



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



In the matter of: )  
)  
) ISCR Case No. 14-02203  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Richard A. Stevens, Esq., Department Counsel  
For Applicant: *Pro se*

12/01/2014

**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 July 16, 2014, the Department of Defense (DOD) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, drug involvement, and Guideline E, personal conduct. 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 July 28, 2014. He requested a decision based on the written record. On September 4, 2014, Department Counsel requested a hearing before an administrative judge. The case was assigned to me on September 19, 2014. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on

September 26, 2014, scheduling the hearing for October 16, 2014. On the date of the hearing, Applicant emailed DOHA's administrative assistant advising him he was unable to attend the hearing due to a medical condition. He later provided a doctor's note.<sup>1</sup> His hearing was postponed and an amended notice of appearance was issued on October 24, 2014, scheduling the hearing on November 12, 2014, by video teleconference. The hearing was held as scheduled. The Government offered exhibits (GE) 1 through 5, and they were admitted into evidence without objection. Applicant testified on his own behalf. He offered Applicant's Exhibit (AE) A, which was admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on November 24, 2014.

### **Procedural Issues**

Department Counsel moved to amend the SOR by withdrawing SOR ¶ 2.a. The motion was granted.

### **Findings of Fact**

Applicant admitted the allegations in the SOR. His admissions are incorporated 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 37 years old. He graduated from college in 2000. He married in 2011 and has two children ages four and one. He has worked for a government contractor since 2006. He has held a security clearance since 2006.<sup>2</sup>

Applicant used marijuana in 2005 while living overseas and teaching English. Friends were visiting, and they traveled to Amsterdam where marijuana use is legal. He stated it was the first time he used marijuana. He was 28 years old at the time.<sup>3</sup>

Applicant returned to the United States and began working for a government contractor in August 2005. He obtained his first security clearance in February 2006. He worked with both classified and unclassified matters while at this job. In July 2007, he met friends in a park and used marijuana. He used marijuana again with friends in the park in September 2007. He stated he was young. He did not appreciate the gravity of his actions, and it seemed like a minor event in his life. He understands that he made poor decisions at the time and does not believe he was thinking about its impact on his security clearance. He stated he was experimenting at the time. He was 30 years old. He believed it was an innocent situation, and he was having "a good time." He stated he now has a broader exposure to and understanding of the seriousness of his action.<sup>4</sup>

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<sup>1</sup> Hearing Exhibit I is the email and doctor's note.

<sup>2</sup> Tr. 21-22, 49.

<sup>3</sup> Tr. 22, 28.

<sup>4</sup> Tr. 26, 33-36, 45-49, 51.

In 2009, Applicant moved to a new city with his prospective wife. While attending a party where he was meeting new people, he wanted to “fit in” and succumbed to peer pressure to use marijuana. He was unaware before going to the party that marijuana would be present. He admitted he should have refused the marijuana. He stated that since that occurrence he has told his friends he will not use marijuana again. He stated his friends do not use marijuana in his presence. Applicant was 32 years old at the time and had a security clearance. His current job requires him to have access to facilities that hold classified material.<sup>5</sup>

Applicant stated that he has become more aware in the past couple of years about the importance of his security clearance. This has occurred primarily because as he travels to sites that are more secure, he now understands the weight of holding a security clearance. He felt that in 2007, the place where he was working, did not take holding a security clearance as seriously as where he works now.<sup>6</sup>

Applicant noted it has been five years since his last marijuana use. He has performed exemplary work for his employer.<sup>7</sup> He does not intend to use marijuana in the future. He is a family man and has a different focus. Applicant’s wife does not use illegal drugs.<sup>8</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 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

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<sup>5</sup> Tr. 27, 36-39, 41-43, 45-46.

<sup>6</sup> Tr. 39, 47-49, 51-52.

<sup>7</sup> AE A.

<sup>8</sup> Tr. 51.

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; and
  
- (g) any illegal drug use after being granted a security clearance.

Applicant illegally used marijuana twice in 2007 and once in 2009. He held a security clearance when he used marijuana. 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 used marijuana in 2005, twice in 2007, and once in 2009. The last three times he used marijuana, he held a security clearance. His marijuana use in 2005 in Amsterdam was not illegal there. He used illegal drugs when he was aware of the special trust he was given when he was granted a security clearance, a trust he violated. Applicant's conduct casts doubt on his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) does not apply.

Applicant credibly testified that he does not intend to use illegal drugs in the future. It has been five years since his last marijuana use. He testified that he has told his friends not to use marijuana in his presence. He is now a family man. AG ¶ 26 (b) partially applies.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern for personal conduct;

Conduct involving questionable judgment, 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I find the following potentially applicable:

(d) credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse

determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information.

Applicant associated with people who used illegal drugs and on three occasions while holding a security clearance used marijuana. The above disqualifying condition applies.

The guideline also includes conditions that could mitigate security concerns arising from personal conduct. I have considered the following mitigating conditions under AG ¶ 17:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur; and

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.

Applicant credibly testified he told his friends he no longer uses marijuana and not to use it in his presence. He has acknowledged his behavior and taken positive steps to eliminate marijuana use in his presence. I find both mitigating conditions 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guidelines H and E in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

Applicant is 38 years old. His explanation for his illegal marijuana use in 2007 was that he was young, he did not appreciate the gravity of his actions, and it seemed like a minor event. He was 30 years old. Applicant then moved to a new city and used marijuana again. His excuse for using it in 2009 was peer pressure. He used it because he wanted to fit in with new people he was meeting. He was 32 years old. It does not appear he understood the gravity and importance of holding a security clearance. He had gained the trust of the government when he was granted a security clearance in 2006. He abused that trust by breaking the law and using illegal drugs three times while holding a clearance. The Government requires people it entrusts with security clearances to abide by laws and regulations, regardless of the repercussions. Applicant was beyond the age of youthful indiscretion when he used marijuana as an adult and a trusted employee. It has been five years since his last marijuana use, but that passage of time does not negate the fact he did not have sufficient self-discipline to refuse illegal drugs while holding a security clearance. Applicant's actions reflect poor judgment. Succumbing to peer pressure at 32 years old raises security concerns. This is not a case where Applicant was using marijuana before he had a security clearance and was unaware of its negative impact on his employment. Rather, he had a security clearance, but did not recognize or ignored the importance of his responsibilities and obligations. Applicant violated the trust the Government placed in him.

Applicant has told his friends he does not use marijuana and they should not use it in his presence. He has mitigated the security concern regarding his contact with people who use drugs.

Overall, the record evidence leaves me with significant questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns raised under the personal conduct guideline, but 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
Subparagraph 1.a-1.b:	Against Applicant
Paragraph 2, Guideline E:	FOR APPLICANT

Subparagraph 2.a:  
Subparagraph 2.b:

Withdrawn  
For 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