



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



In the matter of: )  
 )  
----- ) ISCR Case No. 14-02276  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

12/15/2014

**Decision**

GALES, Robert Robinson, Administrative Judge:

Applicant mitigated the security concerns regarding drug involvement, criminal conduct, and personal conduct. Eligibility for a security clearance and access to classified information is granted.

**Statement of the Case**

On December 27, 2013, Applicant applied for a security clearance and submitted an Electronic Questionnaire for Investigations Processing (e-QIP) version of a Security Clearance Application.<sup>1</sup> On July 22, 2014, the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) issued a Statement of Reasons (SOR) to him under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended and modified; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended and modified (Directive); and the *Adjudicative Guidelines for Determining Eligibility For Access to Classified Information* (December 29, 2005) (AG) applicable to all adjudications and other determinations made under the Directive, effective

<sup>1</sup> GE 1 (e-QIP, dated, dated December 27, 2013).

September 1, 2006. The SOR alleged security concerns under Guidelines H (Drug Involvement), J (Criminal Conduct), and E (Personal Conduct), and detailed reasons why the DOD adjudicators were unable to find that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR recommended referral to an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant received the SOR on July 30, 2014. In a sworn statement, dated July 30, 2014, Applicant responded to the SOR allegations and requested a hearing before an administrative judge. Department Counsel indicated the Government was prepared to proceed on September 25, 2014. The case was assigned to me on October 14, 2014. A Notice of Hearing was issued on October 27, 2014, verbally amended due to logistical difficulties, and I convened the hearing, as newly scheduled, on November 20, 2014.<sup>2</sup>

During the hearing, two Government exhibits (GE 1 and GE 2) were admitted into evidence without objection. Applicant testified, but offered no exhibits. The transcript of the hearing (Tr.) was received on December 3, 2014. I kept the record open to enable Applicant to supplement it. Applicant took advantage of that opportunity, and he submitted four Applicant Exhibits (AE 1 through AE 4) which were admitted into evidence without objection. The record closed on December 1, 2014.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted all of the factual allegations in the SOR under drug involvement (§ 1.a.), criminal conduct (§§ 2.a. through 2.c.), and personal conduct (§ 3.a.). Applicant's admissions are incorporated herein as findings of fact. After a complete and thorough review of the evidence in the record, and upon due consideration of same, I make the following additional findings of fact:

Applicant is a 25-year-old employee of a defense contractor, but since he was offered the position in December 2013, because he has no security clearance, he has no duties.<sup>3</sup> He has two part-time positions (as a dishwasher since October 2012 and as an accountant/bookkeeper since November 2012).<sup>4</sup> A June 2007 high school graduate, Applicant received a bachelor's degree in finance in May 2013.<sup>5</sup> He has never served with the U.S. military.<sup>6</sup> He has never held a security clearance.<sup>7</sup> He has never been married, and currently resides with his parents.<sup>8</sup>

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<sup>2</sup> The Notice of Hearing issued on October 27, 2014 scheduled the hearing for November 17, 2014. However, because my flight was cancelled, the hearing was, with the approval of Department Counsel and Applicant, verbally rescheduled for November 20, 2014. During the hearing, Applicant did not object to the verbal change and was prepared to proceed. See Tr. at 13-15.

<sup>3</sup> Tr. at 31.

<sup>4</sup> Tr. at 32-33.

<sup>5</sup> GE 1, *supra* note 1, at 8-9; Tr. at 30.

<sup>6</sup> GE 1, *supra* note 1, at 16.

## Drug Involvement, Criminal Conduct, and Personal Conduct

(SOR ¶¶ 2.b. and 3.a.): During the period May 2008 until February 2011, Applicant held a part-time job as a cashier/auditor with a grocery store.<sup>9</sup> One day in February 2011, while Applicant was working the cash register, an individual came through his line and purchased alcohol. Applicant entered the individual's date of birth into the register, and if the purchase is not approved, a beeping noise is supposed to ring out. In this instance, Applicant did not hear the beep, so he continued processing the sale. Shortly thereafter, he was approached by a law enforcement officer who informed him that he had sold alcohol to a minor. It was the first and only time he had ever done so. The entire transaction was part of a police sting. As a result, Applicant was immediately terminated from his job.<sup>10</sup> He was charged with selling alcohol to a person under the age of 21, found guilty, and fined approximately \$700.<sup>11</sup> Applicant attributed the action either to a defective system or inattentiveness on his part.<sup>12</sup>

