



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



In the matter of: )  
)  
) ISCR Case No. 07-10252  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: John Bayard Glendon, Esq., Department Counsel  
For Applicant: Kathleen E. Voelker, Esq.

May 19, 2008

**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant mitigated the security concerns raised by his drug involvement. Eligibility for access to classified information is granted.

On January 30, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant 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.

Applicant answered the SOR on February 14, 2008, and requested a hearing before an Administrative Judge. The case was assigned to me on February 27, 2008. DOHA issued a notice of hearing on March 4, 2008, scheduling the hearing for March 26, 2008. Applicant was sick on the date of the hearing and requested a continuance.

Department Counsel did not oppose the continuance and it was granted. DOHA issued an amended notice of hearing on April 1, 2008, and the hearing was convened as scheduled on April 22, 2008. The Government offered Exhibits (GE) 1 and 2, which were received without objection. Applicant testified on his own behalf, called three witnesses, and submitted Exhibits (AE) A through H, which were received without objection. I granted Applicant's request to keep the record open until April 29, 2008, to submit additional matters through Department Counsel. No additional evidence was submitted. The record closed on April 29, 2008. DOHA received the transcript of the hearing (Tr.) on April 30, 2008.

### **Findings of Fact**

Applicant is a 27-year-old employee of a defense contractor. He has a Bachelor of Science degree awarded in May 2002. He has been with his current employer since December 2002. He is married with a two-year-old child and his wife is pregnant with their second child.<sup>1</sup>

Applicant first smoked marijuana in July 1997, before he started his senior year in high school. He played football and did not smoke marijuana in the fall of 1997. He smoked marijuana on several occasions during the spring of 1998. He started college in the fall of 1998. His marijuana use increased greatly to the point where he was smoking marijuana on an almost daily basis. He smoked marijuana on about 1,000 occasions. He bought marijuana on several occasions. He also contributed money when his friends would purchase marijuana. Sometimes friends would share their drugs with him. He also used other drugs during this time period. He estimated that he used cocaine about ten times; methamphetamine twice; hallucinogenic mushrooms four times; and ecstasy five times.<sup>2</sup>

Applicant and his friends were caught using marijuana in a dorm room by the campus security. They were not arrested but were placed on school probation for a year. He continued to smoke marijuana, but did it off campus. He also feels that his drug use contributed to his not playing football in college, which is one of his regrets. His grades in college were good, but he realizes that they could have been much better if he was not using drugs.<sup>3</sup>

Applicant continued to use drugs, but less frequently, after he graduated from college. His company had a policy against drug use and required a drug test as a condition of employment. Applicant passed the test by abstaining from drugs for several weeks prior to the test. There were no additional tests after he was hired. His future wife worked for the same company as he did for about four months in 2004 to 2005. Applicant met her in November 2004. She was and is against illegal drugs and would

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<sup>1</sup> Tr. at 47-48, 55-56; GE 1.

<sup>2</sup> Tr. at 59-62, 81-87; Applicant's response to SOR; GE 1, 2.

<sup>3</sup> Tr. at 76-79; 87-88, 96-97.

not have dated a drug user. He decided to completely stop using illegal drugs. He has not used illegal drugs since December 2004. They married in 2005.<sup>4</sup>

Applicant's father became sick and passed away in the summer of 2005. This also spurred a change in Applicant. As the only son, he took charge of assisting his mother and his sisters. Family became more important to him. He works fairly long hours. He spends most of his off time with his wife, child and their families. They spend every Tuesday night with his mother. He usually sees one of his sisters and her husband during the visits. His other sister lives in another state. His father-in-law and mother-in-law are divorced. Applicant and his wife spend most Saturdays with her father and most Sundays with her mother. Applicant and his wife bought a townhouse in 2005. With their growing family, they are in the process of buying a single family house. They will put their townhouse up for rent.<sup>5</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86), certified as true on October 24, 2006. He completely listed his illegal drug use in the Questionnaire.<sup>6</sup>

Applicant stated that he has almost no contact with individuals that still use drugs. Most of his friends from high school and college have stopped using drugs. He is into fantasy sports leagues and is still in contact telephonically with a friend that he used drugs with, who shares the same interest, but he no longer sees him. His friends know that he no longer uses drugs, so if any are using, they do not do it in his presence. The last time he was aware of a friend smoking marijuana was in March 2005, when he believes a friend was smoking marijuana in his room while Applicant and others were outside the house waiting for him.<sup>7</sup>

Applicant testified that he will never use illegal drugs again.<sup>8</sup> He signed a statement of intent on April 21, 2008, stating:

I, [Applicant] have not abused [illegal] drugs since the end of 2004. I intend not to abuse drugs in the future and agree to automatic revocation of any security clearance I might have for any violation involving abuse of drugs.<sup>9</sup>

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<sup>4</sup> Tr. at 59-62, 89-92; GE 1, 2.

<sup>5</sup> Tr. at 59-62, 70; GE 1, 2.

<sup>6</sup> GE 1.

<sup>7</sup> Tr. at 70-72, 92-95, 98.

<sup>8</sup> Tr. at 72-73.

<sup>9</sup> AE H.

Applicant's performance appraisals indicate that he is a conscientious, dedicated, and highly-valued employee. He has been promoted five times since January 2004. He is now earning a significant salary. He is one of the top performers on his manager's team. She testified that Applicant is ethical, very honest, trustworthy, and he has very good judgment. His supervisor testified that Applicant has greatly matured since he began working with him in March 2005. He feels that the sudden illness and death of Applicant's father triggered a positive transformation in Applicant. He described Applicant as having a tremendous work ethic, detail-oriented, honest, and reliable. Both witnesses are aware of his past drug use and both recommend him for a security clearance. Character letters on his behalf describe him with similar superlatives.<sup>10</sup>

## **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 to 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, Administrative Judges apply the guidelines 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. 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 the 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

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<sup>10</sup> Tr. at 16-42; AE A-G.

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 adverse 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.

Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. Two are potentially applicable in this case:

- (a) any drug abuse; and
- (b) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

Applicant’s drug purchase, possession, and use are sufficient to raise the above potentially disqualifying conditions.

Two Drug Involvement Mitigating Conditions under AG ¶ 26 are potentially applicable:

- (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;

(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;
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant admitted to using illegal drugs up until about December 2004. He used marijuana almost daily when he was in college. He also used other illegal drugs. After he graduated college in 2002, he did not use as often, but his drug use continued. He met his future wife in November 2004, and things started changing. She is vehemently anti-drug. He decided that he needed a change in his life and if he was going to have any chance with her, that he would have to give up drugs. They fell in love, got married, had a baby, and his wife is pregnant with their second child. Family became very important to him, particularly after the sudden illness and passing of his father. He has not used drugs in more than three years and is not around people who are using drugs. He submitted "a signed statement of intent with automatic revocation of clearance for any violation." I find that both AG ¶¶ 26(a) and 26(b) are applicable.

### **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. Applicant is 27 years old. He has clearly matured since he met his future wife in November 2004. They married, had a child, and have another one on the way. His father passed away in 2005. Family and his

job now dominate his life. He is highly regarded at work. He has received five promotions. His supervisor testified about how much Applicant has matured. His wife is very opposed to drugs. Applicant realizes that drugs may have cost him a chance to play college football. He does not want them to cost him his career and his family. It is not unusual to see great changes in someone's life when they are in their twenties. Applicant has convinced me that he has changed. I am completely satisfied that illegal drugs are no longer a part of his life.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his drug use.

### **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

Subparagraphs 1.a-1.e: For Applicant

### **Conclusion**

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

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Edward W. Loughran  
Administrative Judge