



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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 ----- ) ISCR Case No. 14-06498  
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 Applicant for Security Clearance )

**Appearances**

For Government: Robert J. Kilmartin, Esquire, Department Counsel  
For Applicant: *Pro se*

June 1, 2016

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**Decision**

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MOGUL, Martin H., Administrative Judge:

On January 26, 2015, the Department of Defense (DoD) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H for Applicant. (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 within the Department of Defense for SORs issued after September 1, 2006.

Applicant replied to the SOR (RSOR) in writing and signed it on May 7, 2015, and he requested that his case be decided on the written record in lieu of a hearing. (Item 1.) On August 24, 2015, Department Counsel issued the Department's written case. A complete copy of the file of relevant material (FORM) was provided to Applicant. In the FORM, Department Counsel offered four documentary exhibits. (Items 1-4.) Applicant was given the opportunity to file objections and submit material in refutation, extenuation, or mitigation. A response was due on October 29, 2015. Applicant submitted no additional evidence. The case was assigned to this

Administrative Judge on November 10, 2015. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

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

Applicant is 30 years old and a high school graduate. He has never been married, and he has one child. Applicant has been employed as a Shipper by his current employer, a defense contractor, since January 2008, and he seeks a DoD security clearance in connection with employment in the defense sector. (Item 2.)

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

The SOR lists three allegations (1.a. through 1.c.) under Adjudicative Guideline H.

1.a. The SOR alleges that Applicant, "used marijuana from approximately 04/2011 through at least 01/2012, after being granted a security clearance." Applicant denied this allegation in his RSOR, and he wrote, "It's been years since I last used marijuana. I don't remember exactly when the last time was. However, I do know for sure it was before I was granted my first security clearance. I never used marijuana after obtaining a security clearance." (Item 1.)

1.b. The SOR alleges, and Applicant admitted in his RSOR, that he, "purchased marijuana from approximately 01/2000 to approximately 01/2012 with varying frequency." (Item 1.)

1.c. The SOR alleges, and Applicant admitted in his RSOR, that he, "used marijuana from "approximately 01/2000 to approximately 01/2012." (Item 1.)

On his Electronic Questionnaires for Investigations Processing (e-QIP) that he signed on June 4, 2014, (Item 2.) Applicant identified the following drugs and dates of usage:

1) THC (such as marijuana, weed, pot, hashish, etc.) estimated from January 2000 to January 2012, used recreationally "a couple times a week to a couple times a month." He also wrote, "Quit 2 years ago. No interest in doing it again." Finally, on his e-QIP Applicant checked the box indicating that his drug use did not occur while he possessed a security clearance.

2) Hallucinogenic (such as LSD, PCP, mushrooms, etc.) estimated one time used in January 2005. He wrote, "1 time thing. Experimental. no interest in doing it again."

3) Stimulants (such as amphetamines, speed, crystal meth, ecstasy, etc.) estimated from January 2005 to January 2007, used "Recreational. Once every couple months. Estimate 10-15 times." He also wrote, "Quit a long time ago. No interest in doing again."

The JPAS Person Summary established that Applicant was determined eligible for a security clearance on April 7, 2011. (Item 4.) Therefore, based on Applicant's admission to SOR allegation 1.c., that he used marijuana until January 2012, I find that, despite Applicant's denial, he did use marijuana after he was granted a security clearance.

### **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 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 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 several different illegal substances over the course of several years, from 2000 to as recently as 2012, during several years when he was employed by his current employer and especially during a period when he held 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,” (c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution,” and (g) “any illegal drug use after being granted a security clearance.”

Applicant used marijuana for the years from 2000 to 2012, which included a four year period since he has been employed by his current employer, and for at least part of one year while he held a security clearance. Additionally, no evidence was introduced as to Applicant’s character, or his current or past employment records; nor was there any evidence in the record that would give insight as to Applicant’s current reliability, trustworthiness or good judgment. Therefore, I am not convinced that Applicant’s illegal drug use is not likely to recur, and so I cannot conclude that ¶ 26(a) “the behavior . . . was so infrequent” and “happened under such circumstances that it is unlikely to recur” is applicable. I also cannot find that any of the other mitigating conditions is applicable in this case.

In this case, the Government has met its initial burden of proving that Applicant has used illegal drugs under Guideline H, especially while holding a security clearance. Applicant, on the other hand, has not 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 against 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 disqualifying conditions are applicable and controlling under Guideline H, I find that the record evidence leaves me with significant questions and 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 not mitigated the security concerns under the whole-person concept.

### **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**

Subparagraphs 1.a.-1.c:

**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.

Martin H. Mogul  
Administrative Judge