



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 07-12633  
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Applicant for Security Clearance )

**Appearances**

For Government: Francisco Mendez, Esquire, Department Counsel  
For Applicant: *Pro Se*

April 25, 2008

**Decision**

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CURRY, Marc E., Administrative Judge:

On, December 19, 2007, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H. 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 January 8, 2008, admitted all of the allegations and requested an administrative determination. On February 25, 2008, department counsel prepared a File of Relevant Material (FORM). Applicant received it on March 7, 2008, and mailed a reply on March 31, 2008. Department counsel did not object to the attachments included with the reply, and on April 2, 2008, the case was assigned to me. I have reviewed the FORM and have concluded that eligibility for access to classified information is denied.

## **Findings of Fact**

Applicant is a 24-year-old single man. He graduated from college in May 2007 with a bachelor of science degree in accounting. Since graduating, he has worked on the staff of an accounting firm where he had interned the previous two summers during college (Item 4 at 16).

From 2002 through 2004, Applicant smoked marijuana approximately three times per week (Item 5 at 3). Typically, he would purchase it, bring it to his apartment, and smoke it in a bong pipe with his roommate. In 2004, he restricted his use to the weekends. He stopped in April 2007, shortly before graduating from college because he wanted to start looking for a career (Item 5 at 3). He disclosed his marijuana use on his security clearance application.

Applicant does not intend to use marijuana in the future (Signed, Statement of Intent, as Included in Reply at 5). He recently took and passed a drug screening (Reply at 7). He no longer associates with friends who use marijuana, and lives with his parents, far from college where his marijuana abuse occurred. He spends his spare time volunteering as a coach in a local, teen basketball league.

## **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, they are applied together with the factors listed in the adjudicative process. According to AG ¶ 2(c), the entire process is a 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. 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.

## Analysis

### Guideline H, Drug Involvement

Under this guideline, “use of an illegal 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.” Here, Applicant’s college marijuana use triggers the application of AG ¶ 25(a), “any drug abuse,” and AG ¶ 25(c), “illegal drug possession . . . including purchase . . . or possession of drug paraphernalia.”

Applicant has not smoked marijuana since April 2007. Since then, he has graduated from college and obtained a full-time job. He no longer associates with his marijuana-smoking friends, has not visited college since graduating, and spends his free time coaching in a youth basketball league. These changes in addition to his execution of a statement of intent with revocation of clearance for any violation, trigger the application of AG ¶ 25 (b)(1), “disassociation from drug-using associates and contacts,” AG ¶ 25 (b)(2), changing or avoiding the environment where drugs were used,” and AG ¶ 25 (b)(4), “a signed, statement of intent with automatic revocation of clearance for any violation.”

These steps, though encouraging, are not sufficient at this time to mitigate the drug involvement security concern. Given the nature, extent, and seriousness of Applicant’s marijuana use, and the frequency of his participation in college, not enough time has elapsed to conclude it no longer poses a security concern. Applicant argues persuasively that his dedication to his job is evidence of his maturity and changed lifestyle. However, he interned at this same firm for two summers during college when he was abusing marijuana. Consequently, his dedication to his job has limited probative value with respect to gauging whether his marijuana use will recur in the future. Applicant has not mitigated the drug involvement security concern.

### 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.”

Applicant deserves credit for disclosing the extent of his marijuana use. He is active in his community and committed to his job. These positive attributes are

outweighed by the frequency and extent of his past marijuana use. Consequently, although a year has elapsed since his last marijuana use, it is too soon to conclude it does not pose a security concern. Clearance is denied.

**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:	AGAINST APPLICANT
Subparagraphs 1.a - 1.b:	Against Applicant

**Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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MARC E. CURRY  
Administrative Judge