



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



In the matter of:	)	
	)	
	)	ISCR Case No. 08-11212
SSN:	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: James F. Duffy, Esquire, Department Counsel  
For Applicant: *Pro Se*

December 23, 2009

**Decision**

HENRY, Mary E., Administrative Judge:

Based upon a review of the case file, pleadings, exhibits, and testimony, I conclude that Applicant's eligibility for access to classified information is granted.

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP) on July 23, 2009. The Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guidelines H and E on June 3, 2009. 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 received the SOR and answered it in writing on June 30, 2009 and again on July 20, 2009. He requested a hearing before an administrative judge. DOHA

received the request on July 23, 2009. Department Counsel was prepared to proceed on August 31, 2009, and I received the case assignment on September 3, 2009. DOHA issued a notice of hearing on September 25, 2009, and I convened the hearing as scheduled on October 20, 2009. The government offered three exhibits (GE) 1 through 3, which were received and admitted into evidence without objection. Applicant and four witnesses testified on his behalf. He submitted three exhibits (AE) A through C, which were received and admitted into evidence without objection. The record closed on October 20, 2009. DOHA received the transcript of the hearing (Tr.) on October 28, 2009.

### **Findings of Fact**

In his Answer to the SOR, Applicant admitted the factual allegations in ¶¶ 1.a, 1.b, and 2.a of the SOR, with explanations. He also provided additional information to support his request for eligibility for a security clearance.

Applicant, who is 28 years old, works as a graduate research assistant at a state university. In this position, he also works as a project team leader for a Department of Defense contractor. Applicant began his work as a research assistant six years ago and began working on a government contract more than 18 months ago.<sup>1</sup>

Applicant was born in Taiwan and emigrated from Taiwan to the United States in 1990 with his parents. He became a United States citizen in 1999 and holds a United States passport. Applicant graduated from high school in 1999. He attended college and graduated in 2003 with a bachelor's degree in mechanical engineering. He received a master's degree in aerospace engineering in 2005, and is currently working towards a Ph.D in aerospace system design. He anticipates receiving his Ph.D in 2010.

Applicant is engaged. He began dating his fiancée in 2005. They plan to marry in September 2010. He does not have any children.

As a college student, at age 20, Applicant first used marijuana while on a college break. Applicant and his long-time childhood friend drove to his friend's girlfriend's house to watch TV. During the evening, his friend asked him if he wanted to try marijuana. Applicant took four or five puffs from a bong, as he was curious about marijuana. Over the next six years, Applicant used marijuana about four additional times. He smoked marijuana once or twice, ate a brownie with marijuana, and used a smoking bowl maybe twice. He last used marijuana in the summer of 2007.<sup>2</sup>

Applicant never purchased marijuana for his use or for use by others. He has never been provided anything in exchange for marijuana and does not possess any drug paraphernalia. He last used marijuana with his girlfriend in the summer of 2007.

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<sup>1</sup>GE 1; Tr. 28, 45.

<sup>2</sup>GE 1; GE 2; GE 3; Tr. 41-43, 49-51.

Their upstairs neighbor provided the marijuana to them. He sees his neighbor in the driveway, but otherwise he does not have any contact with this neighbor. His girlfriend no longer smokes marijuana. To his knowledge, his girlfriend never purchased marijuana.<sup>3</sup>

Applicant's childhood friend still uses marijuana. Applicant served as his friend's best man when his friend married in September 2009. To Applicant's knowledge, marijuana was not at the wedding reception. He did observe marijuana at the bachelor party for his friend. Applicant did not use any marijuana at the party, but he believed six or seven individuals of the twelve who attended did use marijuana. Following his decision not to use marijuana, Applicant declined marijuana offers from his friend. His friend no longer offers him marijuana. Because he lives several hundred miles from his childhood friend, he sees him on rare occasions, usually when Applicant visits his parents. Before the wedding and bachelor party, Applicant has not seen his friend since late December 2008 or early January 2009.<sup>4</sup>

When he completed his e-QIP, Applicant acknowledged his past marijuana use, listing his estimate of his use. At the hearing, Applicant stated that he had no future intent to use marijuana or any other illegal drug. He has never been arrested for drugs or treated for drug problems. Applicant's employer has a zero tolerance policy for drug use at work, which he has not violated.<sup>5</sup>

Four friends and co-workers testified on Applicant's behalf. They have known each other between one and five years. All work with him and associate with him outside of work. Each describe Applicant as hardworking, reliable, dependable, truthful, ethical, and highly trustworthy. Applicant provided each with basic information about his past drug use and explained that his past drug use was the reason for the hearing. Applicant does not discuss using drugs as a social activity, and has never come to work smelling of marijuana. His witnesses have not observed him smoking marijuana. Each states that he follows company rules concerning the handling of proprietary information and sensitive information. His associates at work do not use drugs. A co-worker and his supervisor wrote letters of recommendation, which also reiterate his reliability, dependability, and trustworthiness. Applicant is an exemplary worker and can be trusted to comply with company procedures for handling propriety information. Applicant's academic advisor and the director of his laboratory opines that Applicant is candid and honest. He obeys "all the facets of the rules and guidelines set by the school." Applicant can be entrusted with proprietary information and to the best of his knowledge. Applicant has never been accused or suspected of improperly handling such information.<sup>6</sup>

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<sup>3</sup>Tr. 47, 52, 59, 64.