(SOR ¶¶ 1.a., 2.c, and 3.a.): Applicant was a substance abuser whose substance of choice was marijuana. He started using marijuana when he entered college, and did so about two or three times per week, or sometimes three or four times per month, either with his roommates or at parties.<sup>13</sup> Applicant acknowledged using marijuana until he graduated from college, and although he graduated in May 2013, his use continued until August 2013.<sup>14</sup> During the period of his marijuana use, Applicant periodically purchased the substance, but never sold it.<sup>15</sup> In December 2013, in his e-QIP, Applicant wrote:<sup>16</sup>

I do not intend to use any drugs because I would like to keep a well-paying job to build my future. I would not want my employer to think that I am a drug abuser because I am not that type of person. . . . I stopped using drugs 4 months ago to get ready to begin my career.

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<sup>7</sup> Tr. at 30-31.

<sup>8</sup> GE 1, *supra* note 1, at 18; Tr. at 34.

<sup>9</sup> GE 1, *supra* note 1, at 13-14.

<sup>10</sup> Tr. at 34-36, 53-56; GE 1, *supra* note 1, at 13-14; Applicant's Answer to the SOR, dated July 30, 2014, at 1.

<sup>11</sup> Tr. at 56-57.

<sup>12</sup> Tr. at 54-56.

<sup>13</sup> Tr. at 36-39; GE 1, *supra* note 1, at 25; Applicant's Answer to the SOR, *supra* note 10, at 1.

<sup>14</sup> Tr. at 38; GE 1, *supra* note 1, at 25; Applicant's Answer to the SOR, *supra* note 10, at 1.

<sup>15</sup> Tr. at 39.

<sup>16</sup> GE 1, *supra* note 1, at 26.

In July 2014, in his Answer to the SOR, Applicant wrote: “Once I graduated, I stopped using the drug altogether. I am currently clean from this drug and do not plan to use it ever again.”<sup>17</sup>

Although Applicant no longer uses marijuana, he has been in situations where others have used it. In October 2014, Applicant and a cousin were at their grandmother’s residence for a cookout. His cousin smoked some marijuana, but because he knows that Applicant no longer does so, Applicant was not offered any.<sup>18</sup> That same month, while attending a fraternity party during his college homecoming, others were smoking marijuana, but Applicant did not do so.<sup>19</sup> Applicant still sees some of his former roommates and friends with whom he had previously used marijuana while in college, but they no longer use the substance.<sup>20</sup>

(SOR ¶¶ 2.a. and 3.a.): In September 2013, Applicant and another cousin were at their grandmother’s residence for a cookout. Applicant drove his cousin downtown to a party, and while in Applicant’s vehicle, his cousin put a bag of marijuana in Applicant’s glove box. After he dropped his cousin at his residence, they both forgot about the marijuana. On the way to his own home, Applicant was stopped by the police for a traffic infraction. When Applicant opened the glove box to retrieve his registration, the bag of marijuana fell out. He was issued a citation for simple possession of marijuana 1<sup>st</sup> - a criminal misdemeanor, and rather than contesting the citation, he was found guilty and fined \$250.<sup>21</sup> Applicant was not represented by an attorney at the time.<sup>22</sup>

Applicant has never received any medical treatment or counseling related to the substance abuse.<sup>23</sup> He has never been evaluated or diagnosed for substance abuse or dependence.<sup>24</sup>

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<sup>17</sup> Applicant’s Answer to the SOR, *supra* note 10, at 1.

<sup>18</sup> Tr. at 40; Applicant’s Answer to the SOR, *supra* note 10, at 1.

<sup>19</sup> Tr. at 41.

<sup>20</sup> Tr. at 39-40.

<sup>21</sup> Tr. at 44-45; GE 2 (Extract of Municipal Court Records, undated).

<sup>22</sup> Tr. at 44-45. It is interesting to note that if Applicant had been represented, he could have avoided the consequences of the citation. Under the state law, whenever any person who has not previously been convicted for violations of laws relating to marijuana or other non-narcotic drugs is found guilty of possession of a controlled substance, the court, without entering a judgment and with the consent of the accused, may defer further proceedings and place him on probation. Upon fulfillment of the terms and conditions of the probation, the court shall discharge the person and dismiss the proceedings against him. Upon dismissal or discharge under this section, the accused, if under the age of 25 at the time of the offense, may apply to the court for an order to remove from all official records any mention of his arrest and the subsequent proceedings. This was Applicant’s first offense, and at the time of the incident, he was under 25.

<sup>23</sup> Tr. at 45.

