



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



In the matter of: )  
 )  
----- ) ISCR Case No. 07-14023  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

August 11, 2008

**Decision**

WESLEY, Roger C., Administrative Judge:

**Statement of Case**

On January 14, 2008, the Defense Office of Hearings and Appeals (DOHA), pursuant to Executive Order 10865 and Department of Defense Directive 5220.6 (Directive), dated January 2, 1992, issued a Statement of Reasons (SOR) to Applicant, which detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for Applicant, and recommended referral to an administrative judge to determine whether clearance should be granted, continued, denied or revoked.

Applicant responded to the SOR on February 5, 2008, and requested a hearing. The case was assigned to me on April 2, 2008, and was scheduled for hearing on April 29, 2008. A hearing was held on April 29, 2008, for the purpose of considering whether it would be clearly consistent with the national interest to grant, continue, deny, or revoke Applicant's security clearance. At hearing, the Government's case consisted of two exhibits; Applicant relied on one witness (himself) and one exhibit. The transcript

(R.T.) was received on May 7, 2008. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility to access classified information is denied.

### **Summary of Pleadings**

Under Guideline H, Applicant is alleged to have (a) used marijuana on at least 50 occasions from 2000 to at least March 2007 and (b) purchased marijuana on at least 45 occasions from January 2000 to at least March 2007. For his answer to the SOR, Applicant admitted each of the allegations without explanation.

### **Findings of Fact**

Applicant is a 39-year-old consultant for a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted by Applicant are incorporated herein by reference and adopted as relevant and material findings. Additional findings follow.

Applicant is unmarried and has no children. He was introduced to marijuana in social settings in January 2000. Before January 2000, he had never before used marijuana or any illegal substances, never in high school and never in college (R.T., at 34-35). Between January 2000 and March 2007, Applicant used marijuana occasionally with friends in social settings. He estimates to have smoked the substance approximately 50 times between January 2000 and March 2007. He had no established pattern of use.

For the most part, Applicant used marijuana when offered by a friend in a social setting. While he would customarily get together with friends once or twice a week, he had no time table on when they would decide to use marijuana (R.T., at 37-38). Albeit, he occasionally used it when he was alone (R.T., at 38). Most of his use was with in cigarette form, but occasionally he would use a pipe (R.T., at 38-39). Because he did not own a pipe himself, he borrowed one from others when he wished to use one. Sometimes, he used rolling paper for his marijuana use (R.T., at 39). Currently, he has neither a pipe nor rolling paper in his possession (R.T., at 39).

Applicant has no clear explanation for why he used marijuana: It was just a social thing he liked doing. He assures he never used marijuana at work (R.T., at 40) or while driving (see ex. 2; R.T., at 54). He assures, too, that he never became addicted to the substance (R.T., at 29). Without any probative evidence to discredit these assurances, they are entitled to acceptance.

Applicant last underwent work-related drug screening for illegal drugs in 1990 (R.T., at 40). While in the Air Force (AF) (1988-1990), Applicant never held a clearance and never used marijuana. At all times relevant, he was aware of AF policy against the use of illegal drugs (R.T., at 42).

Applicant purchased marijuana approximately 45 times between January 2000 and March 2007, all for his personal use, and not for resale. He obtained his marijuana from friends, mostly in coffee houses. Typically, his purchases involved 1/8 of an ounce of the substance for \$50.00. Sometimes, he would buy 1/4 of an ounce of the substance for \$120.00 (R.T., at 46-47). He assures he never sold or received anything else from his sources besides marijuana (R.T., at 52).

Applicant ceased using marijuana in March 2007 (possibly as early as January 2007 according to his testimony) and has none of the substance left in his custody and control (R.T., at 45-48). He does not think it is wrong to use marijuana and believes its use should be legalized like other intoxicating substances (R.T., at 48-49). Still, he is aware that marijuana use is against the law and acknowledges breaking the law when using the substance.

Applicant has no intention of using marijuana in the future. Since March 2007, he has avoided parties where marijuana is used (R.T., at 50). He has never been counseled for drug use, and has never used any illegal drugs other than marijuana (R.T., at 52-53).

Applicant's facility clearance officer (FSO) is impressed with Applicant's technical skills and honesty (R.T., at 57-58). She is aware of Applicant's past marijuana use. She sees him weekly and notes that he has been free of drugs for over a year (R.T., at 58-60); although, she has had little socialization with him on off-duty hours (R.T., at 60-61). Applicant's direct supervisor (an owner of the company) considers Applicant to be honest and trustworthy (see ex. A; R.T., at 63-66). He sees Applicant daily and is familiar with his past use of marijuana (R.T., at 67-69). When he hired Applicant in April 2007 he did not discuss drugs with him. Not until he sponsored Applicant for a security clearance did he discuss illegal drugs with him,

Applicant's other references characterize him as honest and trustworthy (see ex. A). Coworkers who have worked closely with Applicant find him professional and conscientious in his handling of his assigned programs (ex. A).

