



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



In the matter of:	)	
	)	
	)	ISCR Case No. 09-00233
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

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

August 31, 2009

**Decision**

HEINY, Claude R., Administrative Judge:

Applicant used illegal drugs starting in April 2007. Her last use of marijuana was in January 2009. Not enough time has passed for Applicant to have rebutted or mitigated the government’s security concerns under drug involvement. This is not to say that with additional time without further drug use, she would not qualify for a clearance. However, that time has not yet arrived. Clearance is denied.

**Statement of the Case**

Applicant contests the Defense Department’s intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a

<sup>1</sup> 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)

Statement of Reasons (SOR) on April 14, 2009, detailing security concerns under drugs and personal conduct.

On April 14, 2009, Applicant answered the SOR, and requested a hearing. On June 10, 2009, I was assigned the case. On July 1, 2009, DOHA issued a notice of hearing scheduling the hearing which was held on July 29, 2009.

The government offered Exhibits (Ex.) 1 through 4, which were admitted into evidence. Applicant testified on her own behalf and submitted Ex. A through Ex. J, which were admitted into evidence. The record was held open to allow additional information from Applicant. On July 29, 2009, additional material was submitted. Department Counsel had no objection to the material, which was admitted into the record as Ex. K. On August 4, 2009, the transcript (Tr.) was received.

### **Findings of Fact**

In Applicant's Answer to the SOR, she admits the factual allegations in the SOR. Applicant's admissions to the SOR allegations are incorporated herein. After a thorough review of the record, pleadings, exhibits, and testimony, I make the following findings of fact:

Applicant is a 22-year-old student who has worked part-time in inventory control for a defense contractor since September 2008. She is seeking to obtain a security clearance. Applicant's work performance has been outstanding. (Ex. F) She quickly mastered the tasks, took initiative, is dedicated, has keen analytical skills, and took on additional responsibility. Her work is both quick and efficient. Applicant is dedicated, conscientious, intelligent, trustworthy, and her time management skills are excellent. (Tr. 35, Ex. F) Applicant completes her work while remaining on the dean's list at school. (Tr. 36, Tr. F)

Applicant is an art institute senior. She has recently moved onto campus. (Tr. 49, Ex. D) The chair of her department, dean of academic affairs, and her academic advisor state: she was one of the brightest and most distinguished students, admired by her peers and teachers. (Ex. A) She is an intelligent, energetic person who does not shy away from taking on new challenges. She shows great leadership skills and enthusiasm. She is a motivated young woman held in high esteem.

Applicant ranks in the top 10 percent of juniors and seniors. (Tr. 23) Her cumulated grade point average is 3.6 placing her in the honors category. (Tr. 32, Ex. B, E) In the spring of 2009, Applicant was elected president of the college chapter for the upper classmen's academic honor society, a national college honor scholarship society. (Ex. B, G, H, I) (Ex. C) Applicant has been involved in fund raising activities, social events, charitable events, and community food drives with her honor society. (Tr. 35, Ex. J) The society also works with at-risk youth. (Tr. 40)

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promulgated by the President on December 29, 2005, and effective within the Department of Defense for SORs issued after September 1, 2006.

In 2005, following high school, Applicant went to a large state university in another state, which was a big change for her. Applicant discovered the large university was not for her. At the end of 2005, following one semester, Applicant returned home and fell in with the wrong crowd. The people she met and associated with were those not attending school. In April 2007, Applicant first tried marijuana. (Tr. 50) She was working in a movie theater when she attended a party at the home of two co-workers.

In June 2007, Applicant was living at home when she met others who had a negative influence on her. (Tr. 44, 51) They were visiting the area for the summer and left in August 2007. (Tr. 51) She used marijuana with these individuals three or four times a week. (Tr. 51, Ex. 3) Applicant no longer sees or associates with these individuals since they have moved to the other coast. Applicant was working at a restaurant. After that group left, Applicant still associated with people who used drugs from the movie theater and restaurant. (Tr. 52) Her marijuana use declined to once every couple of months. (Tr. 51) Applicant no longer associates with these individuals but now associates with fellow students. Applicant stated she was a much healthier and happier person now that the negative influence is out of her life and she has met new friends. (Rex. 2)

On October 7, 2008, Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP) in which she disclosed her illegal drug history. At a Halloween party in 2008, Applicant used marijuana. (Tr. 53) Shortly thereafter, she was interviewed about her drug usage, at which time she revealed all her use including her October usage. (Tr. 54) Her last use of marijuana occurred in January 2009 with a high school acquaintance. (Tr. 62) Both of these uses occurred after she had applied for a security clearance. Applicant was honest, forthcoming, and cooperative in discussing her illegal drug usage.

Between December 2007 and February 2008, Applicant used Clonazepam three times. (Tr. 46) Applicant first used it out of curiosity. In December 2007, during a panic attack, Applicant took one tablet of Clonazepam, which she obtained from a friend who had a prescription for the drug. The drug calmed her down. During the third incident, Applicant was shaking and crying uncontrollably when her mother gave her one tablet of Clonazepam. Her mother had a prescription for the drug. When Applicant took the drug she stopped crying, felt better, relaxed, and returned to normal. (Ex. 3)

During the summer of 2007, Applicant tried ecstasy and oxycodone one time each, the result of peer pressure. (Tr. 55) She obtained the oxycodone from a friend who had her wisdom teeth removed. (Tr. 60) Between July 2007 and July 2008, Applicant used cocaine three times. Each use occurred at a friend's home. (Ex. 3) Applicant believes cocaine to be "unbelievably dangerous and addictive." (Ex. 2)

Applicant's father died the week she started her current job. When her father died, she realized how short and precious life is and decided not to waste it on dangerous and harmful pursuits. (Ex. 2) She made a commitment to a healthy lifestyle and joined a gym. She has sought therapy to help her with the grief of losing her father.

