



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



In the matter of: )  
 )  
----- ) ISCR Case No. 09-00117  
SSN: ----- )  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

August 13, 2010

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant’s history of illegal drug involvement, his current use, and his intention to use in the future bars him by law from being granted a security clearance. Clearance is denied.

**Statement of the Case**

On January 8, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines.

DOHA received Applicant’s answer to the SOR on February 8, 2010. He admitted all of the allegations and requested a hearing. The case was assigned to me on April 5, 2010. On May 17, 2010, a notice of hearing was issued scheduling the case for June 8, 2010. The hearing was held as scheduled. At the hearing, I received three

government exhibits and Applicant's testimony. DOHA received the transcript on June 16, 2010.

### **Findings of Fact**

Applicant is a 34-year-old married man with two children ages two and four. He has a high school education. Since 2000, he has worked as an electrician. (Tr. 14) Currently, he works for a DoD subcontractor maintaining critical electrical systems and temperature control. (Tr. 16) Also, he works as an instructor at a local electrician's union where he teaches alternative energy, photovoltaics, and fuel cells. (Tr. 15)

Applicant entered the United States Navy in 1993. After testing positive for marijuana, he was administratively separated "by reason of Misconduct Due to Commission of a Serious Offense" in 1996. His discharge status was general under honorable conditions. (GE 3 at 3)

With the exception of a one-year period of abstinence in 2004, Applicant has smoked marijuana every day since 1996. He typically smokes marijuana after work. Once, while the security clearance application process was pending, he smoked it while carpooling to work in a company vehicle. (Tr. 25, 26) His most recent use was the night before the hearing. (Tr. 19-20, 26)

Applicant spends approximately \$200 per month on marijuana. During the week before the hearing, he purchased it on seven occasions. (Tr. 26)

Applicant's one year abstinence period in 2004, as noted above, was triggered by his failure of a drug test administered by the electrician's union. (Tr. 23) At the time, he was completing his apprenticeship. The union required him to attend drug counseling as a condition of continued membership. (Tr. 23)

Applicant remained drug-free through the remainder of his apprenticeship. (Tr. 23) After completing his apprenticeship and attaining journeyman status, Applicant resumed using marijuana. He did so because the union does not test licensed electricians and can no longer "influence . . . whether or not [he] use[s]." (Tr. 23)

When asked on cross-examination whether he intends to continue using marijuana, Applicant responded as follows:

At this point, I do intend to continue using marijuana. However, if it becomes an issue with employment, I would obviously stop. (Tr. 21)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). 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.

According to AG ¶ two(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."

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.

## **Analysis**

### **Drug Involvement**

Under 50 U.S.C. § 435c, "the head of a Federal agency may not grant or renew a security clearance for a covered person who is an unlawful user of a controlled substance or an addict." This statute is applicable only if the person is currently an unlawful user or addict. (See ISCR Case No. 03-25009 (App. Bd. June. 28, 2005))

Absent a clinical diagnosis, I do not conclude Applicant is addicted to marijuana. Conversely, there is ample evidence that Applicant is a current user of marijuana. Specifically, he smoked marijuana daily for at least 14 years, and maintained this frequency unabated through the night before the hearing. Moreover, his only period of abstinence in the past 15 years occurred when he was required to undergo periodic drug testing as a condition of membership in a trade union. As soon as this requirement ceased, he resumed smoking marijuana. Most importantly, Applicant admitted that he will continue to use marijuana.

Even if 50 U.S.C. § 435c did not bar Applicant from possessing a security clearance, I would still conclude that granting him a clearance is not clearly consistent with the national interest. Under the adjudicative guideline governing 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 ¶ 24). Applicant's history of marijuana use, his failed drug tests, and his intention to use marijuana in the future trigger the application of the disqualifying conditions set forth in of AG ¶¶ 25(a), "any drug abuse," 25(b), "testing positive for illegal drugs," 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia," and 25(h), "expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use." None of the 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.

Given the significant length and frequency of Applicant's marijuana use and the lack of any rehabilitation, I conclude that Applicant has failed to mitigate the security concern.

### **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 - 1.j:	Against Applicant

## **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge