



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



In the matter of: )  
)  
) ISCR Case No. 14-03076  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esq., Department Counsel  
For Applicant: *Pro se*

04/23/2015

**Decision**

CREAN, THOMAS M., Administrative Judge:

Based on a review of the case file and pleadings, I conclude that Applicant failed to provide sufficient information to mitigate security concerns under Guideline H for drug involvement. Eligibility for access to classified information is denied.

**Statement of the Case**

On February 18, 2014, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) to obtain a security clearance required for her employment with a defense contractor. (Item 5) Applicant was interviewed by an investigator from the Office of Personnel Management (OPM) on March 27, 2014. (Item 6) The Department of Defense (DOD) could not make the affirmative findings required to issue a security clearance. On October 14, 2014, DOD issued Applicant a Statement of Reasons (SOR) detailing security concerns for drug involvement (Guideline H). (Item 1) 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 in the Department of Defense on September 1, 2006.

Applicant answered the SOR on October 24, 2014. She denied two and admitted two allegations under Guideline H. Applicant requested a decision on the written record. (Item 4) Department Counsel submitted the Government's written case on January 28, 2015. Applicant received a complete file of relevant material (FORM) on February 4, 2015, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the security concerns. Applicant timely submitted additional information. (Item 7, Response to FORM, dated February 25, 2015) The case was assigned to me on March 19, 2015.

### **Findings of Fact**

After a thorough review of the case file and the pleadings, I make the following essential findings of fact.

Applicant is a 24-year-old 2013 college graduate employed since January 2014 as a technical writer by a defense contractor. She is single. (Item 5, e-QIP)

The SOR alleges that Applicant purchased and used marijuana with varying frequency from September 2008 until May 2013 (SOR 1.a and 1.d); that she intends to continue to use marijuana (SOR 1.b); and that she continues to associate with individuals who use illegal drugs. (SOR 1.c)

Applicant answered "Yes" to question 23 on the e-QIP asking if she had used any illegal drug in the last seven years. She provided information that from September 2008 until January 2014, she purchased and used marijuana recreationally and to help with insomnia and anxiety. Her use of marijuana was during the time she was in college until she started her post-college job with the defense contractor. (Item 5)

In her interview with the OPM investigator, Applicant admitted purchasing and then smoking marijuana two or three times weekly while in college, but only on weekends, never while attending class or working. She smoked marijuana to relax and unwind. Since graduating from college in 2013, her use of marijuana has been less, about two or three times a month on weekends and never during work hours. She stated that she is not addicted to marijuana and can stop marijuana use at any time. She has future intentions to smoke marijuana unless her job has a problem with smoking marijuana and tells her to stop. She would be willing to stop and would have no problem ending marijuana use entirely. She emphasized that she never had a problem due to marijuana use and does not need marijuana to function. (Item 6 at 5-6)

In her response to the SOR, Applicant denied SOR allegations 1.a and 1.d noting that her use of marijuana was recreational and never when working. She ceased using marijuana in the spring of 2014, and she last purchased marijuana in the spring of 2013. She purchased marijuana only for her personal use. Applicant denied SOR 1.b alleging that she intends to use marijuana in the future. She no longer uses marijuana, her position requiring a security clearance is important to her, and the recreational use of marijuana is now not necessary or conducive. She admitted allegation SOR 1.c that she

still has contact with people that use marijuana. These people attended college with her or are close family friends. She has significantly reduced the amount of time she spends with these friends. (Item 4)

Applicant noted in response to the FORM that she has a changed lifestyle and circumstance. She no longer uses marijuana and has no intention to again use marijuana. She moved from her apartment in December 2014 to live with her mother because her roommates were using marijuana. Her landlord verified that in December 2014, Applicant terminated her lease early because of the issue with her roommates. (Item 8) Applicant's move to live with her mother causes her to have a two hour commute to work. She emphasized that she has not purchased marijuana since the spring of 2013, has stopped seeing most of her past drug using friends except for family members and very close family friends, and stopped using marijuana entirely immediately after the OPM interview in March 2014. (Response to FORM, dated February 25, 2015)

### **Policies**

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

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 burden of persuasion 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.

## **Analysis**

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

The use of an illegal drug can raise questions about an individual's reliability and trustworthiness, because it may impair judgment and raises questions about a person's ability or willingness to comply with laws, rules, and regulations. Drugs are mood and behavior altering substances, and include those listed in the Controlled Substances Act of 1970. Marijuana is listed in the Act. Drug abuse is the illegal use of a drug or the use of a legal drug in a manner that deviates from approved medical direction (AG ¶ 24). Applicant admits to purchasing and using marijuana from 2008 until 2014. Applicant's marijuana use raises the following Drug Involvement Disqualifying Conditions under AG ¶ 25:

- (a) any drug use; and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia.

I considered the following Drug Involvement Mitigating Conditions under AG ¶ 26:

- (a) the behavior happened so long ago, was so infrequent, or happened under such unusual 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 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.

While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of

time has passed without evidence of drug involvement, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

Applicant admits using marijuana while in college and for a time after college from 2008 until early 2014. She used marijuana a few times a week in college and less frequently after college. She used marijuana until she submitted an application for a security clearance and was interviewed by an OPM investigator. Her use of marijuana is recent and frequent. She used marijuana willingly so it was not used under any unique circumstances. Applicant presented evidence of intent not to use drugs in the future. A few months ago, she moved from her apartment because her roommates were using marijuana reinforcing her intent not to use marijuana. She terminated her friendship with some of those she used drugs with in the past. She still has contact with other marijuana using friends because they are family or close family friends. There is no indication she is subject to random testing for drug use or attendance at any drug abuse prevention programs.

Applicant's abstinence from marijuana use for a year and her intention not to use marijuana in the future must be set off against her willing and voluntary possession and use of marijuana for over five years. Applicant used marijuana for over five years while a college student and a recent college graduate. She has now matured and understands that her use of marijuana can adversely affect her life and job prospects. However, a year of abstinence from marijuana use is not a sufficient time for Applicant to meet her burden to show changed circumstances or conduct that indicates she has reformed and will no longer use illegal drugs. While she may well be on the path to ceasing her drug use, her use of marijuana under the circumstances can occur again and it could cast doubt on her reliability, trustworthiness, and good judgment. When there has been more time of abstinence from drug use, Applicant could potentially be granted access to classified information. There is no compelling evidence of a changed circumstance indicating reform or rehabilitation. AG ¶¶ 26(a) and 26(b) do not 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 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. I considered Applicant's stated intention not to use drugs in the future. Applicant used marijuana willingly for over five years. She has not presented information to establish reform and changed circumstances that are sufficient to indicate she will not use illegal drugs in the future. Applicant has not met her burden to show that her drug use from 2008 until 2014 no longer reflects adversely on her reliability, honesty, trustworthiness, and good judgment. Her past knowing and intentional use of marijuana shows that she may not properly safeguard classified information. For all these reasons, I conclude Applicant has not mitigated the security concerns for illegal drug use. Overall, the record evidence leaves me with questions and doubts as to Applicant's judgment, reliability, and trustworthiness. At this time, Applicant should not be granted 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:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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THOMAS M. CREAN  
Administrative Judge