



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



In the matter of:	)	
	)	
	)	ISCR Case No. 07-12623
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Paul M. DeLaney, Esquire, Department Counsel  
For Applicant: *Pro se*

June 30, 2008

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 5 March 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H.<sup>1</sup> Applicant answered the SOR 19 March 2008, and requested a hearing. DOHA assigned the case to me 23 April 2008, and I convened a hearing 28 May 2008. DOHA received the transcript (Tr.) 5 June 2008.

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<sup>1</sup>DOHA acted under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1990), 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 (RAG) promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

## **Findings of Fact**

Applicant denied the SOR allegations. He is a 23-year-old software engineer employed by a defense contractor since June 2007. He has not previously held a clearance.

Applicant used marijuana about 75 times between February 2002 and February 2007. On a handful of occasions during this period, he purchased user amounts of marijuana. Occasionally, he put someone who wanted to buy marijuana in touch with a seller, but never for money. There is no record evidence of physiological or psychological impairment as a result of his marijuana use.

Applicant disclosed this drug history on a clearance application he executed in June 2007 (G.E. 1). He disclosed essentially the same information during a July 2007 subject interview (G.E. 2). He also disclosed his drug use on his employment application. He took, and passed, a company drug screen in May 2007.

Applicant began using marijuana late in high school. He used sporadically with neighborhood friends, none of whom have remained in contact with him. His marijuana use increased in college, but was still haphazard. Some months he would use more frequently; some months not at all. Most of his marijuana use during college occurred during parties with dormmates and roommates, and involved drinking.

Applicant stopped using marijuana around February 2007, because he—and his roommates—realized that continued marijuana use was inconsistent with the professional careers they hoped for. He has not used since, and does not believe that any of his former roommates have used either. Applicant moved to a different state from where he attended college, and now sees these former roommates only 2-3 times per year because they all live in different states. He does not intend to use in the future. He expressed his willingness to sign a statement of intent with automatic revocation of clearance for any violation, but has not been requested to make any such statement.

Applicant's former supervisor is aware of the clearance issues, but opines that Applicant's demonstrated trustworthiness and reliability on the job warrants his getting his clearance (A.E. A). Nevertheless, Applicant does not believe that his job is at risk if he does not obtain his clearance.

## **Policies**

The Revised Adjudicative Guidelines (RAG) list factors to be considered in evaluating an Applicant's suitability for access to classified information. Administrative Judges must assess both disqualifying and mitigating conditions under each issue fairly raised by the facts and circumstances presented. Each decision must also reflect a fair and impartial common sense consideration of the factors listed in RAG ¶ 2(a). The presence or absence of a disqualifying or mitigating condition is not determinative for or against Applicant. However, specific adjudicative guidelines should be followed where a

case can be measured against them, as they represent policy guidance governing the grant or denial of access to classified information. Considering the SOR allegations and the evidence as a whole, the relevant, applicable, adjudicative guideline is Guideline H (Drug Involvement).

Security clearance decisions resolve whether it is clearly consistent with the national interest to grant or continue an Applicant's security clearance. The government must prove, by something less than a preponderance of the evidence, controverted facts alleged in the SOR. If it does so, it establishes a *prima facie* case against access to classified information. Applicant must then refute, extenuate, or mitigate the government's case. Because no one has a right to a security clearance, the Applicant bears a heavy burden of persuasion.

Persons with access to classified information enter into a fiduciary relationship with the government based on trust and confidence. Therefore, the government has a compelling interest in ensuring each Applicant possesses the requisite judgement, reliability, and trustworthiness of those who must protect national interests as their own. The "clearly consistent with the national interest" standard compels resolution of any reasonable doubt about an Applicant's suitability for access in favor of the government.<sup>2</sup>

### Analysis

The government established a case for disqualification under Guideline H, by demonstrating Applicant's use and purchase of marijuana between February 2002 and February 2005.<sup>3</sup> However, Applicant has mitigated the security concerns, by demonstrating that the use was under circumstances unlikely to recur,<sup>4</sup> and further demonstrating intent to not abuse drugs in the future.<sup>5</sup> While Applicant's use is fairly characterized as "recent," this term has less meaning under the new adjudicative criteria, where the corresponding language "the behavior happened so long ago. . ." [¶ 26.(a)], is used in the disjunctive with language that clearly applies to Applicant. In addition, while his marijuana use was not "infrequent," neither is it properly characterized as frequent or regular. The bulk of Applicant's marijuana use occurred while he was in college in a state he moved from to take his current job. With the

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<sup>2</sup>See, *Department of the Navy v. Egan*, 484 U.S. 518 (1988).

<sup>3</sup>§ 25.(a) any drug abuse ; (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

<sup>4</sup>¶ 26.(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 [Emphasis supplied];

<sup>5</sup>¶ 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; (4) a signed statement of intent with automatic revocation of clearance for any violation.

exception of his former roommates, he no longer associates with any of the individuals he used marijuana with, and his roommates foreswore further drug use. Finally, while his abstention from marijuana use since February 2007 might not necessarily constitute an appropriate period of abstinence, given the minimal marijuana use by Applicant and his change in environment—both physical (new state) and psychological (career versus school)—I conclude that this abstinence is appropriate [¶ 26.(b)]. On this record, it is extremely unlikely that Applicant would return to illegal drug use. Accordingly, I resolve Guideline H for Applicant.

### **Formal Findings**

Paragraph 1. Guideline H: FOR APPLICANT

Subparagraph a: For Applicant  
Subparagraph b: For Applicant

### **Conclusion**

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 granted.

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JOHN GRATTAN METZ, JR  
Administrative Judge