



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



In the matter of:

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Applicant for Security Clearance

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ISCR Case No. 14-06710

**Appearances**

For Government: Allison O'Connell, Esq., Department Counsel

For Applicant: *Pro se*

12/30/2015

**Decision**

WESLEY, Roger C., Administrative Judge:

Based upon a review of the pleadings and exhibits, I conclude that Applicant mitigated security concerns regarding his use of illegal drugs. Eligibility for access to classified information is granted.

**History of the Case**

On June 22, 2015, the Department of Defense (DOD) Consolidated Adjudication Facility (CAF) issued a Statement of Reasons (SOR) detailing reasons why DOD adjudicators could not make the preliminary affirmative determination of eligibility for granting a security clearance, and recommended referral to an administrative judge to determine whether a security clearance should be granted, continued, denied, or revoked. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; DOD Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the Adjudicative Guidelines (AGs) implemented by the DOD on September 1, 2006.

Applicant responded to the SOR on July 8, 2015, and elected to have his case decided on the basis of the written record. Applicant received the Government's File of Relevant Material (FORM) on November 2, 2015, and responded to the FORM within the time permitted. He submitted a signed, sworn statement on November 13, 2015, which was admitted as Item 8. The case was assigned to me on December 4, 2015.

### **Summary of Pleadings**

Under Guideline H, Appellant allegedly used marijuana one time (in April 2013) after he had been granted a security clearance. In his response to the allegations in the SOR, Applicant admitted the allegation with explanations. He claimed he used the illegal substance once out of curiosity while on a retreat with trusted friends. He claimed the use was out of character for him and he reported the incident promptly to his facility security officer (FSO).

### **Findings of Fact**

Applicant is a 43-year-old information technology (IT) manager for a defense contractor who seeks to retain his security clearance. The allegations covered in the SOR and admitted by Applicant are adopted as relevant and material findings. Additional findings follow.

### **Background**

Applicant married his spouse in May 1995 and has one child from this marriage. (Item 5) He attended college classes between August 1991 and May 1995 and earned a bachelor's degree in May 1995. (Item 1) He claimed no military service. (Items 1 and 6) Applicant has worked for his current employer since February 2014 as an IT manager. Prior to joining his current employer, he worked as a systems analyst for another defense contractor between December 2012 and January 2014. (Item 5)

### **Drug-related incident**

Applicant spent a weekend retreat with friends on April 21, 2013. (Item 7) That evening, Applicant was offered to smoke marijuana in a pipe by his friends and accepted their offer. After accepting the offer, Applicant used marijuana on this one occasion at the retreat. At the time, Applicant held a security clearance, which he obtained in September 2009. (Items 1 and 6) Applicant did not like the taste of the marijuana and has not used it since he returned from the retreat. (Item 6)

Applicant expressed no desire to ever use marijuana again, and has not used it since April 2013. (Item 6) Applicant told his wife of his experimentation with marijuana and his commitment to avoid it in the future. At the time of the retreat, his security clearance was not active. (Item 6) Applicant has never experimented with any other illegal drugs.

In a post-FORM submission of November 2015, applicant reaffirmed his assurances that his use of marijuana with friends in April 2013 was a one-time event, which has never occurred before or since been replicated. (Item 8) He assured that he has maintained over two and one-half years of abstinence since his first and only use of marijuana in April 2013. Applicant notarized his post-FORM statement with his expressed understanding that he was subject to automatic revocation of his clearance for any violation. (Item 8)

Most of Applicant's leisure time is devoted to family-oriented activities and working around his residence. There is nothing in Applicant's reported background that could be used to pressure, coerce, or influence him. (Item 6) Applicant's has good employment references. (Item 6)

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual's reliability, trustworthiness, and ability to protect classified information. These guidelines include "[c]onditions that could raise a security concern and may be disqualifying" (disqualifying conditions), if any, and many of the "[c]onditions that could mitigate security concerns." The AGs must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant's life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant's conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guideline is pertinent in this case:

### **Drug Involvement**

*The Concern:* 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 AG ¶ 24.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *United States, v. Gaudin*, 515 U.S. 506, 509-511 (1995). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation, or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. "[S]ecurity-clearance determinations should err, if they must, on the side of denials." See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Security concerns are raised about Applicant's one-time use of marijuana while holding a security clearance during a retreat with friends in April 2013. On the strength

of the evidence presented, two disqualifying conditions (DC) of the AGs for drug abuse are applicable: DC ¶ 25(a), “any drug abuse,” and DC ¶ 25(c), “illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.” Judgment concerns exist over Applicant’s one-time use of marijuana while holding a security clearance.

Considering the isolated nature of Applicant’s marijuana use in April 2013, enough time has elapsed to facilitate safe predictable judgments that he will not return to illegal drug use in the foreseeable future. Pertinent mitigating conditions (MC) covered by AG ¶ 24 are available to Applicant. MC ¶ 24(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 MC ¶ 24(b), “a demonstrated intent not to use any drugs in the future, such as (3) an appropriate period of abstinence,” apply to Applicant’s limited use of marijuana.

Prior to his one-time use of marijuana in April 2013 while on a retreat, Applicant had never used marijuana. Compounding the significance of this one-time use was Applicant’s possession of a security clearance at the time and his imputed knowledge that smoking marijuana (even on a single occasion) is incompatible with holding a clearance.

Applicant expressed remorse for his mistaken judgment in using marijuana on his retreat and has committed to avoiding any future recurrence. Since April 2013, Applicant has stayed true to his commitment and avoided any recurrent use of marijuana. With no recurrent history of marijuana use, and with so much time that has elapsed since his first and only use in 2013 (i.e., over two and one-half years of abstinence), Applicant has solidified his commitment to avoid any recurrence of illegal drug use in the foreseeable future.

Based on his assurances and actions to date, it is unlikely that Applicant will resume his use of marijuana or any illegal substance in the foreseeable future. He fully understands, too, that should he return to recurrent use in the future, he is subject to losing his clearance. Based on his one-time use of marijuana, his self reporting of marijuana use, and his assurances he will never use illegal drugs again without placing himself at certain risk of losing his clearance, safe predictable judgments, can be made about Applicant’s ability to avoid recurrent drug involvement in the future.

From a whole-person perspective, Applicant has established independent probative evidence of his one-time use of marijuana and the unlikelihood of his ever resuming his use of the substance. He has a bachelor’s degree and steady employment as an IT specialist with his current employer. Applicant’s own acknowledgment of poor judgment helps to reinforce favorable conclusions about his overall judgment, reliability, and trustworthiness.

Taking into account all of the facts and circumstances surrounding Applicant's isolated drug use and judgment lapse, Applicant mitigates security concerns related to his drug use. Favorable conclusions are warranted with respect to the allegations covered by subparagraph 1.a of Guideline H.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE H: (DRUG INVOLVEMENT):	FOR APPLICANT
Sub-para. 1.a	For Applicant

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is granted.

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Roger C. Wesley  
Administrative Judge