



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



In the matter of: )  
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----- ) ISCR Case No. 08-04059  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Julie R. Mendez, Esquire, Department Counsel  
For Applicant: Pro Se

February 17, 2009

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**Decision**  
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LYNCH, Noreen, Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86), on November 21, 2007. On October 14, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guideline H 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 October 20, 2008, and elected to have his case decided on the record in lieu of a hearing. Department Counsel submitted the Government's written case on January 22, 2009. Applicant received a complete file of relevant material (FORM) on January 26, 2009, and was provided the opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's

case.<sup>1</sup> Applicant submitted additional information in a timely manner. The case was assigned to me on February 10, 2009. Based on a review of the case file, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer to the SOR, signed November 4, 2008, Applicant admitted the factual allegation in ¶ 1.a of the SOR. He also provided additional information to support his request for eligibility for a security clearance.

Applicant is a 58-year-old employee of a defense contractor. He graduated from high school and obtained his college degree in August 1973. He is married and has one child. He has worked as a designer/project manager for his current employer since August 2002 (Item 1).

Applicant used marijuana from about January 1990 until about May 2007. He admitted that he used approximately six to twelve times. He stated that his marijuana use may continue in the future. He used the illegal drug with friends on "game nights." (Item 5) Applicant was interviewed in March 2008. During the interview he stated he smoked approximately 1-2 puffs of a marijuana cigarette. He admitted that he would use whenever the opportunity presented itself at his friends' homes.

Applicant used marijuana in the beginning out of curiosity. He believes he is not affected by the use. He has never been arrested or charged for any drug related offenses (Item 4).

In his response to June 2008 interrogatories, Applicant explained that he failed to mention that in 2006 he ate a brownie laced with marijuana which gave him an "uncomfortable reaction." He advised that he doubted that he would use the drug again (Item 5). This statement is inconsistent with his security application and his answer to the SOR.

Applicant submitted a statement in response to the FORM. He advised that he wanted his application stamped "Not Approved." He explained that he answered all the security clearance questions truthfully and contends that his record is no worse and much better than some in much higher governmental positions. He also elaborated that he did not want a security clearance. He filled out the paperwork as a courtesy to his employer.

Applicant expressly stated that the entire process involving a security clearance is "demeaning." He compared his trustworthiness in regard to drug use with senior Government officials who may use drugs. He does not believe that the Government's security concerns over his drug use are worthwhile.

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<sup>1</sup>The Government submitted five items in support of its contentions.

Applicant's employer rates him as a "stellar employee." They believe that it would be a great benefit to the company if Applicant had a security clearance.

### **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 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>a</sup> is potentially disqualifying. Under AG ¶ 25(c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia” is also potentially disqualifying. Applicant admitted his use of marijuana from 1970 until at least May 2007. The multiple use is sufficient to raise the disqualifying conditions.

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>a</sup> Applicant’s admitted May 2007 use of marijuana is recent. He has used marijuana since 1990 and until at least approximately two years ago. Considering Applicant has used marijuana over a period of 17 years, his conduct should not be deemed infrequent. This mitigating condition does not apply. He expressed a clear disdain for the security clearance process. His inconsistent explanation as to future illegal drug use casts doubt on his trustworthiness, reliability and judgment. 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.” Applicant uses marijuana with friends on social occasions. He stated in his March 2008 interview that he would use marijuana if an opportunity presents itself. Though he stated he doubted he would use marijuana again in response to June 2008 interrogatories, his inconsistent explanations as to future use are not credible and cast doubt on his trustworthiness, reliability and judgment. I do not find that these mitigating conditions 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) 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." 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. Applicant is a mature, well-educated professional. He has a long history of smoking marijuana. He admitted using with friends at social occasions and may do so in the future. His recent decision to stop using marijuana because he became ill in 2006 contradicts his Answer to the SOR. In February 2008 he stated that "if an opportunity to smoke marijuana presents itself and I want to do it, I will." This undercuts any claim that he has expressed a demonstrated intent not to abuse drugs in the future. In addition, Applicant expressed a lack of respect for the security clearance process. He appears to lack the understanding about the Government's concern over drug abuse. Finally, Applicant provided a handwritten statement on his Answer that he finds the security clearance process "demeaning." I find that the lack of understanding of the process undercuts any confidence the Government would have in his reliability and judgment.

Applicant has a long employment record. He voluntarily reported his marijuana use on his security application. I considered his stellar rating as an employee with his company.

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.

## **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

**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