



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| [Redacted]                       | ) | ISCR Case No. 14-02778 |
|                                  | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

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

04/09/2015

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**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted an application for a security clearance (e-QIP) on June 5, 2013. On July 18, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing the 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 (AG) implemented within the Department of Defense on September 1, 2006.

On September 30, 2014, Applicant answered the SOR and requested his case be decided on the written record. Department Counsel prepared a File of Relevant Material (FORM) on December 8, 2014. The FORM was forwarded to Applicant on December 21, 2014. Applicant received the FORM on January 6, 2015. He had 30 days to submit a response to the FORM. He did not submit matters in response to the FORM. On March 11, 2015, the FORM was forwarded to the Hearing Office and was assigned to me on March 13, 2015. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

## Findings of Fact

In his answer to the SOR, Applicant admits to all of the allegations in the SOR. (Item 3)

Applicant is a 24-year-old consultant of a Department of Defense contractor. This is his first time applying for a security clearance. He received his bachelor's degree in May 2013. He is currently enrolled in law school. He is single and has no children. (Item 5)

### Guideline H – Drug Involvement

Applicant admits to using and purchasing marijuana with varying frequency from November 2006 to March 2013. He admits to using mushrooms (psilocybin) in April 2008 and ecstasy in December 2010. (Item 1) He listed his illegal drug abuse in response to section 23 on his security clearance application, which he certified on June 5, 2013. (Item 5, section 23)

Regarding his marijuana use, Applicant stated on his e-QIP, "I have intermittently smoked marijuana in high school and college. At times it may have been more frequent than other times." He indicated that he used to use marijuana as a "crutch." He does not intend to use marijuana again. He will never do anything to jeopardize any future opportunity that is given to him. Applicant purchased marijuana with friends from high school and college on an infrequent basis from October 2006 to January 2013. (Item 5, section 23)

Applicant admits to using hallucinogenic mushrooms while on spring break his junior year in high school in April 2008. He states it was a terrible decision and he has only used it once. In December 2010, he took ecstasy, which was given to him at a New Year's Eve party. This was a one-time use and he does not intend to use ecstasy again. (Item 5, section 23)

Item 6 of the Government's FORM is a summary of Applicant's interview with the investigator conducting his background investigation, dated July 11, 2013. The summary of Applicant's interview is part of the Report of Investigation related to Applicant's background investigation. The Directive, ¶ E3.1.20 states: "An ROI may be received with an authenticating witness provided it is otherwise admissible under the Federal Rules of Evidence (28 U.S.C. 101 et seq. (reference (d))." Item 6 was not properly authenticated. I did not consider it when deliberating Applicant's case.

In his response to the SOR, Applicant admits his illegal drug use tends, "...to represent a certain unwillingness to comply with laws, rules, and regulations. I have made mistakes in my past, and I know that ultimately I am the one who faces the consequences of such actions." He states that he is a decent, hardworking individual. He enrolled in law school in the fall 2014. He is truly sorry for his past conduct. If given the opportunity to be granted a security clearance, he will do so with "the utmost professionalism and discretion." (Item 4)

## 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 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 overarching adjudicative goal is a fair, impartial and commonsense 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.

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 as 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 that 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.

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).

## Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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.

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;

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

The guideline notes several disqualifying conditions that could raise security concerns. I find the following drug involvement disqualifying conditions apply to Applicant's case.

AG ¶ 25(a) (any drug abuse); and

AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia).

Applicant used marijuana with varying frequency from November 2006 to March 2013. He used illegal drugs as a "crutch." He used hallucinogenic mushrooms on one occasion in 2008 while in high school. He used ecstasy once on New Year's Eve 2010. AG ¶ 25(a) applies. AG ¶ 25(c) also applies because Applicant occasionally purchased marijuana.

The Government's substantial evidence and Applicant's own admissions raise security concerns under Guideline H, Drug Involvement. The burden shifted to Applicant to produce evidence to rebut, explain, extenuate, or mitigate the security concerns. (Directive ¶ E3.1.15) An applicant has the burden of proving a mitigating condition, and the burden of disproving it never shifts to the Government. (See ISCR Case No. 02-31154 at 5 (App. Bd. September 22, 2005))

Guideline H also includes examples of conditions that could mitigate security concerns arising from drug involvement. The following mitigating conditions potentially apply to the Applicant's case:

AG ¶ 26(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not

cast doubt on the individual's current reliability, trustworthiness, or good judgment); and

AG ¶ 26(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).

AG ¶ 26(a) applies because more than two years have passed since Applicant's last illegal use of marijuana. He indicated that he stopped using marijuana in March 2013 because he wanted to focus on his future. Most of Applicant's illegal drug use occurred when he was a college student. Upon graduation from college, he applied and was accepted to law school. He is now a law student. He was forthcoming when disclosing his illegal drug use on his security clearance application and apologizes for his behavior. Applicant appears to understand the security concern involving illegal drug use. It is unlikely that he will jeopardize his future by returning to illegal drug use.

AG ¶ 26(b) applies because Applicant has not used illegal drugs for over two years. Aside from a one-time experimental use of hallucinogenic mushrooms in 2008 and a one-time experimental use of ecstasy in December 2010, Applicant's drug of choice was marijuana. His illegal drug use occurred during high school and college. He has matured and is focused on his future. While he did not provide a signed statement of intent with automatic revocation of clearance for any violation, he did express his intent to never use marijuana again in response to questions in Section 23 of his security clearance application. Applicant met his burden to mitigate the security concerns raised under Guideline H, 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 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 the facts and circumstances surrounding this case. In addition to Applicant's illegal drug use, I considered he fully disclosed his illegal drug use on his security clearance application. More than two years have passed since his illegal drug use. Applicant is a law student and understands the consequences that additional illegal drug use may have on his future. Applicant met his burden to overcome his illegal drug use while a high school and college student.

### **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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ERIN C. HOGAN  
Administrative Judge