<sup>4</sup>*Id.* 44, 55-57, 61-62.

<sup>5</sup>GE 1; GE 2; Tr. 55, 63.

<sup>6</sup>AE A; AE B; AE C; Tr. 13-36.

## 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 used 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 overarching adjudicative goal is a fair, impartial, and commonsense 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, an applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." An 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 an 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.

(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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. In this case, the following disqualifying conditions may apply:

(a) any drug abuse (see above definition); and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant admitted in his e-QIP, answers to interrogatories, and testimony that he used marijuana on five or six occasions between 2001 and 2007. Although he has never purchased marijuana or any other illegal drug, to use marijuana he had to possess it. The government has established its *prima facie* case under Guideline H.

Under AG ¶ 26, Applicant may mitigate the government's security concerns through the following conditions:

(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; 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 were used;
- (3) an appropriate period of abstinence; and,
- (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant last used marijuana more than two years ago. Although his use of marijuana was infrequent, his use was intentional and not under unusual circumstances. Because he decided to use marijuana more than once, AG 26(a) is not applicable.

Applicant stopped using marijuana two years ago and has expressed an intent not to use marijuana or other illegal drugs in the future. Applicant has been honest and open about his past marijuana use. The government became aware of his marijuana use when he acknowledged it on his e-QIP. Because of his truthfulness, I find his statement that he will not use drugs in the future credible. Applicant has mitigated the government's security concerns under Guideline H.

#### **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.

Under AG ¶ 16, the following conditions could raise a security concern and may be disqualifying:

(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; and

(g) association with persons involved in criminal activity.

Applicant's past drug use creates a vulnerability for exploitation, manipulation, or duress. He continues to sporadically associate with his childhood friend who continues to use marijuana, an illegal substance. The government has established the applicability of the above disqualifying conditions under Guideline E.

Under AG ¶ 17, Applicant could mitigate the government's security concerns under the following conditions:

(d) the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur;

(e) the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress; and

(g) association with persons involved in criminal activity has ceased or occurs under circumstances that do not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations.

Applicant has been forthright and truthful about his past, infrequent marijuana use. He is not addicted to marijuana; thus, he has no need for counseling. He, however, decided not to use marijuana two years ago and will not use it in the future. Because of his truthfulness and openness about his past drug use, I find his statements about when he stopped using marijuana and about his future intent credible.

Applicant continues to associate with his childhood friend, an individual who still uses marijuana. Applicant does not spend much time with his friend, in part because they live many miles from each other. Marijuana use is not the basis for their friendship and is not the reason they visit with each other. His childhood friend introduced Applicant to marijuana. The friend now respects Applicant's decision not to use marijuana and does not press Applicant to participate. While his friend still uses marijuana, Applicant's continued association with his childhood friend does not cast doubt upon the individual's reliability, trustworthiness, judgment, or willingness to comply with rules and regulations. Applicant complies with his workplace rules on handling proprietary information. His witnesses describe him as trustworthy, reliable, dependable, and ethical. In weighing all the evidence, I find that Applicant has mitigated the government's security concerns about his personal conduct as related to his past drug use.

### **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 an applicant's

conduct and all relevant 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 decision to grant or deny a security clearance requires a careful weighing of all relevant factors, both favorable and unfavorable. In so doing, an administrative judge must review all the evidence of record, not a single item in isolation, to determine if a security concern is established and then whether it is mitigated. A determination of an applicant's eligibility for a security clearance should not be made as punishment for specific past conduct, but on a reasonable and careful evaluation of all the evidence of record to decide if a nexus exists between established facts and a legitimate security concern.

The evidence in support of granting a security clearance to Applicant under the whole person concept is more substantial than the evidence in support of denial. In reaching a conclusion, I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant used marijuana infrequently as a college and graduate student. His childhood friend of many years introduced him to marijuana because Applicant was curious about it. Other than his infrequent use of marijuana, Applicant is a model young adult working towards the American dream. He immigrated to the United States with his parents when he was nine years old. He became a citizen in 1999, about the time he graduated from high school. He attended college, graduating in 2003 with a bachelor's degree in mechanical engineering. He immediately enrolled in graduated school, where he continues to work and study. Two years after his college graduation, he received his master's degree and is currently working on his Ph.D. His co-workers, supervisor, and academic advisor speak highly of him. All of them describe him as honest and trustworthy. He is dependable and reliable with a strong work ethic. He is planning to marry his long-term girlfriend in 2010. He still associates with his childhood friend, who continues to use marijuana. This association does not raise a security concern because the friendship is not based on marijuana use, but bonds established over a long period of time. His friend understands and respects Applicant's wishes not to use marijuana. Their friendship is many years old and will continue into the future, but with fewer contacts because they live many miles apart and have different lives and responsibilities.



Overall, the record evidence leaves me without 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 about his past drug use and personal conduct related to his past drug use under Guidelines H and E.

### **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
Subparagraph 1.a:	For Applicant
Subparagraph 1.b:	For Applicant
Paragraph 2, Guideline E:	FOR APPLICANT
Subparagraph 2.a:	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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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MARY E. HENRY  
Administrative Judge