

DATE: January 18, 2007

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In Re:

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SSN: -----

Applicant for Security Clearance

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ISCR Case No. 06-05409

**DECISION OF ADMINISTRATIVE JUDGE**

**CLAUDE R. HEINY**

**APPEARANCES**

**FOR GOVERNMENT**

Richard A. Stevens, Department Counsel

**FOR APPLICANT**

*Pro Se Pro Se*

**SYNOPSIS**

Applicant, a 20-year-old college student, used marijuana once. This occurred after she had submitted her electronic questionnaire for investigations processing. The record evidence is sufficient to mitigate or extenuate the negative security implications stemming from her single use of marijuana. Clearance is granted.

**STATEMENT OF THE CASE**

On June 22, 2006, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, stating that DOHA could not make the preliminary affirmative finding [\(1\)](#) it is clearly consistent with the national interest to grant or continue a security clearance for Applicant. The SOR set forth reasons why a security clearance could not be granted or continued due to Drug Involvement.

On July 14, 2006, Applicant answered the SOR and requested a hearing. On August 23, 2006, I was assigned the case. On September 19, 2006, a Notice of Hearing was issued scheduling the hearing which was held on October 17, 2006. On October 30, 2006, DOHA received a copy of the transcript (Tr.).

**FINDINGS OF FACT**

The SOR alleges security significant Drug Involvement. Applicant admits using marijuana on one occasion after having submitted her electronic questionnaire. She realizes she made an incredibly bad decision that could jeopardize her future. The admissions are incorporated herein as findings of fact. After a thorough review of the entire record, I make the following additional findings of fact:

Applicant is a 20-year-old student who has worked as a tech/intern for a defense contractor from June 2005 through August 2005 and is seeking to obtain a security clearance. In August 2005, she submitted an Electronic Questionnaire for Investigations Processing (e-QIP). She had a second internship from May 2006 through August 2006. Applicant is

regarded by those who know her as a hard worker, a person of great integrity, very conscientious, enthusiastic, focused, and as having high moral standards. (App Ex A, B, and C)

Applicant is a college electrical engineering student and an intern. Applicant has a 3.383 GPA and is in the top sixth of her group of junior electrical engineers. (Tr. 24) In January 2006, she used marijuana. At the time of her use, Applicant was with her former boyfriend and his friends. The usage occurred at a low point in her life, where she gave into peer pressure. She is now in a different position. She feels better about herself and is a completely different person. She realized her mistake and ended the relationship. She is no longer in contact with her former boyfriend or any people who use illegal drugs.

Applicant's dream since childhood was to be an engineer. She has worked hard to get where she is. In high school, she was a cheerleader, a member of the band, and an honor student who graduated with a 4.0 GPA in the top 10 percent of her class. She graduated high school in May 2004. She met her former boyfriend in August 2004 when they had the same freshman college course.

Since the incident, she is more aware of the people and situation around her. She no longer drinks alcohol or is involved with people who drink. (Tr. 40) She has become very involved in her church and teaches Sunday school. (Tr. 22) She is no longer as concerned with impressing people. (Tr. 41) She is no longer as stressed as she was and handles situations better. In the future, she would leave any place where there are illegal drugs. Applicant has matured and has learned from her mistake. She knows she made a bad decision, realizes the consequences of her actions, and will never use illegal drugs again. (Tr. 17)

### **POLICIES**

The Directive sets forth adjudicative guidelines to be considered when evaluating a person's eligibility to hold a security clearance. Disqualifying Conditions (DC) and Mitigating Conditions (MC) are set forth for each applicable guideline. Additionally, each decision must be a fair and impartial commonsense decision based upon the relevant and material facts and circumstances, the whole person concept, and the factors listed in Section 6.3 of the Directive. The adjudicative guidelines are to be applied by administrative judges on a case-by-case basis with an eye toward making determinations that are clearly consistent with the interests of national security. The presence or absence of a particular condition or factor for or against clearance is not determinative of a conclusion for or against an applicant. However, the adjudicative guidelines should be followed whenever a case can be measured against this policy guidance. Considering the evidence as a whole, I conclude the relevant guidelines to be applied here is Guideline H Drug Involvement.

