



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



In the matter of: )  
)  
) ISCR Case No. 14-02974  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Chris Morin, Esq., Department Counsel  
For Applicant: *Pro se*

12/03/2014

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant failed to mitigate the Government’s security concerns under Guideline H, drug involvement. Applicant’s eligibility for a security clearance is denied.

**Statement of the Case**

On August 8, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing 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) effective within the DOD on September 1, 2006.

Applicant answered the SOR on August 18, 2014, and requested a hearing before an administrative judge. The case was assigned to me on October 27, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on October 31, 2014. I convened the hearing as scheduled on November 18, 2014. The

Government offered exhibits (GE) 1 and 2, and they were admitted into evidence without objection. Applicant testified and offered Applicant's Exhibits (AE) A through E, which were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 26, 2014.

### **Findings of Fact**

Applicant admitted both allegations in the SOR. I have incorporated her admissions into the findings of fact. After a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 47 years old. She graduated from college in 1989. She married in 1994 and has no children. She held a top secret security clearance while working for a government agency during a college internship from 1987 to 1989. She began full-time employment with the government agency in January 1990 after graduating from college. She remained employed with the agency until 1993, when she left to seek employment in the private sector. She continued to hold a top secret security clearance until she left the agency. She began working for her current employer, a federal contractor, in August 2013.<sup>1</sup>

Applicant admitted that she began experimenting with marijuana use while attending college in 1984. She used it a couple of times a year during college. From 1987 to 1989, she attended school for six months and worked as an intern for six months. She did not use marijuana while she was actively working for the agency during her six-month internships, but she did use it once when she returned to school and still maintained her security clearance. She was aware that marijuana use was prohibited by her employer. She was required to go through a recertification process while at the agency when she admitted her use. She was also required to take a polygraph every three years. She explained she was a young college student and disclosed her use to the agency during her internship. She was not terminated from her position. She told the agency she would not use illegal drugs again. She did not use marijuana again while working for the agency from 1990 to 1993. Applicant admitted that she was aware that illegal drug use was a concern of the federal government.<sup>2</sup>

Applicant stated that she did not think she was going to seek employment with the federal government after leaving her job with the agency in 1993. She smoked marijuana about once every three to five years from 1993 to 2011, either at a party or a concert. It was usually provided by friends or people she knew. She did not purchase it. She was usually drinking alcohol at those times. She was aware that marijuana use was illegal. She acknowledged she made poor decisions when she used it.<sup>3</sup>

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<sup>1</sup> Tr. 10, 24-27, 31, 53-55; GE 1.

<sup>2</sup> Tr. 22, 32-39.

<sup>3</sup> Tr. 22, 32-35, 55.

Applicant used marijuana about once a month from late 2011 to May 2013. She ingested it in the form of a cookie. She stated she used it to alleviate pain. It was not prescribed. Her friend baked the cookies and provided them to Applicant. She acknowledged that although she was aware marijuana use and possession was illegal, it was not in the forefront of her thought process when she consumed it. She stated she is now more aware of its illegality. She acknowledged that since at least 1989 she has known that the government prohibits illegal drug use by people holding or seeking a security clearance.<sup>4</sup>

Applicant stopped using marijuana in May 2013 because she wanted to pursue other employment, and did not want her marijuana use to jeopardize her opportunities. On her security clearance application (SCA), signed August 12, 2013, Applicant disclosed her prior drug use from 1984 to 2013. The SCA stated: "Provide an explanation of why you intend or do not intend to use this drug or controlled substance in the future." Applicant wrote that she: "will not use while under security clearance."<sup>5</sup> Applicant explained that she did not mean to infer that she would continue to use marijuana if she did not have a clearance.<sup>6</sup>

In Applicant's answer to the SOR, she stated:

"I admit I did use marijuana when I was approximately 20-21 years old while holding a clearance. I did inform security voluntarily and it was stated in my polygraph session. At the time of the marijuana use, I did not think I would be returning to the [agency] for full-time employment. It was a one-time, isolated event and didn't happen again while I held a clearance at the [agency]."

Applicant stated that she did not use marijuana in any form other than a cookie from 2011 to 2013. She does not have illegal drugs in her house. Her husband used marijuana with her during this time period, and he no longer uses it because he does not want to put Applicant's employment at risk. She has never abused prescription medications and never bought or provided others with illegal drugs. When asked if she considered seeking professional help for her pain instead using marijuana she stated she did.<sup>7</sup>

Applicant is unaware if her current employer has a drug policy. She is not subject to random drug testing by her current employer. She believes one of her former

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<sup>4</sup> Tr. 39, 41-43, 56-58; 61-62; GE 1, 2; Answer to SOR.

<sup>5</sup> GE 1 at page 31.

<sup>6</sup> Tr. 22, 41, 44, 62.