<sup>24</sup> Tr. at 45-46.

## Character References

The Executive Chef where Applicant is employed part-time is very supportive of Applicant's application. He characterized Applicant as a hard-working, reliable, outstanding employee who strives to do his best.<sup>25</sup> Applicant's cousin, the owner of the bag of marijuana in the glove box, not only confirmed Applicant's description of the events in September 2013, but referred to Applicant as level-headed, strong-minded, and inspiring.<sup>26</sup> Applicant's aunt noted that Applicant was a church volunteer. She also called him very honest and trustworthy.<sup>27</sup> Although Applicant's mother appears not to be aware of his past marijuana abuse, she contends he is obedient, trustworthy, highly intelligent, ambitious, kind, and family oriented.<sup>28</sup>

## Policies

The U.S. Supreme Court has recognized the substantial discretion of the Executive Branch in regulating access to information pertaining to national security emphasizing, "no one has a 'right' to a security clearance."<sup>29</sup> As Commander in Chief, the President has the authority to control access to information bearing on national security and to determine whether an individual is sufficiently trustworthy to have access to such information. The President has authorized the Secretary of Defense or his designee to grant an applicant's eligibility for access to classified information "only upon a finding that it is clearly consistent with the national interest to do so."<sup>30</sup>

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 useful in evaluating an applicant's eligibility for access to classified information.

An administrative judge need not view the guidelines as inflexible, ironclad rules of law. Instead, acknowledging 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. The entire process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all

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<sup>25</sup> AE A (Character Reference, dated November 29, 2014).

<sup>26</sup> AE B (Character Reference, dated November 26, 2014).

<sup>27</sup> AE C (Character Reference, dated November 26, 2014).

<sup>28</sup> AE D (Character Reference, dated November 28, 2014).

<sup>29</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988).

<sup>30</sup> Exec. Or. 10865, *Safeguarding Classified Information within Industry* § 2 (Feb. 20, 1960), as amended and modified.

available, reliable information about the person, past and present, favorable and unfavorable, in making a meaningful decision.

In the decision-making process, facts must be established by “substantial evidence.”<sup>31</sup> The Government initially has the burden of producing evidence to establish a potentially disqualifying condition under the Directive, and has the burden of establishing controverted facts alleged in the SOR. Once the Government has produced substantial evidence of a disqualifying condition, under Directive ¶ E3.1.15, the applicant has the burden of persuasion to present evidence in refutation, explanation, extenuation or mitigation, sufficient to overcome the doubts raised by the Government’s case. The burden of disproving a mitigating condition never shifts to the Government.<sup>32</sup>

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 as well. It is because of this special relationship that the Government must be able to repose a high degree of trust and confidence in those 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. Furthermore, “security clearance determinations should err, if they must, on the side of denials.”<sup>33</sup>

Clearance decisions must be “in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”<sup>34</sup> Thus, nothing in this decision should be construed to suggest that I have based this decision, in whole or in part, on any express or implied determination as to Applicant’s allegiance, loyalty, or patriotism. It is merely an indication the Applicant has not met the strict guidelines the President and the Secretary of Defense have established for issuing a clearance. 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.

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<sup>31</sup> “Substantial evidence [is] such relevant evidence as a reasonable mind might accept as adequate to support a conclusion in light of all contrary evidence in the record.” ISCR Case No. 04-11463 at 2 (App. Bd. Aug. 4, 2006) (citing Directive ¶ E3.1.32.1). “Substantial evidence” is “more than a scintilla but less than a preponderance.” *See v. Washington Metro. Area Transit Auth.*, 36 F.3d 375, 380 (4<sup>th</sup> Cir. 1994).

<sup>32</sup> *See* ISCR Case No. 02-31154 at 5 (App. Bd. Sep. 22, 2005).

<sup>33</sup> *Egan*, 484 U.S. at 531

<sup>34</sup> *See* Exec. Or. 10865 § 7.

## Analysis

At the outset, I note I had ample opportunity to evaluate the demeanor of Applicant, observe his manner and deportment, appraise the way in which he responded to questions, assess his candor or evasiveness, read his statements, and listen to his testimony. It is my impression that his explanations regarding his drug involvement, criminal conduct, and personal conduct are consistent and have the solid resonance of truth. This is especially significant because without Applicant's honesty and candor in responding to questions in his e-QIP, it is highly unlikely that the government would have become aware of Applicant's drug involvement, criminal conduct, or personal conduct.