### **BURDEN OF PROOF**

The sole purpose of a security clearance decision is to decide if it is clearly consistent with the national interest to grant or continue a security clearance for an applicant. Initially, the Government must establish, by substantial evidence, that conditions exist in the personal or professional history of the applicant which disqualify, or may disqualify, an applicant from being eligible for access to classified information. The burden of proof in a security clearance case is something less than a preponderance of evidence, although the government is required to present substantial evidence to meet its burden of proof. Substantial evidence is more than a scintilla, but less than a preponderance of the evidence. All that is required is proof of facts and circumstances which indicate an applicant is at risk for mishandling classified information, or that an applicant does not demonstrate the high degree of judgment, reliability, or trustworthiness required of persons handling classified information. Additionally, the government must prove controverted facts alleged in the SOR. Once the government has met its burden, the burden shifts to an applicant to present evidence to refute, extenuate or mitigate government's case. Additionally, an applicant has the ultimate burden of persuasion to obtain a favorable clearance decision. [\(2\)](#)

As noted by the United States Supreme Court in *Department of Navy v. Egan*, 484 U.S. 518, 528 (1988), "no one has a 'right' to a security clearance." A person who has access to classified information enters into a fiduciary relationship with the government based on trust and confidence. The government, therefore, has a compelling interest in ensuring each applicant possesses the requisite judgment, reliability and trustworthiness of one who will protect the national interests. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about

an applicant's suitability for access to classified information in favor of protecting national security. Security clearance determinations should err, if they must, on the side of denials.

### **CONCLUSIONS**

The Government has satisfied its initial burden of proof under Guideline H, Drug Involvement. Under Guideline H, the security eligibility of an applicant is placed into question when that applicant is involved with illegal drugs. The improper or illegal involvement with drugs raises questions regarding an applicant's willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information. Directive E.2.A.8.1.1. Applicant used marijuana in January 2006. Disqualifying Condition (DC) 1 (E2.A8.1.2.1. *Any drug abuse*) applies.

Applicant is a 20-year-old college student who used marijuana one time. This incident has been a great learning lesson for her. Mitigating Condition (MC) 2 (E2.A8.1.3.2. *The drug involvement was an isolated or aberrational event*) applies. The fact the usage occurred less than a year ago is of concern, but that concern is overcome by what Applicant has learned from the situation. She realizes she made a stupid mistake that could have a far reaching impact on her future. She ended the relationship with her former boy friend. She does not associate with people who drink or use illegal drugs. She has changed her friends and has become more involved with her church. She will not use marijuana again. If placed in a similar situation, she will remove herself from the situation. MC 3 (E2.A8.1.3.4. *A demonstrated intent not to abuse any drugs in the future*) applies.

In reaching my conclusions I have also considered: the nature, extent, and seriousness of the conduct; the Applicant's age and maturity at the time of the conduct; the circumstances surrounding the conduct; the Applicant's voluntary and knowledgeable participation; the motivation for the conduct; the frequency and recency of the conduct; presence or absence of rehabilitation; potential for pressure, coercion, exploitation, or duress; and the probability that the circumstance or conduct will continue or recur in the future.

After considering the one time usage by this 20-year-old college student, the insight she has gained, the changes in her life, and her stated and demonstrated intent never to use illegal drugs in the future, I find for Applicant as to Drug Involvement.

### **FORMAL FINDINGS**

Formal Findings as required by Section 3, Paragraph 7, of Enclosure 1 of the Directive are hereby rendered as follows:

Paragraph 1 Drug Involvement: FOR APPLICANT

Subparagraph 1.a.: For Applicant

Subparagraph 1.b.: For Applicant

### **DECISION**

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 a security clearance for Applicant. Clearance is granted.

**Claude R. Heiny**

**Administrative Judge**

1. Required by Executive Order 10865, as amended, and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, as amended.
2. ISCR Case No. 93-1390 (January 27, 1995) at pp. 7-8; Directive, Enclosure 3, Item E3.1.15