



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



In the matter of: )  
)  
) ISCR Case No. 14-02518  
)  
)  
Applicant for Security Clearance )

**Appearances**

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

June 23, 2015

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

Applicant failed to mitigate the Drug Involvement and Personal Conduct security concerns. Applicant used marijuana once or twice in 2008 and up to three times in 2013. His 2013 marijuana use occurred while holding a security clearance. Eligibility for access to classified information is denied.

**Statement of the Case**

On April 2, 2013, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP) seeking to upgrade his security clearance level. On September 12, 2014, the Department of Defense (DOD) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct. The action was taken under Executive Order (EO) 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 after September 1, 2006.

Applicant responded to the SOR (Answer) on October 13, 2014, and requested a hearing before an administrative judge. The case was assigned to me on February 18, 2015. The Defense Office of Hearings and Appeals (DOHA) issued a notice of hearing on March 6, 2015, and the hearing was convened as scheduled on April 21, 2015. The Government offered Hearing Exhibit (HE) I and Exhibits (GE) 1 and 2, which were admitted without objection. Applicant offered Exhibits (AE) A through D, which were admitted without objection. Applicant testified on his own behalf. The record was left open for receipt of additional documentation and, on April 25, 2015, Applicant submitted AE E. Department Counsel had no objection to AE E, and it was admitted. The record then closed. DOHA received the hearing transcript (Tr.) on April 27, 2015.

### **Findings of Fact**

Applicant is a 29-year-old employee of a government contractor. He has two bachelor's degrees. He is single and has no children. (GE 1; GE 2.)

Applicant has worked for his present employer since 2010. He applied for, and received, a security clearance in May 2012. On April 2, 2013, Applicant submitted an e-QIP seeking to upgrade his security clearance level. He disclosed marijuana use in 2008 and 2013 on that e-QIP.<sup>1</sup> (GE 1; GE 2; Tr. 21.)

The SOR alleged that Applicant used marijuana in 2008 and 2013, and that his 2013 marijuana use occurred while holding a security clearance. In his Answer and during his testimony, Applicant admitted all of the allegations contained in the SOR. (Answer; Tr. 28.)

Applicant first used marijuana in 2008 while in college. He tried it once or twice out of curiosity. He did not like marijuana and did not use it again until a girlfriend requested he try it in March 2013. He used it two or three times over a one-week period with her in his backyard. He had forgotten he had a security clearance when he used marijuana in 2013, because he had not been briefed into any classified or protected programs. He was aware marijuana use violated both state and Federal laws. His employer is not aware of his drug use. He is no longer in a relationship with that girlfriend. He stated that he no longer associates with drug users. (Tr. 28-48.)

Applicant presented a signed statement of intent in which he vowed "I will not abuse any illegal drugs in the future." (AE E.) He also presented three highly complementary letters of recommendation (AE A); copies of three awards (AE B; AE C.); and two performance reviews (AE D.) They show that Applicant consistently performs above expectations and is a valued employee. (AE D.) He is respected by his managers for his professionalism, dedication, and integrity. (AE A.)

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<sup>1</sup> He also disclosed his 2008 marijuana use on his 2012 e-QIP.

## 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 (DCs) and mitigating conditions (MCs), which are to be 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 AG ¶ 2 describing the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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, "[t]he applicant is responsible for presenting witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by the applicant or proven by Department Counsel, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision." Section 7 of Executive Order 10865 provides: "[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned."

A person applying for access to classified information seeks to enter 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.

## Analysis

### Guideline H, Drug Involvement

AG ¶ 24 expresses the security concern pertaining to 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 all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25, and the following are potentially applicable:

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

The Government presented sufficient information to support all of the factual allegations under Guideline H (SOR ¶¶ 1.a and 1.b). Applicant used marijuana once or twice in 2008 and up to three times 2013. His 2013 marijuana use occurred while holding a security clearance. The facts established through the Government's evidence, and through Applicant's admissions, raise security concerns under both of the above disqualifying conditions.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26, and 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.

Only two years have passed since Applicant's last use of an illegal substance. Additionally, five years passed between his first use of marijuana and his second use. He was a mature adult employed in the defense industry and possessed a security clearance at the time of his multiple uses in 2013. I cannot find that future use is unlikely to occur. In this instance, an appropriate period of abstinence has not been demonstrated. The evidence does not support the application of AG ¶ 26(a).

AG ¶ 26(b) provides limited mitigation. Applicant stated that he does not intend to use illegal substances in the future. AE E contains an explicit signed statement of intent not to use illegal substances again. He claimed that he no longer associates with drug users. These are factors that weigh in Applicant's favor. Applicant used illegal substances in the past out of curiosity or due to social pressure. Despite his assurances not to use drugs in the future, based on his past conduct and his age when he made those decisions, I am not confident he will comply. As noted above, Applicant has not yet demonstrated an appropriate period of abstinence. Applicant has not provided sufficient evidence to meet his burden of proof to overcome the concerns raised by his poor judgment in using illegal substances, especially while holding a security clearance.

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

The security concern for the Personal Conduct guideline 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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. The following disqualifying condition is potentially applicable:

(e) 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, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant's marijuana use created a vulnerability to exploitation, manipulation, or duress, and is an activity that could affect his personal, professional, or community standing because he has not disclosed it to his employer. The above condition applies.

AG ¶ 17 provides conditions that could mitigate security concerns. The following are potentially applicable:

(c) 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;

(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 was honest and disclosed his marijuana use on his e-QIP. He has earned a number of awards and certificates, and is highly respected by his employer. However, he is embarrassed by his past drug use and has not disclosed it to his employer. Applicant made poor, self-serving decisions to violate laws and security procedures when he used marijuana while possessing a security clearance. He failed to produce sufficient evidence that similar lapses in judgment are unlikely to recur, without the passage of more time or other evidence that demonstrates trustworthiness and good judgment. He has not obtained counseling or taken other steps to indicate that risky or illegal conduct is unlikely to recur. He is still vulnerable to potential coercion. The evidence does not support the full application of any of the above mitigating conditions.

### **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 pertinent facts and circumstances surrounding this case. Applicant has not used marijuana since 2013. He voluntarily divulged information about his drug use on his e-QIP. He testified that he will not use illegal substances in the future. However, Applicant was a mature adult with a high level of responsibility when he knowingly violated laws and security procedures. Not enough time has passed since Applicant's drug use while

possessing a security clearance in 2013 to permit a finding that drug abuse is unlikely to recur.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant failed to mitigate the Drug Involvement and Personal Conduct 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:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is denied.

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Jennifer I. Goldstein  
Administrative Judge