



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



In the matter of: )  
)  
) ISCR Case No. 08-06488  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Fahren Hoffman, Esq., Department Counsel  
For Applicant: *Pro Se*

May 6, 2009

**Decision**

RICCIARDELLO, Carol G., Administrative Judge:

Applicant mitigated the Government’s security concerns under Guideline H, Drug Involvement and Guideline E, Personal Conduct. Applicant’s eligibility for a security clearance is granted.

On January 20, 2009, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E. 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 answered the SOR in writing on February 9, 2009, and requested a hearing before an administrative judge. The case was assigned to me on March 19, 2009. DOHA issued a Notice of Hearing on March 23, 2009, and I convened the hearing as scheduled on April 23, 2009. The Government offered Exhibits (GE) 1 through 3.

Applicant did not object and they were admitted. Applicant testified and the record was held open to allow him to submit documents. He submitted one exhibit that was marked as Applicant's Exhibit (AE) A. Department Counsel did not object and it was admitted and the record closed.<sup>1</sup> DOHA received the transcript of the hearing (Tr.) on April 30, 2009.

### **Findings of Fact**

Applicant's admissions to the allegations in the SOR are incorporated herein. In addition, after a thorough and careful review of the pleadings, exhibits, and testimony, I make the following findings of fact.

Applicant is 26 years old and has worked for a federal contractor since February 2008. Prior to this employment he worked in a bicycle store for the past ten years, both part-time while in college and full-time. He is single and engaged to be married. He is a college graduate. His current job is the first that he considers a career job in the "real world."<sup>2</sup>

Applicant admitted that he tried marijuana once when he was in middle school between 1996 and 1998. He did not remember the year. He did not use marijuana again until he was in college. He used it between 8 to 10 times from 2000 to 2004. He never purchased marijuana, but would use it when it was passed to him at parties. He did not particularly like the way it made him feel. He stopped using marijuana after he graduated from college, except for one time in May 2007, when he got together with a friend and used it. He has not used marijuana since the 2007 use. He regrets his use and was mad at himself for using it. He has made a conscious decision never to use marijuana or any other illegal drugs in the future.<sup>3</sup>

For recreation Applicant rides mountain bikes. In 2001 he broke two bones in his arm and needed surgery. He was prescribed Percocet for pain. He used it as prescribed for the pain from the surgery, but also used it later for other pain he had after he resumed mountain biking. He did not have a prescription at the time he used it for pain not associated with his surgery and was given pills by his friends. Applicant had a second prescription for Percocet after he had his wisdom teeth removed. He legally used the drug for pain after this procedure. He also used it on occasion for recreational use not associated with pain from his wisdom teeth. He estimated that he used it approximately 5 to 10 times for sports-related pain and about 10 to 15 times for recreational use during 2002 to 2004. He was not addicted to its use. He also used Percocet without a prescription one time in 2007 after he had been bike riding and was

---

<sup>1</sup> HE I.

<sup>2</sup> Tr. 20-21.

<sup>3</sup> Tr. 24-25, 43-52, 75, 91-92.

experiencing pain. He does not intend to use this or any other legal drug without a prescription in the future.<sup>4</sup>

On one occasion in early 2001 Applicant's roommate asked him for a Percocet pill. Applicant provided him a pill. He thinks his roommate may have offered him money for the pill, but could not remember. He does not believe if money was offered that he accepted it. Applicant never paid money for the pills he accepted from friends.<sup>5</sup>

Applicant completed a security clearance application (SCA) on December 4, 2007. In the SCA he did not divulge he had used Percocet without a prescription or his May 2007 marijuana use. He stated that he struggled with whether the Percocet use was something he should divulge because he did have a valid prescription for the drug, but also knew he had used it improperly. After he completed the SCA he asked his friends whether he should have divulged this information and they advised him he should have done so. He also asked his security manager and was advised the same. Applicant credibly testified that because this was his first "real" job he was very nervous about doing the right thing. He did not really know what he should do at that point, but was aware that he was going to be put in for a higher clearance shortly and would have to complete new paperwork. He decided to wait until that time to divulge the information. Regarding his failure to list the May 2007 marijuana use Applicant credibly testified that he forgot about this use. Later he recalled it and decided to divulge it on his next application. Applicant completed a new SCA on February 13, 2008, approximately two months after the previous one, and divulged his illegal use of Percocet at that time and the May 2007 marijuana use. The investigator was unaware of these facts until Applicant voluntarily divulged then on the updated SCA. Applicant understands he should have divulged this information on his first SCA, but did divulge it during his first opportunity to do so before being confronted with the information by an investigator.<sup>6</sup>

