



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-01536
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Jennifer I. Goldstein, Esquire, Department Counsel  
For Applicant: *Pro Se*

October 21, 2008

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**Decision**

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DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government’s security concerns raised under Guideline H, Drug Involvement and Guideline E, Personal Conduct. His eligibility for a security clearance is denied.

On August 3, 2006, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On June 9, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns under the guidelines for Drug Involvement and Personal Conduct. 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.

On June 30, 2008, Applicant answered the SOR in writing and elected to have the case decided on the written record in lieu of a hearing. On July 18, 2008, Department Counsel prepared a File of Relevant Material (FORM), containing five Items, and mailed Applicant a complete copy on July 21, 2008. Applicant signed the document acknowledging receipt of his copy of the FORM on August 6, 2008, and returned it to DOHA. He provided no further response to the FORM within the 30-day period he was given to do so, did not request additional time to respond, and made no objection to consideration of any evidence submitted by Department Counsel. I received the case assignment on September 24, 2008.

### **Findings of Fact**

In his Answer, Applicant admitted all factual allegations contained in the SOR. Those admissions are incorporated into the findings herein.

Applicant is 48 years old, married with two children. In November 2005, he began working for a defense contractor. In August 2006, he submitted an e-QIP. (Item 4).

In response to Section 24(a) on the e-QIP that inquires into illegal drug activity, Applicant admitted that he used illegal drugs and estimated that he used marijuana, socially, a couple times a month from June 1975 until August 2005. (Item 4 at 30). In response to Section 24(c), he denied ever purchasing illegal drugs. In a September 2007 interview with a government investigator, he disclosed that he used marijuana until June 2006. Later in the interview, he admitted that the last time he used it was in June 2007 after becoming distressed about his brother's divorce. (Item 5 at 14). He normally used the substance with friends because his wife does not approve of his drug use and does not know that he continues to use it. (*Id.* at 13). He no longer sees one of his friends, who provided the marijuana, because the friend moved out of the area. (*Id.* at 14). Applicant believes he will use it in the future. (*Id.*). He has not participated in any substance abuse counseling. (*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 commonsense decision. According to AG ¶¶ 2(a) and 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 “Any 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 and has the ultimate burden of persuasion as to obtaining a favorable security decision.” 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.”

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.

## **Analysis**

### **Guideline H, Drug Involvement**

The security concern pertaining to 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. (a) Drugs are defined as mood and behavior altering substances, and include: (1) Drugs, materials, and other chemical compounds identified and listed in the Controlled Substances Act of 1970, as amended (e.g., marijuana or cannabis, depressants, narcotics, stimulants, and hallucinogens), and; (2) inhalants and other similar substances; (b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

This guideline notes several conditions that could raise security concerns. Based on Applicant's admissions that he used marijuana about twice a month from approximately June 1975 until June 2007, the Government raised a disqualifying condition under AG ¶ 25(a), "any drug abuse (see above definition)."

After the Government produced substantial evidence of that disqualifying condition, the burden shifted to Applicant to produce evidence and prove mitigation of the resulting security concerns. Under AG ¶ 26, four conditions are listed that could mitigate the security concern arising from illegal drug use:

(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;

(b) a 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;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Based on an evaluation of the record evidence as a whole, I conclude that AG ¶ 25(a) does not apply. Applicant used illegal drugs a couple times a month from June 1975 until June 2007, the last incident being about a year ago. Given his 32-year history of marijuana use, his behavior does cast doubt on his trustworthiness and good judgment.

Applicant stated he may use the illegal substance in the future; hence AG ¶ 25(b) does not apply. The record does not contain any evidence to support the application of AG ¶ 25(c) or AG ¶ 25(d).

## **Guideline E, Personal Conduct**

The security concern pertaining to the guideline for personal conduct is set out in AG ¶ 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. 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.

The Government alleged in ¶ 2(a) of the SOR that Applicant deliberately falsified his response to a government investigator about the length of time that he used marijuana. In ¶ 2(b), the Government alleged that his answer in the e-QIP regarding his purchasing marijuana was inconsistent with his answer during the interview. The Government alleged in ¶ 2(c) that he used marijuana after submitting his e-QIP. The Government contended that those omissions may raise a security concern and be disqualifying under AG ¶ 15.

AG ¶ 16 sets out seven conditions that could raise security concerns and be disqualifying. Two of them are applicable:

(a) deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities; and

(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 personal, professional, or community standing, or (2) while in another country, engaging in any activity that is illegal in that country or that is legal in that country but illegal in the United States and may serve as a basis for exploitation or pressure by the foreign security or intelligence service or other group.

Applicant admitted that he intentionally failed to initially disclose to the government investigator the last date on which he smoked marijuana, but instead, disclosed a date one year earlier (2006) before disclosing 2007. Based on that admission, the Government established AG ¶ (16(a). Applicant also admitted that he used marijuana for 32 years, which raises a potential for exploitation, because such information, if known in his community, could affect his reputation, as noted under AG ¶ 16 (e)(1).

Although Applicant admitted that he gave inconsistent answers regarding the purchase of marijuana, the evidence does not support the admission. Applicant denied that he ever purchased marijuana in his response to Question 24(c) on the e-QIP and also during his interview. Hence, his answers are not inconsistent as alleged in SOR ¶ 2.b and this allegation is found in his favor.

Applicant did not provide any evidence that would trigger the application of any of the mitigating conditions listed under AG ¶ 17 as to the allegations contained in ¶ 2. a and ¶ 2.c of the SOR.

### **Whole Person Concept**

In addition to evaluating the disqualifying and mitigating conditions under each guideline, the adjudicative process requires thorough consideration and review of all available, reliable information about the applicant, past and present, favorable and unfavorable, to arrive at a balanced decision. The essence of scrutinizing all appropriate variables in a case is referred to as the “whole person” analysis. In evaluating the conduct of the applicant, 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) the 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.

According to 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 the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a 48-year-old married man, who began using marijuana in 1975 and continued using it until 2007, and after completing an e-QIP. While I find his candid admissions of his drug use noteworthy, his assertion that he may use marijuana in the future is very concerning and indicative of a lack of good judgment.

Overall, the record evidence leaves me with significant questions as to Applicant’s eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant did not mitigate 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
Paragraph 2, Guideline E:	AGAINST Applicant
Subparagraph 2.a:	Against Applicant
Subparagraph 2.b:	For Applicant
Subparagraph 2.c:	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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SHARI DAM  
Administrative Judge