



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



In the matter of: )  
)  
) ISCR Case No. 08-08372  
)  
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Applicant for Security Clearance )

**Appearances**

For Government: Francisco Mendez, Esquire, Department Counsel  
For Applicant: Will A. Gunn, Esquire

April 30, 2009

**Decision**

RIVERA, Juan J., Administrative Judge:

Applicant mitigated the drug involvement security concerns arising from her illegal use of marijuana. Eligibility for access to classified information is granted.

**Statement of the Case**

Applicant submitted her security clearance application on March 24, 2008 (Electronic Questionnaire for Investigations Processing (e-QIP)) (GE 3). On November 18, 2008, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to her alleging security concerns under Guideline H (Drug Involvement).<sup>1</sup> The SOR detailed reasons why DOHA could not make the preliminary affirmative finding under the Directive that it is clearly consistent with the national interest to grant or continue a security clearance for her, and recommended referral to

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<sup>1</sup> On Aug. 30, 2006, the Under Secretary of Defense (Intelligence) published a memorandum directing application of revised Adjudicative Guideline to all adjudications and other determinations made under the Directive and Department of Defense (DoD) Regulation 5200.2-R, *Personnel Security Program* (Regulation), dated Jan. 1987, as amended, modified and revised.

an administrative judge to determine whether a clearance should be granted, continued, denied, or revoked.

Applicant answered the SOR (Answer) on December 1, 2008, and requested a hearing before an administrative judge. The case was assigned to me on January 26, 2009. DOHA issued the notice of hearing on February 4, 2009. The hearing was convened as scheduled on February 27, 2009. The government offered exhibits (GE) 1 through 5, which were admitted without objection (Tr. 12). Applicant testified on her own behalf, and presented two witnesses and exhibits (AE) 1 through 8, which were admitted without objection (Tr. 16). DOHA received the transcript of the hearing (Tr.) on March 10, 2009.

### **Findings of Fact**

In her Answer, Applicant admitted all the SOR allegations with explanations. Her admissions are incorporated herein as findings of fact. After a thorough review of all evidence of record, I make the following additional findings of fact.

Applicant is a 31-year-old program analyst working for a defense contractor. While in high school, between October 1994 and August 1996, she experimented with marijuana approximately five times with her high school friends. During her senior year in high school, she began dating and decided that using marijuana was no longer part of her life and stopped using marijuana. She graduated in the top 10% of her high school class (Tr. 31). She completed her bachelor's degree in journalism in 2000, graduating with a 3.86 grade point average. She is currently pursuing a graduate degree (Tr. 74).

After college, Applicant was hired as a full-time employee by a U.S. government contractor. Pursuant to her employment, in 2001, she submitted a security clearance application in which she disclosed she used marijuana five times between October 1994 (age 16) and August 1996. During a follow up interview by a government investigator in March 2002, Applicant confirmed her use of marijuana and promised never to use illegal drugs again. She was granted access to classified information at the secret level.

Applicant worked for her first employer from January 2001 to January 2006. She left her job because she believed she had outgrown her position. She was hired by a second government contractor and worked for it approximately two years. In November 2007, Applicant was hired by her current employer, another government contractor. She has held access to classified information at the secret level continuously since 2001. All three of her employers had policies prohibiting their employees' use of illegal drugs. She was aware of such policies, and that the use of marijuana was illegal.

In the summer of 2005, Applicant used marijuana (Tr. 57-60). She explained that her fiancé left her under some ugly circumstances. She sought help and was diagnosed with depression and prescribed medication which she took for one year. She is no longer on medications. During the summer of 2005, her husband (then a friend) came to

visit and offered her some marijuana. They smoked the marijuana cigarette together. He was given the marijuana by a long-time friend (X).

In July 2006, Applicant purchased a condo and celebrated the purchase by having a house warming party. After the party, Applicant and her husband (then boyfriend) smoked marijuana from a pipe. He had been given the marijuana by the same long-time friend (X) that gave him the marijuana in 2005 (Tr. 60).

In March 2008, Applicant submitted another security clearance application seeking an upgrade of her access level. She disclosed she used marijuana twice between July 2005 and March 2007 (once in 2005 and once in July 2006) while possessing a security clearance (GE 3, Section 24). During the follow up interviews, Applicant refused to disclose she had smoked marijuana with her now husband, and that the marijuana was provided to her husband by his long-time friend (GEs 4 & 5). In her answer to the SOR, Applicant explained she disclosed her past marijuana use because she believed that as part of the security clearance process she would be subject to a polygraph examination that would unveil her bad judgment (Tr. 64, answer to the SOR). At her hearing, Applicant was candid and forthcoming promptly answering any and all questions about the circumstances surrounding her use of marijuana.

Applicant expressed sincere remorse for her use of marijuana both in 2005 and 2006. She knew that the use of marijuana was illegal and would reflect adversely on her ability to hold a security clearance. She acknowledged she made two bad decisions and that her actions reflect bad judgment. She has not used marijuana since 2006, because such behavior does not fit with her lifestyle anymore or who she is now (Tr. 62). She testified she has observed her husband use marijuana only twice during the four years they have known each other. She claimed he does not smoke marijuana anymore. Applicant and her husband no longer associate with (X). She has seen (X) only once since 2006, at a friend's wedding.

At her hearing, Applicant submitted a statement of intent (AE 2), promising never to use illegal drugs again, and agreeing to an automatic revocation of her clearance if she ever uses illegal drugs again while possessing a security clearance. Applicant is loyal to the United States, and believes her drug related behavior does not make her a threat to the safety of classified information. She disclosed her past drug use and her pending security clearance hearing to three or four of her supervisors and friends. She believes her past drug use cannot be used as leverage against her.

