



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



In the matter of:	)	
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	)	ISCR Case No. 14-00382
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jeff Nagel, Esquire, Department Counsel  
For Applicant: Brian P. Cruz, Esquire

October 22, 2014

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

On March 18, 2014, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H 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 April 10, 2014, and he requested that his case be decision by a hearing before an Administrative Judge. I received the case assignment on May 12, 2014. DOHA first issued a notice of hearing on May 13, 2014, for the hearing to be held on June 2, 2014. The hearing was continued because of the ill health of Applicant's first counsel. The case was continued two more times because of Applicant's counsel's ill health, which sadly resulted in the passing of Applicant's counsel. The hearing was set for July 22, 2014, with the new counsel for Applicant, but that had to be continued because of the new counsel's schedule. Finally, on August 14, 2014, I convened the hearing. The Government offered

Exhibits 1 through 3, which were received without objection. Applicant testified on his own behalf, and submitted Exhibits A through M, which were also admitted without objection. DOHA received the transcript of the hearing (Tr) on August 21, 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**

In his RSOR, Applicant admitted all three SOR allegations, 1.a. through 1.c. The admitted allegations are incorporated herein as findings of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted documents, and the testimony of Applicant, and upon due consideration of that evidence, I make the following additional findings of fact:

Applicant is 34 years old. He is unmarried, and he has no children. Applicant received a Ph.D. degree in Electrical Engineering in 2008. While growing up, Applicant was actively involved in the Boy Scouts of America. During his time in the Boy Scouts, he earned his Eagle Scout, an accomplishment which is rare and the highest award a Scout can earn, and for which he is justifiably proud. (Tr at 27-28.) Applicant was also always an excellent student. Finally, during his high school and college years, he was involved in a number of activities that exhibit many positive traits including responsibility and trustworthiness.(Tr at 23-27, 30-36.) Applicant has been employed by his present employer, a defense contractor, since 2008, and he seeks a DoD security clearance in connection with employment in the defense sector.

### **Guideline H - Drug Involvement**

The SOR lists three allegations (1.a.,1.b., and 1.c.) under Adjudicative Guideline H.

1.a. The SOR alleges, and Applicant admitted in his RSOR, that he, “used marijuana approximately four times between February and June 2010, and approximately six times between approximately August and October 2011.” At the hearing, Applicant testified that he first used marijuana for one summer in 2001, about six times, while he was in college. After that summer, Applicant averred that he did not use marijuana again until 2010, because it was not part of his lifestyle. (Tr at 40-41, 68-69.)

In 2010, Applicant, who was single, moved for his employment, and he began dating a woman whom he met in a bar. He started socializing with her and her friends, and the friends had marijuana at their house. He testified, “When we would get together, they would have it. I resisted using it at first, but at some point, I felt pressure to fit in with them. That’s how I started experimenting with it then.” He used it with his girlfriend or with her and her friends. The boyfriend of his girlfriend’s roommate had a prescription that allowed him to purchase the marijuana legally. He testified that he never purchased or sold marijuana, nor did he own any drug paraphernalia or drive while under the

influence of marijuana. He also stated that he has never used any other illegal drug beside marijuana. (Tr at 41-44.)

Applicant testified that he revealed his marijuana usage to the Government on a new Security Clearance Application (SCA) when he was applying for an SCI clearance. He stated, "I didn't think [my marijuana usage] was a big deal," but when he talked to the CEO of his company about his usage, he came to understand that it could very adversely affect his career. He also received the same message from his supervisor at the time and the future CEO of the company. (Tr at 44-49.)

Applicant testified that he stopped seeing this girlfriend at the same time he ended his drug usage in 2011. He has not seen her or her friends since that time, and he now has new friends. Most of the new friends are employed by Government contractors. Applicant also began seeing a therapist, in part to help him deal with the ending of his relationship, how to find a better relationship, and why he chose to use marijuana. He also stated that currently he has a new girlfriend and a support network of friends just to insure he never uses drugs again. (Tr at 53-56, 67-68.)

1.b. The SOR alleges, and Applicant admitted in his RSOR, that he used marijuana in 2010 and 2011, after being granted a DoD security clearance in February 2009. Applicant conceded that he knew that using drugs that were not prescribed to him was illegal, although he claimed that when he was using the marijuana he was not clear about the legality of his drug usage. He also knew that at the time he used marijuana, his employer had a policy that prohibited its employees from using illegal drugs. Applicant claimed that he when he used the marijuana he was not sure that the Government prohibited an individual with a clearance from using marijuana. When he was asked why he did not do any research to determine what exactly the law was regarding marijuana usage, and what were the Government's rules of drug usage while possessing a security clearance, he could give no answer. (Tr at 72-75.)

Applicant testified that he voluntarily revealed to the Government that he had used an illegal substance upon his own volition. Upon cross examination he admitted that before he revealed his drug usage, he believed he would have to take a polygraph test as part of his SCI clearance review. (Tr at 58-65.) I find that this certainly lessens Applicant's argument that he revealed his drug usage with no Government prompting.

1.c. The SOR alleges, and Applicant admitted in his RSOR, that he was denied access to Sensitive Compartmented Information (SCI) by another Government agency on or about January 30, 2012, because he used marijuana in 2010 and 2011.

Applicant testified, "I do not plan to use illegal drugs ever again." (Tr at 56-57.) He also submitted a statement (Exhibit M), signed by him in which he wrote, "I swear that illegal drugs are not and shall never be part of my life. Should I ever use drugs again, I will report the use and immediately voluntarily surrender my security clearance." He also testified credibly that he has learned his lesson, and if he found himself in a similar situation in the future, he would walk away from it because he has learned his lesson. The last three years, since the drug revelation, have not been fun, and he

knows he could never realize his aspirations of a good career, and settling down with a family in a nice home if he used drugs in the future. (Tr at 75-77.)

## **Mitigation**

Applicant submitted a letter from the psychotherapist with whom he consulted. (Exhibit A.) In the therapist's letter, dated May 27, 2014, she wrote that she had met with Applicant regularly during 2012 and 2013. She wrote, "[Applicant's] straightforward acknowledgment of his mistakes and his willingness to receive corrective feedback and implement it support his integrity and in my opinion, make him a strong asset to his company, as a person suitable for handling access to the security issues. [Applicant] treated our therapeutic relationship with professionalism, good judgement and dedication."

Applicant also submitted 11 extremely positive and laudatory character letters from individuals who know Applicant professionally and personally. (Exhibits B through L.) He was described by a Vice President of his current employer as "unfailingly reliable, trustworthy, professional, courteous, and dedicated. [Applicant] possesses good judgement, maturity, and self-discipline." (Exhibit G.)

## **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 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 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**

### **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 as recently as October 2011, 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.” ¶ 25(g) is also applicable because of Applicant’s “illegal drug use after being granted a security clearance.”

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 used an illegal drug during a new and unusual phase of his life, his testimony that he would know better how to cope with any potential temptation in the future, and Applicant’s realization that future use of illegal drugs could destroy all Applicant’s current goals, for which he has worked so diligently. 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.

### **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

## 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