<sup>7</sup> Tr. 41, 44-47, 58.

employers had a drug policy and she was required to take a pre-employment drug test, which she passed.<sup>8</sup>

Applicant maintains contact with the spouse of the friend who provided the marijuana cookie. They socialize together as a couple. She is unaware if they continue to use marijuana.<sup>9</sup>

Applicant testified she does not intend to use marijuana in the future. She believes she made bad decisions in the past when she used it. She understands she repeatedly violated the law by her use of illegal drugs. She has never taken any other illegal drugs. She believes she is dependable, reliable, and has no financial problems. She included in her answer to the SOR a statement that she does not smoke or otherwise damage her body using drugs. She does not take any prescription drugs. She provided a copy of drug test results for a sample she voluntarily provided on October 20, 2014. The test results were negative for illegal drugs. She provided a statement to mitigate security concerns stating that she does not intend to use any illegal substance “or else suffer revocation of clearance.”<sup>10</sup> She provided a copy of her credit score and a list of professional organizations where she is a member.<sup>11</sup>

Applicant provided character letters that describe her as a trusted professional, who is credible and honest, both personally and professionally. They believe Applicant will show good judgment and follow all laws, rules, and regulations with regard to maintaining a security clearance.<sup>12</sup> Applicant acknowledged that those providing character letters were unaware of the extent of her prior drug use. Only one of those providing a character letter was aware of her most recent marijuana use.<sup>13</sup>

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. 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.

These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, these guidelines are applied in conjunction with the

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<sup>8</sup> Tr. 36, 50-51.

<sup>9</sup> Tr. 41, 51-53.

<sup>10</sup> AE E.

<sup>11</sup> Tr. 22-23 48, 62-63; AE C and D.

<sup>12</sup> AE A.

<sup>13</sup> Tr. 63-64.

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. Likewise, I have not drawn 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, an "applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel and 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 safeguard 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**

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

AG ¶ 24 expresses the security concern for 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.

I have considered the following disqualifying conditions for drug involvement under AG ¶ 25 and the following are potentially applicable:

- (a) any drug abuse;
- (b) testing positive for illegal drug use; and
- (g) any illegal drug use after being granted a security clearance.

Applicant used marijuana while holding a security clearance during her college internship from 1987 to 1989. She sporadically used marijuana from 1993 to 2011, and used it monthly from 2011 to May 2013. I find the above disqualifying conditions apply.

I have considered the mitigating conditions under AG ¶ 26. The following are potentially applicable:

- (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; and
- (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; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant knew that marijuana use was illegal when she used it as a young college student while holding a security clearance. She may not have been aware of the seriousness of her actions at the time. However, she sufficiently understood the gravity of her actions because she disclosed her illegal use to her employer with whom she subsequently took a full-time position. She voluntarily abstained from marijuana use during her four years of employment at the agency. She resumed using it sporadically after she left that position in 1993. Beginning in 2011, she used it monthly until May 2013. She fully acknowledged that she was aware using marijuana was illegal. She attributed her actions to making poor choices. She indicated she does not intend to use marijuana in the future, a promise she previously made to the agency while a young adult. It appears that part of her motivation to cease marijuana use is because she is seeking a security clearance and knows it is inconsistent with obtaining one. This is evidenced by her statements that after she left the agency, she continued to use marijuana, as she did not intend to return to the federal government for full-time employment. She stated on her SCA that she would not use marijuana while holding a clearance. Applicant's conduct casts doubt on her current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply.

Applicant continues to associate with the friends who provided her with the marijuana cookies. She asserted that she has not used marijuana since May 2013, but failed to submit sufficient evidence to support that assertion. She submitted a statement of intent not to use illegal drugs in the future with automatic revocation of clearance if violated. AG ¶ 26 (b) partially applies.

### **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. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Applicant is 47 years old and has a long history of substance abuse. She used marijuana as a young college student while holding a security clearance. She informed the agency where she worked at the time that her intent was not to use illegal drugs in the future. She abstained from marijuana use while holding a full-time job with the agency until 1993, when she left. She then illegally used marijuana sporadically until 2011 when she began to use it monthly until May 2013. Applicant was aware her conduct was a violation of the law, but repeatedly chose to break the law. During those periods of time when it was to her benefit to comply, such as to maintain her security clearance, she did. When her security clearance was no longer a factor, she resumed her illegal conduct. Her actions were not infrequent, but spanned more than a 20-year period. The government expects its employees to exercise self-discipline and comply with the law at all times. Applicant continued engaging in prohibited behavior beyond her college years where youthful indiscretion was a factor in her poor decision-making. As an accomplished adult and professional, she made choices with little regard for the illegality of her actions. She indicated her intent to refrain from marijuana use in the

future, a promise she made in the past and broke. Overall, the record evidence leaves me with substantial questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the security concerns arising under the drug involvement guideline.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.b:	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 a security clearance. Eligibility for access to classified information is denied.

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Carol G. Ricciardello  
Administrative Judge