Applicant believes she is more stable mentally and emotionally now than she was in 2005. She has been married to her husband approximately one and one-half years and they have a good relationship. She performs as stepmother to her husband's eight-year-old son, and serves as a soccer coach. Additionally, she participates in charitable community activities.

Since graduating from college, Applicant has worked for three different government contractors. She is considered by supervisors and friends to be a trusted,

dependable, and valuable employee. She is extremely reliable, honest, and truthful. She is regarded as a hard worker with excellent job performance. There is no evidence she has compromised classified information during the eight years she has possessed a security clearance. Applicant's past and current supervisors recommended she receive access to classified information without reservations.

### **Policies**

The purpose of a security clearance decision is to resolve whether it is clearly consistent with the national interest to grant or continue an applicant's eligibility for access to classified information.<sup>2</sup>

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 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 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."<sup>3</sup> In reaching this decision, I have drawn only those conclusions that are reasonable, logical and based on the evidence contained in the record.

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

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<sup>2</sup> See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> *Egan, supra*, at 528, 531.

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 articulates the government’s security concern about 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.

AG ¶ 25 provides eight drug involvement conditions that could raise a security concern and may be disqualifying. Three drug involvement disqualifying conditions raise a security concern and may be disqualifying in this particular case: AG ¶ 25(a): “any drug abuse;”<sup>4</sup> AG ¶ 25(b): “illegal drug possession;” and AG ¶ 25(g): “any illegal drug use after being granted a security clearance.”

AG ¶¶ 25(a), 25(c), and 25(g) apply. Applicant used marijuana in high school, and in the summer of 2005 and July 2006, while she possessed a security clearance. The other disqualifying conditions listed in AG ¶ 25 are not applicable.

She disclosed her illegal drug use on her 2001 and 2008 security clearance applications, to government investigators, and at her hearing. She used illegal drugs initially because she was curious about the effects of the drugs and her peers and friends were using illegal drugs. She used marijuana in 2005 and 2006, because at the time she believed it would be fun and would make her feel better. She possessed these illegal drugs before she used them.

AG ¶ 26 provides four potentially applicable drug involvement mitigating conditions:

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<sup>4</sup>AG ¶ 24(b) defines “drug abuse” as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.”

(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.

Considering the record as a whole, I find AG ¶ 26(a) and (b) apply. There are no "bright line" rules for determining when conduct is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). All of the information the government has concerning Applicant's use of drugs was disclosed by her. She experimented with marijuana five times while in high school between 1994 and 1996. She then used marijuana again once in 2005 and once in July 2006, while possessing a security clearance. Her last use of marijuana was in July 2006.

It has been approximately 32 months since Applicant's last use of marijuana. I find that "a significant period of time has passed without any evidence of misconduct." Since that last use of marijuana, Applicant married her husband and assumed the role of stepmother for her eight-year-old stepson (albeit during the weekends). She was not a frequent abuser of illegal drugs. She has expressed sincere remorse for her past misconduct and submitted a statement of intent never to use illegal drugs again. Applicant has matured since her last use of marijuana and I believe she now fully understands the legal and adverse security clearance consequences of such irresponsible behavior. Applicant's abstinence from illegal drugs, her new personal circumstances, and her work performance warrant a finding of reform and rehabilitation. For the above stated reasons, her past use of marijuana does not raise doubts about her current reliability, trustworthiness, and good judgment.

AG ¶ 26(b) lists four ways Applicant can demonstrate her intent not to abuse illegal drugs in the future. She has somewhat disassociated from her drug-facilitating associate (X); although, she is married to the person with whom she used marijuana in 2005 and 2006. She testified her husband no longer uses marijuana. Moreover, she provided “a signed statement of intent with automatic revocation of clearance for any violation.” AG ¶¶ 26(c) and 26(d) are not applicable because Applicant did not abuse prescription drugs after being prescribed those drugs for an illness or injury.

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

The evidence against approval of Applicant’s clearance includes her experimentation with marijuana while in high school, and her use of marijuana in 2005 and 2006 while possessing a security clearance. Because of her 2001 security clearance application and follow up interview, Applicant knew or should have known of the government’s security concerns regarding her past use of illegal drugs. She even promised to never use illegal drugs again. Obviously, her employers had policies against using drugs which she was aware of and violated. Notwithstanding her 2001 promise, Applicant illegally used marijuana in 2005 and 2006. She continues to associate with her husband, the person who provided her with the marijuana in 2005 and 2006.

The evidence supporting approval of Applicant’s clearance is more substantial. She is 31 years old and has worked for government contractors for approximately eight years. She is considered a top notch employee with excellent potential. Applicant was young and immature when she began using illegal drugs. She stopped using illegal drugs after high school and only used drugs twice in 2005 and 2006. She disclosed her history of drug use on her 2001 and 2008 security clearance applications. She subsequently admitted her drug use to a government investigator, in her response to

DOHA interrogatories, on her SOR response, and at her hearing. She knows the consequences of drug abuse.

There is no evidence at work of any other disciplinary problems. There is no evidence of disloyalty or that she would intentionally violate national security. Her character and good work performance show responsibility, rehabilitation and mitigation. Her supervisors fully support her security clearance. They consider her questionable behavior out of character for Applicant. I am satisfied Applicant has learned her lesson. She has not used illegal drugs during the last 32 months. She has expressed sincere remorse for her past drug-related behavior, and promised to abstain from illegal drug use. Moreover, she signed a statement of intent with automatic revocation of clearance for any violation.

On balance, after weighing the disqualifying and mitigating conditions, all the facts and circumstances, in the context of the whole person, I conclude she has mitigated the drug involvement security concerns.

### **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.d:	For Applicant

### **Conclusion**

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

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JUAN J. RIVERA  
Administrative Judge