### 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.

(a) 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;

(b) 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 conditions that could raise security concerns. Under AG ¶ 25(a), *any drug abuse (see above definition)*, is potentially disqualifying. Similarly, under AG ¶ 25(c), *illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*, may raise security concerns.

Applicant started using marijuana when he entered college in September 2007, and did so about two or three times per week, or sometimes three or four times per month, either with his roommates or at parties. His use continued until August 2013. During the period of his marijuana use, Applicant periodically purchased the substance, but never sold it. AG ¶¶ 25(a) and 25(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying conditions may be mitigated where *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.* Under AG ¶ 26(b), drug involvement concerns may also be mitigated where there is 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.*

AG ¶¶ 26(a) and 26(b) apply. Applicant's marijuana abuse ceased in August 2013, nearly one-and-a-half years ago. Applicant has never received any medical treatment or counseling related to the substance abuse, and he has never been evaluated or diagnosed for substance abuse or dependence. Applicant intends to refrain from such use in the future, he has submitted a signed statement of intent as part of his Answer to the SOR, and he verbally stated the same intention during the hearing. Applicant's abstinence is viewed favorably, and he should be encouraged to continue it. He tries not to associate himself with other substance abusers, but his efforts have not always been successful. Nevertheless, those with whom he comes in contact have honored his wishes to remain abstinent and they do not offer or attempt to persuade him to join them. Applicant's substance abuse occurred during his college years and he has attempted to put that phase of his life behind him. He was candid and forthright in admitting his substance abuse in his e-QIP. His admissions took a degree of courage and maturity, and reflect positive character traits. Under these circumstances, it appears that such behavior will not recur, and the uncertainty regarding Applicant's reliability, trustworthiness, or good judgment has been put to rest.

### **Guideline J, Criminal Conduct**

The security concern under the guideline for Criminal Conduct is set out in AG ¶ 30:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

The guideline notes several conditions that could raise security concerns. Under AG ¶ 31(a), *a single serious crime or multiple lesser offenses* is potentially disqualifying. Also, a security concern may be raised under AG ¶ 31(c), when there is an *allegation or admission of criminal conduct, regardless of whether the person was formally charged,*



*formally prosecuted or convicted.* As noted above, Applicant's marijuana abuse occurred from about September 2007 to August 2013. He was convicted of simple possession of marijuana 1<sup>st</sup> in September 2013 when a bag of marijuana belonging to his cousin was found in his car during a police traffic stop. In February 2011, he was convicted of selling alcohol to a person under the age of 21. AG ¶¶ 31(a) and 31(c) have been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from criminal conduct. Under AG ¶ 32(a), the disqualifying condition may be mitigated where *so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.* Similarly, AG ¶ 32(d) may apply where *there is evidence of successful rehabilitation: including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.*

As to the alcohol-related incident, AG ¶¶ 32(a) and 32(d) apply. In February 2011, Applicant held a part-time job as a cashier/auditor with a grocery store. One day, while Applicant was working the cash register, as part of a police sting an individual came through his line and purchased alcohol. There was some confusion as to whether or not the electronic system was working properly or if Applicant was simply inattentive. Shortly after the sale was completed, Applicant was informed by a law enforcement officer that he had illegally sold alcohol to a minor. It was the first and only time Applicant had ever done so. As a result, Applicant was charged with selling alcohol to a person under the age of 21, found guilty, and fined approximately \$700. This isolated incident happened under very unusual circumstances, and occurred nearly four years ago, and similar conduct has not been repeated. It is unlikely to recur and no longer casts doubt on Applicant's reliability, trustworthiness, or good judgment.

As to Applicant's use and possession of marijuana, AG ¶¶ 32(a) and 32(d) apply. While Applicant used marijuana during his college years, he has abstained from marijuana use since August 2013. The September 2013 incident involving his conviction for possession of marijuana was the result of his cousin's inadvertent leaving a bag of marijuana in Applicant's glove box. Applicant's former drug-related criminal behavior is also unlikely to recur and no longer casts doubt on his reliability, trustworthiness, or good judgment.

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

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

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.

