



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



In the matter of:	)	
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	)	ISCR Case No. 14-02889
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: *Pro se*

February 17, 2015

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**Decision**  
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MOGUL, Martin H., Administrative Judge:

On July 25, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E for Applicant. 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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing on August 12, 2014, and he requested that his case be decided by a hearing before an Administrative Judge. The case was assigned to this Administrative Judge on September 30, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 9, 2014, and I convened the hearing, as scheduled on November 12, 2014. The Government offered Exhibit 1, which was received without objection. Applicant testified on his own behalf and submitted Exhibits A and B, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on November 20, 2014. Based upon a

review of the pleadings, exhibits, and the testimony of Applicant, eligibility for access to classified information is granted.

### **Findings of Fact**

After a complete and thorough review of the evidence in the record, as described above, and upon due consideration of that evidence, I make the following findings of fact:

Applicant is 32 years old. He is married for the second time, and he has four children. Applicant received a Bachelor of Science degree in 2005 in Electrical Engineering. Since 2005, Applicant has been employed as a Senior Systems Engineer by his present employer, a defense contractor, and he seeks a DoD security clearance in connection with employment in the defense sector.

#### **Paragraph 1 (Guideline H - Drug Involvement)**

The SOR lists three allegations (1.a. through 1.c.) under Adjudicative Guideline H.

1.a. The SOR alleges, and Applicant has admitted in his RSOR, that he, “used marijuana approximately four times between 2009 and 2010, while holding a security clearance.” At the hearing, Applicant testified that these were the dates he put on his Security Clearance Application (SCA) on April 3, 2013. (Exhibit 1.) Upon further reflection and review of his calendar, he believes that all four uses of the marijuana occurred in 2009. He averred that he never used marijuana, or any other drug, before 2009, or after that year. (Tr at 24-36.)

Applicant testified that at the time of his marijuana use he was going through a very difficult period. His brother was undergoing melanoma treatment, including the removal of part of his lymph nodes, his ear lobe, a rib, and part of his hip. In 2009, he also became aware that his first wife has been unfaithful to him and she began divorce proceedings. During this period, a friend, to whom he reached out for comfort, offered him marijuana. Applicant made it clear that he had not requested the marijuana from this friend. (Tr at 26-30.) Since that time, he has only seen this friend one additional time at her wedding, four years ago. Applicant testified that his current wife does not use illegal drugs, and he does not knowingly associate with anyone else who uses illegal drugs. When Applicant was asked whether there was any chance he would use marijuana in the future, he stated, “Absolutely not. There is no way I would risk my family’s future for something that stupid.”(Tr at 34-36.)

Applicant testified that when he used the marijuana, he was not sure of the legal status of marijuana for the state in which he used it. He stated that he had not considered its illegal status under Federal law or that it was barred for use by anyone holding a security clearance, although he conceded that he should have been aware. (Tr at 32-33.)

The Government's information about Applicant's marijuana usage came solely from Applicant when he completed his SCA and spoke to a Government investigator. (Tr at 44-45.) (Exhibit 1.)

Applicant submitted a signed statement (Exhibit B), in which he wrote:

I have never (outside of the instances listed) used or condoned the use by others of any drugs.

I have no interest in ever again using drugs of any sort (regardless of any future changes of legality).

I agree that should I ever again use an illegal drug of any sort, it should result in my immediate loss of any clearances.

The situation which existed at that time is the only reason that I made the mistakes I did, I have grown and matured since.

Finally, Applicant testified that he has developed new coping mechanisms including counseling, becoming more active in his church and developing some closer friendships, so that if he ever found himself in a high stress situation again, he would not turn to illegal drugs. (Tr at 47-48.)

