



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



In the matter of:

SSN:

Applicant for Security Clearance

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)  
) ISCR Case No. 07-04829  
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)

**Appearances**

For Government: Robert E. Coacher, Esquire, Department Counsel  
For Applicant: Kristen E. Ittig, Esquire

March 16, 2010

**Decision**

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HOGAN, Erin C., Administrative Judge:

Applicant submitted a security clearance application (e-QIP format) on September 11, 2006. On August 27, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H, Drug Involvement. 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 September 18, 2009, Applicant answered the SOR and requested a hearing before an administrative judge. Department Counsel was ready to proceed on November 4, 2009. The case was assigned to me on November 16, 2009. On December 29, 2009, a Notice of Hearing was issued, scheduling the hearing for January 26, 2010. The case was heard on that date. The Government offered four exhibits which were admitted as Government Exhibits (Gov) 1 – 4. Applicant testified and offered four documents which were admitted as Applicant Exhibits (AE) A – D. The record was held open until February 9, 2010, to allow Applicant to submit additional documents. A six-page document was timely received and admitted as AE E.

Department Counsel did not object to the documents. Department Counsel's Response to AE E is marked as Hearing Exhibit (HE) I. The transcript (Tr) was received on February 2, 2010. 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 the allegations in SOR ¶¶ 1.a and 1.b.

Applicant is a 29-year-old geospatial analyst for a Department of Defense contractor. He has worked for his employer since August 2006. He is applying for a security clearance for the first time. He has an undergraduate degree in geography. He is single and has no children. He is in a long term relationship and intended to propose to his girlfriend the weekend after the hearing. (Tr at 22; Gov 1)

When Applicant was seven years old, he was diagnosed with Attention Deficit Disorder (ADD). He took various prescription drugs for his condition during his childhood until college. In college, he was prescribed Adderall, a stimulant. His psychiatrist, whom he saw when he was home from college, provided him with prescription slips that were written in advance so that he did not have come home to fill his prescription during the school year. In 2004, he became more dependent on Adderall and began to consume more of the drug than was prescribed to him. In the summer 2005, he began to forge prescriptions in order to maintain his habit. He scanned one of the prescription slips provided by his psychiatrist into a computer and altered the amount of the prescription. He did this approximately 16-20 times from the summer 2005 to January 2006. By the fall 2005, he was taking four times the dosage prescribed to him. (Tr at 27-31, 53-55; Gov 2 at 3; Gov 3 at 2, 6; AE 4 at 19)

On January 19, 2006, he was arrested and charged with Obtaining Possession of a Controlled Substance by Fraud. On that date, Applicant dropped off a forged prescription at a pharmacy. The pharmacy contacted Applicant's psychiatrist to verify the prescription. The psychiatrist told the pharmacist to call the police. When he appeared in court, Applicant was treated as a first offender and placed in a pre-trial diversion program, the requirements of which included three years probation, a \$300 fine, and treatment. He attended treatment until June 2006. During treatment, he learned alternative ways to handle stress. (Tr at 30-34; Gov 2 at 3-4; Gov 3 at 6)

While on probation, Applicant took routine drug tests which he passed. Based on his good conduct, he was released from probation one year early. His probation ended in February 2009. He has not used Adderall since the day before his arrest in January 2006. (Tr at 35-36; AE 3 at 4)

Applicant started using marijuana occasionally while in high school. He began to use marijuana on a regular basis while in college. He used marijuana approximately 100 times while in college. He stopped using marijuana in the spring 2003 because of

added responsibilities related to his school activities, and it was expensive. He also wanted to stop using marijuana before he graduated from college and started his professional career. Applicant was aware that marijuana use was illegal when he used it. (Tr at 24-26, 46-49; Gov 2 at 17; Gov 3 at 2,5)

After the hearing, Applicant provided a signed statement of intent stating that he had no intent to abuse Adderall or any other drugs in the future. He acknowledges that any clearance that he is granted could be automatically revoked if he abuses Adderall or any other drugs in the future. (AE E at 2)

From October 4, 2005, to May 24, 2006, Applicant was treated by Dr. C, a licensed psychologist, on issues related to his ADD, depression, and relationships. In a letter, dated November 14, 2008, Dr. C indicates that Applicant worked diligently to enhance his coping skills with a combination of psychotherapy and appropriate medication. He states Applicant acknowledged his abuse of stimulant medication and worked to overcome it with healthier alternative methods. He would not hesitate to hire Applicant. (Gov 4 at 27)

Applicant's supervisor wrote a letter on his behalf indicating that Applicant has worked for him since August 28, 2006. Applicant started out as an entry level Geospatial Analyst and has advanced to his current supervisory position of Lead Geospatial Analyst. He states that "[Applicant's] competence, work ethic, dedication to quality, and attention to detail combined to allow him to move into his current position. His professionalism and maturity have contributed to him becoming an effective leader within the production group and also allowed him to handle the added responsibility that comes with the supervisory position. His dedication to his job and dedication to the United States of America cannot be questioned in any way." (AE A) Several of Applicant's friends and co-workers provided letters that say similar favorable things about Applicant. (AE B – D)

## **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 must be used 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 overarching 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.

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.

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) are relevant to Applicant’s case. Applicant admits illegally using marijuana in high school

and in college. He became dependent on Adderall in 2004. He forged prescriptions to feed his habit from the spring 2005 until he was caught in January 2006.

Of the Drug Involvement Mitigating Conditions (DI MC), two apply to Applicant's case:

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 because Applicant has not abused drugs in over four years. His illegal marijuana use occurred in high school and college. He stopped using marijuana his senior year in college. His supervisor and co-workers state that Applicant is a good employee. After college, he has matured and worked his way up to a supervisory position. He has not taken Adderall since January 2006. There is no evidence of recent drug abuse.

DI MC ¶ 26(b) (a demonstrated intent not abuse any drugs in the future, such as: ... (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation) applies. Applicant has not abused drugs in over four years. He intends never to abuse drugs again and signed a statement of intent acknowledging that any future drug abuse will result in the automatic revocation of his security clearance.

DI MC ¶ 26(c) (abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended) applies with respect to Applicant's abuse of the prescription drug Adderall. Applicant has been prescribed medication to treat his ADD for most of his childhood. He became dependent on Adderall while in college. He quit taking Adderall after he was arrested in January 2006. He has learned other ways to cope with his ADD and no longer takes prescription medication.

The drug involvement concerns are mitigated.

### **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):

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 Applicant's history of marijuana use and his dependence on Adderall. His drug abuse occurred in high school and college. While his drug abuse cannot be considered experimental, Applicant has demonstrated that his drug abuse is no longer a concern. He has not used marijuana in over seven years and has not used Adderall since January 2006. The favorable letters of his supervisor, friends, and co-workers show that he has matured and has established a successful career as a geospatial analyst. He is in a long term relationship which he anticipates will lead towards marriage. He is aware that any future drug abuse will result in the automatic revocation of his security clearance. He has met his burden to mitigate the security concerns raised under the drug involvement concern.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.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