).<sup>2</sup> The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960),

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<sup>1</sup>Item 5.

<sup>2</sup>Item 1.

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 effective in the Department of Defense on September 1, 2006.

Applicant submitted a written response to the SOR on March 28, 2014, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on May 13, 2014. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant received his copy of the FORM on June 10, 2014. On June 24, 2014, he submitted a response letter presenting some updated information concerning his former drug-using roommate, his new living arrangements, and his intention to comply with security rules. He provided no other mitigating evidence, made no objection to consideration of any contents of the FORM, and did not request additional time to respond. Department Counsel had no objection to the admissibility of Applicant's response to the FORM. I received the case assignment on July 17, 2014, and the case file on July 21, 2014.

### **Findings of Fact**

Applicant is a 23-year-old employee of a defense contractor, where he began working in May 2013 as a college student technical specialist. This is his first application for a security clearance, and he has no prior military service. He graduated from high school in May 2010, and from college in May 2014. He has never married and has no children.<sup>5</sup>

In his response to the SOR, Applicant admitted the truth of all of the factual allegations set forth in SOR ¶¶ 1.a through 1.p, with some explanations. Applicant's admissions, including those made in response to DoD CAF interrogatories,<sup>6</sup> are incorporated into the following findings of fact.

Applicant disclosed on his SF-86, and confirmed in his responses to the DoD CAF's interrogatories and SOR, that between March 2005 and February 2012 he illegally used marijuana (about 500 times), LSD (about 10 times), psilocybin mushrooms (about 10 times), hashish (once), ecstasy (once), cocaine (once), and three different prescription medications (five times). He also admitted to illegally purchasing and selling marijuana, LSD, psilocybin, and cocaine on numerous occasions (as specified in the

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<sup>3</sup>Item 4.

<sup>4</sup>The Government submitted six Items in support of the SOR allegations.

<sup>5</sup>Item 5.

<sup>6</sup>Item 6.

SOR) throughout that period. He further admitted to having been stopped and warned by campus security at his college for smoking marijuana in public, and to continuing his association with individuals who use marijuana after he stopped doing so in 2012.<sup>7</sup>

Applicant stated that he decided to stop abusing drugs in February 2012, has been drug free since then, and does not intend to ever abuse drugs in the future. This was a personal decision he made to improve his well-being and health. He no longer found drugs to be enjoyable or wanted to be associated with them. He has never had a positive drug test, undergone treatment for drug abuse, or been diagnosed with drug abuse or drug dependency. On June 9, 2013, he signed an agreement with his employer to strictly abide by the company's Drug-Free Work Place Policy and the terms of the Federal Drug-Free Workplace Act. He stated, without corroboration, that he has successfully passed several urinalysis drug tests, which were and are a condition of his employment.<sup>8</sup>

Applicant also made the following comments regarding his attitude about drug abuse being a basis for security concerns:

Drug use and experimentation is a common occurrence in young individuals in America. There are numerous examples of high ranking US government officials who had used drugs at an earlier point in life, including the previous three presidents. Their immature indiscretions did not make them less reliable, less trustworthy, or have poor judgment later in life. My choices do not make me less so either. Additionally, this policy for determining who is and isn't a security risk is from August 2006. Since that time, numerous states have legalized marijuana for medical use, and some have even legalized it for recreational use. Is every person in those states who uses a drug legally really a security risk? I say this not to make a political statement or claim that the law should be changed, but merely to point out that blind adherence to an outdated policy may not reflect the true reality that we live in at this time.<sup>9</sup>

Applicant provided no evidence concerning the quality of his academic or professional performance, the level of responsibility his duties entail, or his track record with respect to handling sensitive information and observation of security procedures. He submitted no character references describing his judgment, morality, trustworthiness, integrity, or reliability. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

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<sup>7</sup>Items 4, 5, and 6. He and his former drug-using friends and roommates have all gone their separate ways after they recently graduated from college. Applicant just moved to another state in connection with work.

<sup>8</sup>Items 4 and 6.

<sup>9</sup>Item 4. In his response to the FORM, he added, "It is not my job to make or judge these rules but to follow them as I have committedly demonstrated for the past two and a half years.

## 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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The DCs raised by the evidence in this case are:

(a) any drug abuse (see above definition); and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant admittedly abused marijuana, LSD, psilocybin mushrooms, hashish, ecstasy, cocaine, and three different prescription medications on numerous occasions between March 2005 and February 2012. He also admitted to illegally purchasing and selling marijuana, LSD, psilocybin, and cocaine on multiple occasions during that period. His statements consistently admit facts that raise significant security concerns under AG ¶¶ 25(a) and (c), and therefore shift the burden to Applicant to establish, and prove, mitigation of those concerns.

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 admitted regular recreational use of marijuana and other drugs since age 13 ended in February 2012. Some mitigation under AG ¶ 26(a) was accordingly established due to the passage of time. However, the length and frequency of his drug abuse, his admitted purchase and resale of drugs in connection therewith, and his belief that "that blind adherence to an outdated policy may not reflect the true reality that we live in at this time," all combine to preclude a finding that recurrence is unlikely and to cast continuing doubt on his reliability, trustworthiness, and good judgment.

Applicant's disassociation from his former drug-using friends and roommates was more a function of their going different ways upon graduation from college than of any decision on his part to avoid other drug users. He has moved to a new state, and away from the college campus where he most recently used drugs. However, he has not yet established a pattern of abstention in these new surroundings. His abstinence since February 2012 is an excellent start toward demonstrating his intent to remain drug free, but is not compelling in the context of his extensive and frequent drug abuse over the preceding seven-year period. He stated his intent not to abuse drugs in the future. Given his honest admissions concerning his past drug abuse, I find this statement of intent to be credible. These facts establish some mitigation under AG ¶ 26(b).

Applicant's abuse of prescription drugs did not involve drugs that had ever been prescribed for him, and was purely recreational, so AG ¶ 26(c) has no application to this decision. Applicant has not participated in any drug treatment program, and was never diagnosed with drug dependence or abuse, or recommended for treatment. No favorable prognosis by a duly qualified medical professional was provided, so AG ¶ 26(d) does not apply.

## 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 is a young and very recent college graduate, who stopped abusing drugs in February 2012 and expressed his intention to remain drug free in the future. He acknowledges his responsibility for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. His integrity in disclosing his past drug involvement weighs in his favor.

Applicant has just moved to a new location away from the environment and associates with whom he formerly abused and distributed illegal drugs. Insufficient time has passed for him to demonstrate trustworthy, responsible, and law-abiding conduct under his new circumstances. Although he believes that restrictions on drug abuse are outdated and unrealistic, he expressed his current willingness and intent to abide by them. The absence of evidence corroborating his participation in workplace drug testing, or attesting to his supervisors' confidence in his trustworthiness, precludes a finding of rehabilitation or permanent behavioral change. Applicant abused drugs because he wanted to, and stopped because he decided that his decreasing enjoyment of the experience was not worth the cost and potentially adverse consequences. He has not yet persuasively demonstrated that recurrence is unlikely should he decide he wants to abuse drugs again in his new surroundings.

Overall, the record evidence leaves me with questions and doubt as to Applicant's present eligibility and suitability for a security clearance. He did not meet his burden to mitigate the security concerns arising from his drug involvement. Such doubt must be resolved in favor of the national security.

## **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:                      AGAINST APPLICANT

Subparagraphs 1.a through 1.p:              Against Applicant

## **Conclusion**

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

DAVID M. WHITE  
Administrative Judge