The guideline notes conditions that could raise security concerns. Under AG ¶ 16(e), security concerns may be raised when there is: *personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing. . . .*

There is no evidence of a failure by Applicant to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process. The SOR allegation focuses solely on Applicant's alcohol-related incident, his use of marijuana while in college, and his conviction for possession of marijuana. In other words, the personal conduct issues are redundant. Nevertheless, AG ¶ 16(e) has been established.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. AG ¶ 17(c) may apply if *the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.* Under AG ¶ 17(e), personal conduct concerns may also be mitigated where *the individual has taken other positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress.*

AG ¶¶ 17(c) and 17(e) apply. Applicant's marijuana abuse occurred in a university environment and ceased in August 2013. The conviction for possession of marijuana occurred in September 2013. While Applicant was, in fact, convicted of a criminal misdemeanor, since he was younger than 25 years old, and it was his first offense, he could have applied to the court for an order to remove from all official records any mention of his arrest and the subsequent proceedings. But he was apparently unaware he could do so. Applicant has never received any medical treatment or counseling related to substance abuse, and he has never been evaluated or diagnosed for drug abuse or dependence. He has been abstinent since August 2013. Applicant has furnished substantial evidence of positive actions taken regarding his drug involvement, criminal conduct, and personal conduct that enables me to conclude that his isolated alcohol-related incident and college-related marijuana abuse have been put behind him and will not recur.

### **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 have incorporated my comments under Guidelines H, J, and E, in my analysis below.

There is substantial evidence supporting the security concerns. During his college years, from September 2007 until August 2013, he was a marijuana abuser. He has convictions for simple possession of marijuana in September 2013 and for selling alcohol to a person under the age of 21 in February 2011.

The mitigating evidence under the whole-person concept is more substantial. The alcohol-related incident, on its face, might appear to be significant, but it was actually an isolated incident attributed to either Applicant's inattentiveness or a system malfunction. With the passage of time, and in the absence of any other alcohol-related incidents, it has minimal security significance. It is Applicant's relatively routine use of marijuana, as well as his conviction for simple possession of marijuana, that justifies substantial attention. As to the conviction, the marijuana was not his, and it was simply in the wrong place at the wrong time.

Applicant has never been evaluated or diagnosed for drug abuse or dependence, and he never received any medical treatment, education, or counseling related to his substance abuse. Applicant has abstained from marijuana use for nearly one-and-half years, and he intends to refrain from such use in the future. It is unfortunate that his efforts to disassociate himself from other substance abusers have not always been successful, but those circumstances and situations cannot always be avoided. What is significant is that he has remained abstinent.

Applicant's substance abuse occurred during his college years and he has attempted to put that phase of his life behind him. He was candid and forthright in admitting his substance abuse in his e-QIP. His admissions took a degree of courage and maturity, and reflect positive character traits. Under these circumstances, it appears that the indiscretions of his youth will not recur, and the uncertainty regarding Applicant's reliability, trustworthiness, or good judgment has been put to rest.

I have evaluated the various aspects of this case in light of the totality of the record evidence and have not merely performed a piecemeal analysis.<sup>35</sup> Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. This decision should serve as a warning that his failure to continue his abstinence from drugs will adversely affect his future eligibility for a security clearance.<sup>36</sup> After weighing the disqualifying and mitigating conditions, and all the facts and circumstances, in the context of the whole person, I conclude he has mitigated the drug involvement, criminal conduct, and personal conduct security concerns. (See AG ¶¶ 2(a)(1) - 2(a)(9).)

I take this position based on the law, as set forth in *Department of Navy v. Egan*, 484 U.S. 518 (1988), my careful consideration of the whole-person factors and supporting evidence, my application of the pertinent factors under the adjudicative process, and my interpretation of my responsibilities under the Guidelines. Applicant has mitigated and overcome the Government's case. For the reasons stated, I conclude he is not eligible for access to classified information.

### 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
Subparagraph 1.a:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	For Applicant
Paragraph 3, Guideline E:	FOR APPLICANT
Subparagraph 3.a:	For Applicant

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<sup>35</sup> See *U.S. v. Bottone*, 365 F.2d 389, 392 (2d Cir. 1966); See also ISCR Case No. 03-22861 at 2-3 (App. Bd. Jun. 2, 2006).

<sup>36</sup> While this decision should serve as a warning to Applicant, the decision, including the warning, should not be interpreted as being contingent on future monitoring of Applicant's drug abstinence. The Defense Office of Hearings and Appeals (DOHA) has no authority to attach conditions to an applicant's security clearance. See, e.g., ISCR Case No. 06-26686 at 2 (App. Bd. Mar. 21, 2008); ISCR Case No. 04-04302 at 5 (App. Bd. Jun. 30, 2005); ISCR Case No. 03-17410 at 4 (App. Bd. Apr. 12, 2005); ISCR Case No. 99-0109 at 2 (App. Bd. Mar. 1, 2000).

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ROBERT ROBINSON GALES  
Administrative Judge