In an interview with an Office of Personnel Management Investigator conducted on March 12, 2008, Applicant stated he first used marijuana in 2000. On September 16, 2008, he sworn to the accuracy of the Results of Interview included as an attachment to Interrogatories.<sup>7</sup> Question 5 allowed Applicant to provide additional information. He wrote: "Please see attached sheet." The attached sheet was a letter from Applicant to the investigator stating the following: "Additionally, I now recall, to the best of my knowledge, the first time that I tried marijuana as occurring earlier, some time between 1996 and 1998 at a friend's house." Applicant credibly testified that he forgot that his first use of marijuana was when he was in middle school rather than in 2000 and

---

<sup>4</sup> Tr. 22, 52-59, 62-66, 92.

<sup>5</sup> Applicant listed other types of prescription drugs on his SCA that were provided by friends to him. He was not sure, in some instances, if what he took was actually Percocet or another type of pain killer, such as Vicodin or codeine. However, the total times he admitted using prescription drugs illegally included all these drugs.

<sup>6</sup> Tr. 22-34, 59-62, 67, 72-77, 87-91.

<sup>7</sup> AE 3

corrected the discrepancy. I find Applicant's testimony credible. He did not use marijuana again until college. The question did not require he divulge this use because it occurred between 1996 and 1998, which was more than seven years earlier.<sup>8</sup>

Applicant continues to ride mountain bikes, but no longer associates with most of those friends who gave him the drugs, except for a few, who live out of state. He does not use drugs with anyone and does not know if his friends continue to use prescription drugs. He credibly testified that he has moved on to a different point in his life and began to realize he has responsibilities that are important. He has a good job with prospects of a good career; he is engaged to be married; and he has matured significantly. He has put his drug use behind him. He is committed to a drug free future. His fiancé and some of his family are aware of his past drug use.<sup>9</sup>

Applicant provided character letters that I have considered. His supervisor believes him to be an exemplary employee who has proved to be trustworthy, proactive and a valuable asset to the team. The production manager for whom Applicant works considers Applicant's work outstanding. He is diligent and exercises an attention to detail and understanding of security concerns that he is confronted with on a daily basis. He is considered a trustworthy person with the utmost integrity. Another co-worker describes Applicant as always willing to go the "extra mile for the team."<sup>10</sup> In addition, two persons who have known Applicant for most of his life provided statements. They consider him to be honest, conscientious, and trustworthy, with impeccable character and values. Through his life experiences he has developed into a person with the qualities to be an efficient and effective leader. He is a man with integrity, honor, and creativity.<sup>11</sup>

## **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

---

<sup>8</sup> Tr. 25, 34-37, 72, 91.

<sup>9</sup> Tr. 38-40, 65, 74, 78-78, 86.

<sup>10</sup> AE A.

<sup>11</sup> Tr. 80-85; Attachments to Answer.

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**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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. 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; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”

I have considered the disqualifying conditions under Drug Involvement AG ¶ 25 and especially considerer the following:

- (a) any drug abuse, and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant used marijuana once in middle school and while in college from 2000 to 2004 on eight to ten occasions. He then used it one more time in 2007. He also illegally used a prescription drug for recreation and when not prescribed. I find all of the above disqualifying conditions apply.

I have considered all of the mitigating conditions under Drug Involvement AG ¶ 26 and especially considered the following:

- (a) the behavior happened so long ago, was so infrequent or happened under circumstances that it is unlikely to recur or does not cast doubt on the individual’s reliability, trustworthiness, or good judgment, and
- (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 are used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant used marijuana primarily while in college on an infrequent basis, eight to ten times over a four year period. He had an additional use in 2007. He also used a prescription drug when it was not prescribed for pain and sometimes for recreation. This use was primarily in 2002 to 2003 and a one time use in 2007. He credibly testified that he does not intend to use any illegal drugs or ones not prescribed in the future. It has been approximately a year and a half since his last use. Although this is not an extensive period of abstinence, I have considered this in conjunction with Applicant’s commitment and the fact that he is a young man who has matured with the growing responsibility of his career and his impending marriage. He has moved past his period of youthful indiscretion and developed into a mature young man. I find mitigating condition (a) apply because Applicant’s actions are unlikely to recur.