### **Policies**

The revised Adjudicative Guidelines for Determining Eligibility for Access to Classified Information (effective September 2006) list Guidelines to be considered by judges in the decision making process covering DOHA cases. These Guidelines require the judge to consider all of the "Conditions that could raise a security concern and may be disqualifying" (Disqualifying Conditions), if any, and all of the "Mitigating Conditions," if any, before deciding whether or not a security clearance should be granted, continued or denied. The Guidelines do not require the judge to assess these factors exclusively in arriving at a decision. In addition to the relevant Adjudicative Guidelines, judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in E.2.2 of the Adjudicative Process of Enclosure 2 of the Directive, which are intended to assist the judges in reaching a fair and impartial common sense decision.

Viewing the issues raised and evidence as a whole, the following adjudication policy factors are pertinent herein:

### **Drug Involvement**

*The Concern:* “Improper or illegal involvement with drugs raises questions regarding an individual’s willingness or ability to protect classified information. Drug abuse or dependence may impair social or occupational functioning, increasing the risk of an unauthorized disclosure of classified information.” See Adjudicative Guidelines, ¶24.

### **Burden of Proof**

By virtue of the precepts framed by the revised Adjudicative Guidelines, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires Administrative Judges to make a common sense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. As with all adversary proceedings, the Judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the Judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) It must prove any controverted fact[s] alleged in the Statement of Reasons and (2) it must demonstrate that the facts proven have a material bearing on the applicant's eligibility to obtain or maintain a security clearance. The required showing of material bearing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, consideration must take account of cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the burden of persuasion shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation or mitigation of the Government's case.

### **Analysis**

Applicant is a meritorious defense consultant with a considerable history of marijuana involvement over a seven-year period. His use and purchases of the substance over a seven-year period spanning January 2000 through March 2007 is security-significant.

By his own acknowledgments, Applicant began using marijuana as a mature adult when offered the substance in social situations. While he views marijuana as no more

harmful than alcoholic beverages, he admits to being aware of its illegality while in the AF, and later as a civilian. Between 2000 and 2007, he used marijuana at least 50 times in social settings and purchased the substance on almost as many occasions (at least 45 times).

Applicant's extended use and purchase of marijuana is sufficient to invoke two of the disqualifying conditions of the Adjudicative Guidelines for drugs, *i.e.*, DC 25(a) (*any drug abuse*) and DC 25©) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution, or possession of drug paraphernalia*).

Applicant has not used or purchased marijuana since March 2007 and assures he will not use the substance in the future. Based on Applicant's considerable history of marijuana involvement, it is still too soon to enable him to claim the benefits of any of the mitigating conditions of the guideline for drug involvement. Both his substantial involvement with marijuana and the relative recency of his involvement preclude him from taking advantage of MC 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" of the Guidelines. His accepted year of abstinence and expressed intentions to avoid places in the future where marijuana is used are very encouraging but still untested, and in need of additional seasoning to absorb all reasonable risks of recurrence. At this time, it is still too soon to warrant application of any of the remaining mitigation conditions.

From a whole person perspective, Applicant presents as an essentially honest and hardworking professional consultant who used and purchased marijuana he knew violated the civilian laws of his state. The positive impressions he has made on his civilian employer must be balanced against the risks he poses to recurrent to marijuana use based on his past involvement with the substance. Neither his coworkers or supervisors who know him pretty well socialize with him enough after hours to be able to make safe predictions themselves about his risks of recurrence. With only a year of abstinence to his credit and no counseling to guide him in the future, his positive work-related contributions are enough at this time to surmount risks of his returning to marijuana use in the foreseeable future.

Considering all of the developed evidence of record, Applicant fails to mitigate security concerns associated with his recurrent use and possession of illegal substances. Unfavorable conclusions warrant with respect to sub-paragraphs 1.a and 1.b of Guideline H.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the FINDINGS OF FACT, CONCLUSIONS, CONDITIONS, and the factors listed above, I make the following FORMAL FINDINGS:

GUIDELINE H (DRUGS):

AGAINST APPLICANT

Sub-paras. 1.a - 1.b:

AGAINST APPLICANT

**Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant's security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge