



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
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----- ) ISCR Case No. 07-13925  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

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

March 28, 2008

**Decision**

LYNCH, Noreen, Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on June 4, 2007. On January 8, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E 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.

Applicant acknowledged receipt of the SOR on January 22, 2008. He requested a hearing before an Administrative Judge. DOHA received the request on February 21, 2008, and I received the case assignment on the same day. DOHA issued a notice of hearing on February 21, 2008, and I convened the hearing as scheduled on March 5,

2008.<sup>1</sup> The government offered Exhibits (Ex.) 1 and 2, which were received without objection.<sup>2</sup> Applicant testified on his own behalf and submitted Exhibits A and B, without objection. DOHA received the transcript of the hearing (Tr.) on March 13, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, received January 25, 2008, Applicant admitted some of the factual allegations in ¶ 1.b of the SOR, with explanations. He denied all other allegations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 40-year-old employee of a defense contractor. He graduated from high school in 1986, and he received his undergraduate degree in 1996.<sup>3</sup> He is not married. He has been with his current employer since October 1992.<sup>4</sup>

Applicant used marijuana while he was in high school. He would smoke with his friends on the weekends. After graduation from high school, Applicant continued using marijuana occasionally in college.<sup>5</sup>

Applicant lived with his grandmother from the age of 16. He returned to live with her after graduating from college. She died in 1997 and he inherited the house. He admitted that he used marijuana in 1998 because he was on his own and had the opportunity to do so.<sup>6</sup>

In August 2006, Applicant was arrested and charged with possession of marijuana. At the time, he was attending a concert with a friend. Applicant had his own pipe at the time. He was sitting in a car preparing to smoke from a pipe that belonged to his friend. Applicant placed the pipe under the seat when the police arrived. When questioned by the police, he initially denied that he had been in possession of the pipe. He eventually admitted to the officer that the pipe belonged to him. He went to court for the charge as a first offender. The judge ordered Applicant to undergo a substance abuse screening and assessment and to perform 24 hours of community service.

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<sup>1</sup>Applicant waived his right to 15 days notice.

<sup>2</sup>Department Counsel offered three documents for administrative notice concerning the Controlled Substance II Adderall. I accepted the documents at the hearing.

<sup>3</sup>GE 1 (Security Clearance Application, dated June 2007 ).

<sup>4</sup>*Id.*

<sup>5</sup>Tr. 38-39.

<sup>6</sup>Tr. 15; 39.

Applicant completed his probation which ended on January 28, 2008. The charge was dismissed.<sup>7</sup>

Applicant completed his security clearance application in June 2007. When Applicant responded to section 24 (use of illegal drugs and drug activity), he explained in detail that his 2006 use of marijuana was motivated by an incident that occurred in May 2006 in his neighborhood. He recounted that he witnessed a shooting two doors down from his home and watched the man die. However, he listed the dates of use for marijuana from January 2001 to the present.

In response to section 24 (use of illegal drugs and drug activity), he also noted he used the prescription drug Adderall. Adderall is a Schedule 2 Controlled Substance. He noted that he had a friend who used the prescription medication and that he wanted to see what it does for your attention. He listed the dates of use as January 2006 to the present (June 2007). His answer to the SOR lists the same dates.

At the hearing, Applicant contradicted that information. He stated the dates were a mistake because he did not use Adderall when he was on probation. He could not answer when he actually started or stopped using the prescription medication. He was vague and somewhat evasive in his testimony regarding his reason for trying his friend's prescription medication. He testified that at first he did not realize it was an amphetamine, but he continued to use it for a while in tablet form. He took the prescription when he had a lot of work to do because he could work eighteen hours easily.<sup>8</sup> He also stated that turning 40 was a difficult thing for him and that this behavior was an aberration on his part.<sup>9</sup>

The Department of Defense interviewed Applicant in 2007 as part of his security clearance investigation. His answers to questions concerning his use of marijuana differ from his responses to the SOR and his testimony at the hearing. However, he confirmed the information was correct when he signed the Interrogatories.<sup>10</sup> Applicant states that he has no dependency on marijuana. At one point, Applicant testified that his pipe had resin from 1998 when the police arrested him in 2006. Although, at the hearing he admitted carrying a pipe, he denied any other use from 1998. His testimony was not credible or reasonable. When Applicant was cross examined during the hearing he often gave different responses to the same question.

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<sup>7</sup>Tr. 26; AE A.

<sup>8</sup>Tr. 20.

<sup>9</sup>Tr. 18.

<sup>10</sup>GE 2 (Interrogatories, dated October 2007).

Applicant stated that he has never been in any other trouble in his life. He does not believe this will happen again. He acknowledged that he did not realize the seriousness of taking prescription medication without a prescription.<sup>11</sup>

Applicant's current employer praises his outstanding work. He has several letters of recommendation from 1992 to the present.<sup>12</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 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. 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 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

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<sup>11</sup>Tr. 50.

<sup>12</sup>AE B (Packet of Recommendations).

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 conditions that could raise security concerns. Under AG & 25(a), Any drug abuse<sup>@</sup> is potentially disqualifying. Applicant acknowledged using marijuana sporadically for a period of time in high school, college and again in 2006. He also admitted using Adderall without a prescription for a period of time as recent as 2007. The evidence is sufficient to raise these potentially disqualifying conditions, requiring a closer examination.

Under AG ¶ 25(c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia” is also potentially disqualifying. In 2006, Applicant was arrested for possession of marijuana with drug paraphernalia. He had his own pipe. He completed probation in January 2008. The charge was then dismissed.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26 (a), the disqualifying condition may be mitigated where Athe 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.<sup>@</sup> Applicant’s illegal use arose when he was in high school and college. However, he recently used marijuana in 2006. He completed his probation only a month ago. I do not find that this mitigating condition applies.

Under AG ¶ 26 (b), it may be mitigating where Aa 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. As noted above, some of the problems arose from Applicant's immaturity. However, Applicant was almost 40 years old when he used the marijuana at the concert and decided to use his friend's prescription drug - Adderall. He has not had an appropriate period of abstinence for mitigation. In addition, his inconsistencies do not convince me of his future intentions concerning the illegal drug use.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying:

(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 community standing.

Applicant's inconsistency in his answers to questions concerning marijuana use and the time period during which he used Adderall leaves me with doubts about his reliability and judgment. He was unable to answer questions in a clear, straightforward manner. I find his personal conduct creates a vulnerability and raises a security concern under the above disqualifying condition. After reviewing the mitigating conditions, I do not find that any apply.

### **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. When these problems first began, Applicant was a high school student. He is now 40 years old and employed with a defense contractor. Although the marijuana use is limited in scope, Applicant’s 2006 incident with marijuana and his various inconsistent statements in his security clearance application, his answers to the SOR and his testimony at the hearing do not convince me that his poor judgment is not likely to recur. His poor judgment to use Adderall for a period of time because he was approaching 40 is troubling. Applicant has not met his burden of proof in this case. His testimony was at times not credible, especially in light of the statement concerning resin in his pipe from 1998.

Overall, the record evidence leaves me with questions and doubts as to Applicant’s eligibility, judgment, and suitability for a security clearance. For all the reasons discussed above, I conclude Applicant has not mitigated the security concerns arising from his drug involvement and personal conduct.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	Against Applicant
Subparagraph 1.c:	Against Applicant
Paragraph 2, Guideline E:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant

## **Conclusion**

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

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Noreen A. Lynch  
Administrative Judge