



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



In the matter of:	)	
	)	
SSN:	)	ISCR Case No. 08-00617
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

November 28, 2008

**Decision**

METZ, John Grattan, Jr., Administrative Judge:

On 8 July 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 on 28 July 2008, and requested a decision without hearing. DOHA assigned the case to me 19 November 2008. The record in this case closed 19 October 2008, the day Applicant’s response to the government’s File of Relevant Material (FORM) was due. Applicant did not respond to the FORM.

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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 admitted the SOR allegations. He is a 24-year-old electrical engineer employed by a defense contractor since May 2007. He has not previously held a clearance.

Applicant began using marijuana in late 2002, during his senior year in high school, in social settings. He estimates he used marijuana monthly from then until his May 2007 graduation from high school. He also estimates buying a \$20 bag of marijuana fewer than 10 times. Otherwise, he used marijuana provided by his friends. While he was in college from August 2003 to February 2007, he estimates using marijuana two or three times per year. He last used marijuana in July 2007, just before applying for his security clearance (Item 4). He stopped because was preparing to graduate from college and he knew marijuana use would not be acceptable in the workplace. He disclosed his marijuana use on his clearance application, estimating that he used marijuana 30 times between September 2002 and July 2007.

During a subject interview in October 2007, he described his marijuana use as above, and opined that he did not intend to use marijuana in the future, especially while employed by a government contractor, but could not rule out using it again after he retired. In March 2008, he confirmed the contents of his subject interview (Item 5). In his answer, he categorically states an intent to not use marijuana in the future.

## 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,<sup>3</sup> and Applicant did not mitigate the security concerns. Applicant used marijuana casually for five years beginning in 2002, stopping in anticipation of his employment by a government contractor. This use was neither distant in time, infrequent, nor under unusual circumstances unlikely to recur.<sup>4</sup> His abstinence from drug use—approximately one year—is inadequate to demonstrate an intent to refrain from drug use in the future particularly where he equivocated on future use. I cannot conclude Applicant is unlikely to use illegal drugs in the future.<sup>5</sup> Further, a whole-person analysis cannot help Applicant in this case because the record contains no favorable evidence about him that might support such an analysis. Accordingly, I resolve Guideline H against Applicant.

### **Formal Findings**

Paragraph 1. Guideline H: AGAINST APPLICANT

Subparagraph a: Against Applicant

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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. . . purchase. . . ; (h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinued drug use.

<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;

<sup>5</sup>¶26.(b). a demonstrated intent not to abuse any drugs in the future, such as; . . . (3) an appropriate period of abstinence; . . . (4) a signed statement of intent with automatic revocation of clearance for any violation;

## **Conclusion**

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 a security clearance for Applicant. Clearance denied.

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JOHN GRATTAN METZ, JR  
Administrative Judge