



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-03407
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Richard B. Stevens, Esquire, Department Counsel  
For Applicant: Mark S. Peters, Esquire

October 16, 2008

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**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP), on August 29, 2006. On March 27, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H, Drug Involvement, and Guideline E, Personal Conduct for Applicant. 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 revised adjudicative guidelines (AG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

On June 5, 2008, Applicant answered the SOR and requested a hearing before an Administrative Judge. Department Counsel was prepared to proceed on July 3, 2008. The case was assigned to me on August 1, 2008. On August 13, 2008, a Notice of Hearing was issued scheduling the hearing for September 9, 2008, and was held on that date. The Government offered Government Exhibits (Gov) 1 - 3, which were admitted without objection. Applicant's counsel called four witnesses, including the Applicant, and submitted Applicant Exhibits A - B, which were admitted without

objection. The record was held open until September 23, 2008, to allow Applicant to submit additional documents. Applicant timely submitted a one page document which was admitted as AE C. Department Counsel's response to AE C is marked as Hearing Exhibit 1. DOHA received the transcript of hearing on September 18, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted to all the SOR allegations.

Applicant is a 32-year-old computer support technician employed with a Department of Defense contractor seeking a security clearance. He has been employed with the defense contractor since April 2004. He has associates degrees in electrical engineering and computer networking. He recently married on June 7, 2008, and has one step-son, age 2. (Tr at 48-49; Gov 1.)

Applicant has a history of marijuana use beginning in high school. Applicant used marijuana an average of two to three times a month while in high school. He estimates that his total use of marijuana was a couple of hundred times from the time he started using marijuana to the last time he used marijuana in 2006. (Tr at 44, 62-63.) He admits to purchasing marijuana on at least one occasion for his personal use. He was not involved in the manufacture or distribution of marijuana. (Gov 2.)

Applicant's last use of marijuana was in August or September 2006. Applicant could not recall the exact date. It occurred a few weeks after his birthday which is in mid August. He was at a party. A marijuana joint was being passed around. He took a couple puffs off the joint. Prior to his use in 2006, Applicant testified that to the best of his recollection, the last time he used marijuana was in 1997 or 1998. (Tr at 54-55, 63-65; Gov 2.) In response to question 24(a) on his security clearance questionnaire, he listed that he last used marijuana at a New Year's Eve party in 2000. (Gov 1.) He does not intend to use marijuana in the future. (Tr at 66.) After the hearing, Applicant presented a signed, statement of intent to refrain from illegal drug use with the acknowledgement that any future use of illegal drug use would result in the automatic revocation of his security clearance (if granted). (Tr at 66-67; AE C.)

Between age 19 and 23, Applicant was arrested on four occasions. In 1995, he was arrested for possession of marijuana and drug paraphernalia. The charges were dismissed. In 1996, he was arrested for possession of marijuana and drug paraphernalia. Adjudication was withheld. In 1997, he was cited for possession of marijuana. Adjudication was withheld. On each occasion that he was arrested for marijuana possession, the amount of marijuana possessed was less than 20 grams. In 1999, he was arrested for driving under the influence. The charge was reduced to reckless driving. (Tr at 49-52; Gov 2; Gov 3.)

Applicant testified he never tried to keep his arrests secret from his parents. He disclosed his arrest history on his security clearance application. He disclosed his 2006 marijuana use to the investigator conducting his background interview in July 2007. He no longer uses illegal drugs and admits to using bad judgment when he last used illegal drugs in August/September 2006. He states that he has made a big life change. He understands the importance of responsibility and wants to progress in his career in order to provide for his new family. He bought a house in 2007 and is current on his mortgage payments. He no longer associates with people who use marijuana. His wife does not tolerate drug use. He does not intend to use marijuana in the future and understands that if he does so he could lose his security clearance (if he is granted one), his job, and possibly his wife and stepson. (Tr at 51-54, 57-60, 66; Gov 2.)

Applicant's father testified. He served as a pilot in the United States Air Force. He is a Vietnam veteran and served in the reserves. He retired from the reserves in 1996. He is currently a corporate pilot. He is aware of his son's past arrest history and issues with drug use. He states that his son is a good kid who just did not seem to learn. He lectured his son each time he was arrested. He blames part of the problem on his son's friends whom he believes were a bad influence. He does not believe that his son has a drug or alcohol problem. He noticed a change in his son. He is more responsible. He has a good work ethic. He is newly married and purchased a home. He is keeping his personal affairs in order. He is disappointed in his son for his 2006 drug use but is proud that he told the truth during his security clearance investigation. (Tr at 34-46.)

Two of Applicant's co-workers testified. The first co-worker has worked for the defense contractor for over 23 years. Applicant works as a contract employee in his division. He has worked with Applicant on a daily basis for five years. He never noticed Applicant to have an alcohol or drug problem. He does not believe Applicant is an unreliable risk to national security. He is aware of his company's policy of no illegal drug use. (Tr at 17-25.) The second co-worker testified that he has worked with Applicant on a daily basis since 2006. He describes Applicant as a superb co-worker. He has no concerns about Applicant having access to classified information. He has never observed him to have a drug problem. (Tr at 25-32.)