1.b. The SOR alleges, and Applicant has admitted in his RSOR, that he, "purchased marijuana between 2009 and 2010, while holding a security clearance." At the hearing, Applicant testified that he received his DoD security clearance shortly after he began working for his current employer, in late 2005 or early 2006. (Tr at 25-26.) He stated that he only purchased marijuana one time from the friend who had offered it to him, and he gave the friend \$20 for this one purchase. The marijuana that he purchased was enough for the four times he used marijuana in 2009, referred to in 1.a., above. (Tr at 30-32.)

1.c. The SOR alleges, and Applicant has admitted in his RSOR, that in April 2013, he told a Government investigator that he did not use all of the marijuana he purchased, and it could still be in his home. Applicant testified that after he made that statement to the investigator, he asked his current wife about the marijuana. She informed him that she had come across the marijuana and she threw it away. (Tr at 33-34.)

## **Paragraph 2 (Guideline E - Personal Conduct)**

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, unwillingness to comply with rules and regulations, and untrustworthiness.

2.a. It is alleged in the SOR that Applicant's conduct as set forth in paragraph 1., above constitutes disqualifying conduct under this Guideline.

## **Mitigation**

Applicant submitted six extremely positive and laudatory character letters from individuals who know him in his professional capacity. (Exhibit A.) Typical of all of the letters is one in which he was described as “trustworthy, dependable and honest.” Also he was described as someone with “judgement, integrity and trustworthiness.”

## **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 over-arching 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. 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 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 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).

## **Analysis**

### **Paragraph 1 (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 judgement and because it raises questions about a person’s ability or willingness to comply with laws, rules and regulations.

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, specifically the use of marijuana on four occasions in 2009, while he was holding a security clearance, is of great concern, especially in light of his continued desire to have access to the nation's secrets. Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement ¶ 25(a) “any drug abuse” and (c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution.”

However, I find credible his testimony and his written statement that he intends to abstain from using marijuana or any illegal drug in the future. I also considered that Applicant only used an illegal drug four times during the most stressful period of his life, and his testimony that he would know better how to cope with any potential severe stress in the future. Additionally, the fact that Applicant revealed his drug usage on a security clearance application and to a Government investigator without any apparent outside source is significant. Finally, I considered the positive and laudatory character letters, which make Applicant’s stated intentions to never use illegal drugs again more credible and convincing. Therefore, I conclude that ¶ 26(a) is applicable since “the behavior . . . was so infrequent” and “happened under such circumstances that it is unlikely to recur.” Also, ¶ 26(b) “a demonstrated intent not to abuse any drugs in the future,” including (3) “an appropriate period of abstinence;” and (4) “a signed statement of intent with automatic revocation of clearance for any violation,” is applicable and mitigating.

In this case, the Government has met its initial burden of proving that Applicant has used illegal drugs under Guideline H. Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation, or mitigation, which is sufficient to overcome the Government's case against him. Accordingly, Guideline H of the SOR is concluded for Applicant.

## **Paragraph 2 (Guideline E - Personal Conduct)**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

Conduct involving questionable judgement, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness and ability to protect classified information. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

The Government alleges in this paragraph that Applicant is ineligible for clearance because he engaged in conduct that exhibited questionable judgement, unreliability, and untrustworthiness.

In reviewing the disqualifying conditions under Guideline E, I conclude that Applicant's marijuana usage in 2009, as reviewed above, is a concern to the Government under Guideline E. However, based on all of the evidence introduced during the hearing, I find that his conduct does not "support a whole-person assessment of questionable judgement, untrustworthiness, unreliability, . . . and unwillingness to comply with rules and regulations." Therefore, I do not find any disqualifying condition applies against Applicant under ¶ 16. I do find that mitigating condition ¶ 17(c) is applicable because "so much time has passed" and "it [the conduct] is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment." I, therefore, resolve Guideline E for Applicant.

### **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. Based on all of the reasons cited above as to why the mitigating conditions are applicable and controlling, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, I conclude Applicant has mitigated the security concerns.

### **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
Subparagraph 1.c.:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a.:	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.

Martin H. Mogul  
Administrative Judge