



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
)  
) ISCR Case No. 08-00228  
SSN: )  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 10, 2008

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**Decision**

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CEFOLA, Richard A., Administrative Judge:

Applicant submitted his Electronic Questionnaires for Investigations Processing (e-QIP), on July 12, 2007. On June 19, 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 July 12, 2008. He answered the SOR in writing on July 18, 2008, and subsequently requested a hearing before an Administrative Judge. DOHA received the request soon thereafter, and I received the case assignment on August 25, 2008. DOHA issued a notice of hearing on that same day, and I convened the hearing as scheduled on September 11, 2008. The

Government offered Exhibits (GXs) 1 and 2, which were received without objection. Applicant testified on his own behalf and submitted Exhibit A, without objection. DOHA received the transcript of the hearing (TR) on September 19, 2008. I granted Applicant's request to keep the record open until September 25, 2008, to submit additional matters. On September 23, 2007, he submitted Exhibit B, without objection. The record closed on that same day. Based upon a review of the case file, pleadings, exhibits, and testimony, eligibility for access to classified information is granted.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in Subparagraphs 1.a.~1.c. of the SOR, and Subparagraph 2.a., of the SOR, as it relates to Subparagraphs 1.a.~1.c., without any explanations.

The Applicant is 22 years of age, and a recent, June 2008, college graduate (TR at page 18 line 23 to page 21 line 11). He was very active in college, and a member of a college fraternity (*Id*). He has recently started "an in home personal training service;" and as such, is very concerned about his health (TR at page 18 line 23 to page 21 line 11).

### **Guideline H - Drug Involvement & Guideline E - Personal Conduct**

1.a.~1.c., and 2.a. The Applicant has smoked marijuana, at most, about 50 times (TR at page 27 line 7 to page 28 line 19). While attending college, from September of 2004 until September of 2007, the Applicant smoked marijuana at his college fraternity between 10~20 times (*Id*, and GX 1 at page 10, and AppX A at page 1). He last used the drug in that setting in September of 2007, when "a couple of guys were watching TV and . . . [he] was sitting there and somebody passed it around and . . . [he] took a puff or two . . ." (TR at page 44 line 18 to page 45 line 5).

The Applicant also contributed to the purchase of marijuana 5~10 times, the last time being concurrent with his penultimate usage, sometime in 2006 (TR at page 43 line 18 to page 44 line 12). Again, in a fraternity setting, he "would throw \$5 on the table for whoever got it. . . . [He] never purchased it from a drug dealer . . ." (TR at page 34 line 23 to page 35 line 22).

The Applicant executed his e-QIP in July of 2007 (GX 1). He thus used marijuana once after executing this questionnaire, but prior to obtaining a security clearance (TR at page 40 lines 1~23, and at page 44 line 18 to page 45 line 5). At his hearing, he averred that he intended no future drug involvement (TR at page 35 lines 20~25). Subsequent to his hearing, Applicant signed a statement of intent, vowing to "[d]isassociate from drug using affiliates," and "to never buy, use, sell or manufacture any drugs in the future" (AppX B). He further acknowledged that, by signing this statement, any future drug involvement would result in any clearance he may hold being "revoked" (*Id*).

## 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 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 Paragraph 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 also notes several conditions that could raise security concerns. Under Subparagraph 25(a), "*any drug abuse*" may be disqualifying. As is the "*purchase*" of illegal drugs under Subparagraph 25(c). Here the Applicant used marijuana about 50 times, with his last usage being about a year prior to his hearing. This is countered, however, by the mitigating condition found in Subparagraph 26(a). The Applicant's Drug Involvement "*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.*" Here, the Applicant has graduated from college, and has left the attitude of complacency about marijuana of his college fraternity. Subparagraph 26(b) is also applicable, as Applicant has shown "*a demonstrated intent not to abuse any drugs in the future, such as: (4) a signed statement of intent with automatic revocation of clearance for any violation.*"

### Guideline E - Personal Conduct

The security concern relating to the guideline for Personal Conduct is set out in AG Paragraph 15:

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.

The guideline notes several conditions that could raise security concerns. Under Subparagraph 16(d), "*credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment . . . . This includes but is not limited to consideration of: (3) a pattern of dishonesty or rule violations.*" Here, the Applicant used an illegal substance, marijuana, about 50 times, and used it once after executing his e-QIP. However, this is countered by Subparagraph 17(c) as "*it happened under such unique circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment.*" Again, the Applicant has graduated from college, and has left the attitude of complacency about marijuana of

his college fraternity. Furthermore, the Applicant has formally and credibly eschewed any future drug involvement.

### **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 commonsense judgment based upon careful consideration of the guidelines and the whole person concept.

I considered all of the evidence, including the potentially disqualifying and mitigating conditions surrounding this case. Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant mitigated the security concerns arising from his Drug Involvement and related 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:	FOR APPLICANT
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Subparagraph 1.c:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	For Applicant

## **Conclusion**

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

Richard A. Cefola  
Administrative Judge