Three additional colleagues wrote letters on Applicant's behalf. They describe Applicant as "professional and diligent," "positive," and "responsive and dedicated" to his work. (AE A; AE B.)

## **Policies**

When evaluating an Applicant's suitability for a security clearance, the Administrative Judge must consider the revised 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 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.

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 judgment and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations.

Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and (2) inhalants and other similar substances. AG ¶ 24(a).

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction. AG ¶ 24(b).

The guideline notes several disqualifying conditions that could raise security concerns. I find Drug Involvement Disqualifying Condition (DI DC) ¶ 25(a) (any drug abuse) and DI DC ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia) apply to Applicant's case. Applicant admits to illegally using marijuana on hundreds of occasions especially during his high school and college years. He was arrested on three occasions for marijuana possession and the possession of drug paraphernalia. He admits to purchasing marijuana for his own personal use.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Two apply to Applicant's case. Drug Involvement Mitigating Condition (DI MC) ¶ 26(a) (the behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual's current reliability, trustworthiness, or good judgment) applies. While Applicant used marijuana on a regular basis when he was younger, he stopped using marijuana on a regular basis over eight years ago. Admittedly, he demonstrated extremely poor judgment when he used marijuana in 2006 while at a party. He was 30 years old, employed with a defense contractor, and had recently applied for a security clearance. However, he has not used marijuana since that incident. More than two years have passed since his last use of marijuana. He recently married and has become more mature and responsible.

The second mitigating condition that applies is FC MC ¶ 26(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; and (4) a signed statement of intent with automatic revocation of clearance for any violation.) Applicant does not intend to use marijuana ever again. He no longer socializes with his friends who used marijuana. His new wife does not approve of illegal drug use. He has not used marijuana for two years. He signed a statement of intent to abstain from illegal drug use and acknowledges that any future use will result in the automatic revocation of his security clearance. While Applicant's past drug abuse raised security concerns, particularly his marijuana use in 2006, he has taken sufficient steps demonstrating that he does not intend to abuse any

drugs in the future. Applicant has met his burden to mitigate the security concerns raised under Guideline H, Drug Involvement.

## **Personal Conduct**

The security concern relating to the guideline for Personal Conduct 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.

The government established security concerns based on Applicant's past illegal drug use and arrest history which includes a 1999 arrest for DUI. The following Personal Conduct Disqualifying Conditions (PC DC) apply to Applicant's case:

PC DC ¶ 16(c) (credible adverse information in several adjudicative areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information) applies. Applicant's arrest history to include his 1999 DUI arrest raise questions about his judgment and willingness to comply with rules and regulations. His history of marijuana use raises additional concerns. In his late teens and early twenties, Applicant was a habitual user. His choice to use marijuana while at a party in 2006, further raises issues about his judgment. He was employed with a defense contractor and had recently applied for a security clearance.

PC DC ¶ 16(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) applies. Applicant's past arrest and drug use history potentially makes him vulnerable to exploitation, manipulation or duress. His past conduct also may affect his standing in his professional or community life.

The Personal Conduct concern may be mitigated. The following Personal Conduct Mitigating Conditions (PC MC) apply to Applicant's case.

PC MC ¶ 17(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) applies. While Applicant was a habitual marijuana user in the past, he was not a regular marijuana user at the time he last used marijuana in 2006. He had not used marijuana for at least six years prior to that occasion. While Applicant used extremely poor judgment when he used marijuana in the August/September 2006 timeframe, he fully disclosed this past use to the investigator conducting his background investigation in July 2007. He has not used marijuana in over two years. Since that time, he has purchased a home and started a new family. Testimony from his father and his co-workers indicate that Applicant has become more reliable and trustworthy.

PC MC ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) applies. Applicant fully disclosed his arrest history and illegal drug use on his August 26, 2006, security clearance application and during his subsequent interview with the investigator conducting his background investigation. His parents are aware of his past history of marijuana use and arrests. He no longer uses marijuana and no longer associates with his friends who use marijuana. His vulnerability to exploitation, manipulation, or duress due to his past marijuana use has been significantly reduced or eliminated.

### **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) 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 common sense 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. Although Applicant's last use of marijuana occurred around the time he completed his security clearance questionnaire, he fully disclosed his usage during his background investigation interview. While he showed extremely poor judgment, he accepted full responsibility for his actions and made no excuses for his behavior. Although he has a history of marijuana use, his last use of marijuana occurred over two years ago. He appears to have matured since that time. He purchased a home. He recently married and is responsible for providing support for his wife and stepson. He does not intend to use marijuana again and understands that future illegal drug use will result in the automatic revocation of his security clearance.

While the Applicant's past conduct justified the concerns raised under Drug Involvement and Personal Conduct, he has met his burden of mitigating the security concerns arising under these guidelines.

### **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:	FOR APPLICANT
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Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant

Paragraph 2, Guideline E:	FOR APPLICANT
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Subparagraph 2.a:	For Applicant
Subparagraph 2.b:	For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

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ERIN C. HOGAN  
Administrative Judge