Applicant for the most part no longer associates with friends who use drugs and drugs are no longer a part of his life. He does not know whether his associates continue

to use drugs. He is not involved enough with them to know. He primarily used the drugs during his college years, with a one time lapse for both marijuana and Percocet in 2007. Since then he is committed to remaining drug free and with a mature responsible focus on his future. He credibly testified he intends never to use illegal drugs or prescribed drugs illegally in the future. I find mitigating condition (b) applies.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct:

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.

AG ¶ 16 describes conditions that could raise a security concern and may be disqualifying. I have specifically considered the following:

(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.

Applicant admitted that he had difficulty deciding whether to include on his first SCA that he had used a prescription drug for other than its intended use. He seemed to be rationalizing whether he needed to divulge it. He chose not to do so on his first SCA. I find this was a deliberate omission and disqualifying condition (a) applies to these facts. Applicant also did not divulge his one time use of marijuana in 2007. I considered Applicant's demeanor and candid responses at his hearing. I find Applicant's explanation credible that he forgot the 2007 marijuana use and divulged it later when he remembered on his subsequent SF 86. The inconsistent admission as to his first use of marijuana occurring in 2000 and later corrected to occurring sometime in 1996 to 1998, I find was not a deliberate falsification. This was a use that did not have to be divulged. In his attempt to be completely thorough and honest he corrected the information by providing a supplemental statement. It is inconsistent to believe that he would feel the need to hide this use. Therefore, I find Applicant did not deliberately provide inaccurate information as to his first use of marijuana and therefore no disqualifying conditions apply to these facts.

The guideline also includes examples of conditions that could mitigate security concerns arising from personal conduct. I have considered all of the mitigating conditions and especially considered the following under AG ¶ 17:

(a) the individual made prompt, good-faith efforts to correct the omission, concealment, or falsification before being confronted with the facts, and

(c) the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment.

After Applicant completed his first SCA he asked his friends about whether he should have divulged his use of prescription drugs. They advised him to do so. Undeniably it would have been better had Applicant immediately notified the appropriate authorities, however, he was new to the process and confused about how to go about it. This may sound somewhat naive or disingenuous, however I found Applicant to be sincere and credible. He was aware that his security clearance was to be upgraded in a short time, so he waited until he completed his next SCA, two months later. At that time he voluntarily divulged his use of prescription drugs. He corrected this omission before he was confronted with the facts. These are facts the government would not have known had Applicant not divulged them. Although his actions were not as timely as they could have been, I find the period of time to be reasonable. Therefore, I find mitigating condition (a) applies.

I find Applicant's omission was not minor, but it was infrequent and it is unlikely to happen again. Applicant is now familiar with the process and understands the obligation to divulge any derogatory information. I do not find his actions cast doubt on his reliability, trustworthiness, or good judgment and conclude mitigating condition (c) applies.

### **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 experienced a period of youthful indiscretion when he used marijuana and a prescription drug. He admitted he was young and immature. He has since taken on adult responsibilities and has a budding career and is engaged to be married. He no longer uses any illegal drugs or illegally uses prescription drugs and never intends to again. He struggled with whether he was required to divulge his prescription drug use and chose not to divulge it. He did divulge it later voluntarily and before confronted with the facts. I observed Applicant's demeanor and credibility throughout the hearing. I also considered his past conduct in the context of his age, motivation and maturity and made a risk assessment. Overall, the record evidence leaves me with no serious 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 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:	FOR APPLICANT
Subparagraphs 1.a-1.c:	For Applicant
Paragraph, Guideline E:	FOR APPLICANT
Subparagraphs 2.a-2.b:	For Applicant

### **Conclusion**

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

---

Carol G. Ricciardello  
Administrative Judge