In a November 2008 interview, Applicant stated she might continue occasional social use of marijuana if marijuana was present. She stated she had no intention to seek out marijuana, purchase marijuana, or use any other illegal drugs in the future. (Ex. 3) In February 2009, Applicant stated she had no interest, under any circumstances, to use marijuana or other illegal drugs in the future. (Ex. 4) Following the hearing, Applicant submitted a pledge never to use illegal drugs in the future. (Ex. J) Applicant understands the government's zero tolerance policy towards illegal drugs. (Tr. 63) Applicant no longer associates with any of the individuals with whom she had used illegal drugs. (Tr. 63)

Applicant's grandfather is the assistant facility security officer for the company where Applicant works. (Tr. 68) Applicant's grandmother has recently died and Applicant is helping her grandfather with the arrangements and throughout this period. (Tr. 69) Applicant states her illegal drug use were choices made by a young, immature, and foolish teenager. She sees her past usage as shameful and humiliating. (Tr. 21) Applicant has yet to graduate from college.

### **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 must be considered 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, 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**

### **Drug Involvement**

Revised adjudicative guideline (AG) ¶ 24 articulates the security concerns relating 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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

- (a) any drug abuse;
- (b) testing positive for illegal drug use;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;
- (e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;

(f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;

(g) any illegal drug use after being granted a security clearance; and,

(h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Starting in April 2007, Applicant used marijuana for the first time. During the summer of 2007, she used it three or four times a week. She also experimented with other drugs using cocaine three times, Clonazepam three times, ecstasy, and oxycodone once. In August 2007, when Applicant's associates returned home to the other coast, her use of marijuana greatly declined, but did not end. She used it at a Halloween party in 2008 after she had completed her e-QIP and last used it in January 2009. AG ¶ 25(a) applies.

AG ¶ 25(g) does not apply because Applicant had applied for a clearance, but did not have a clearance during her last two uses. However, it does go to the question of judgment for someone to use marijuana after applying for clearance and after having been interviewed about her drug use. This conduct is discussed under personal conduct below.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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.

AG ¶ 26(b) (1), (2), and (4) have some applicability. Applicant no longer associates with those who use illegal drugs. Her associates have returned to the other coast. She no longer associates with those individuals she knew from the movie theater and restaurant. She is an honor student associating with other students. She has signed a statement of intent with automatic revocation of clearance for any violation.

AG ¶ 26(a) only partially applies because her illegal drug use of certain drugs appears to be infrequent. Her use of cocaine, Clonazepam, oxycodone, and ecstasy appear to be experimental and infrequent. Additionally, they were last used more than two years ago. However, her use of marijuana was more frequent and more recent. Her marijuana use did not occur under unusual circumstances and her use does cast doubt on her reliability, trustworthiness, and good judgment.

The major concern is that Applicant's last used marijuana eight months ago. 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). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation."<sup>2</sup> I do not find eight months to be a significant period of time.

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<sup>2</sup> ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

*Compare* ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) ("The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.") (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security

## Personal Conduct

Revised adjudicative guideline (AG) ¶ 25 articulates the security concerns relating to 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.

The last two times Applicant's used marijuana occurred after she had started her security clearance process. It shows questionable judgment for someone to use marijuana after applying for clearance and after having been interviewed about her drug use.

AG ¶ 17 provides conditions that could mitigate security concerns:

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

(b) the refusal or failure to cooperate, omission, or concealment was caused or significantly contributed to by improper or inadequate advice of authorized personnel or legal counsel advising or instructing the individual specifically concerning the security clearance process. Upon being made aware of the requirement to cooperate or provide the information, the individual cooperated fully and truthfully;

(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;

(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;

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clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.



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

(f) the information was unsubstantiated or from a source of questionable reliability; 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.

None of the mitigating factors apply. AG ¶ 17(a) does not apply because the conduct of concern was marijuana usage after having applied for a clearance. There were no allegations of falsification or omission. The record is clear that Applicant was always honest and forthcoming as it related to her illegal drug usage. AG ¶ 17(b) does not apply because there was no failure to cooperate, omission, or concealment.

The use of illegal drugs was not minor, her last use was recent, and her use does cast doubt on her reliability, trustworthiness, or good judgment. AG ¶ 17(c) does not apply. AG ¶ 17(d) only partially applies because Applicant has acknowledged the behavior and no longer associates with those who use illegal drugs. However, it is too soon to find the behavior is unlikely to recur. AG ¶ 17(e) only partially applies because, although Applicant has taken steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress by no longer associating with drug users, the question is her use, and not the possibility of vulnerability, that was the security concern.

AG ¶ 17(f) does not apply because her illegal drug use was substantiated. AG ¶ 17(g) partially applies because Applicant no longer associates with persons involved in criminal activities. However, it was her illegal drug usage and not merely her association with drug users that was of security concern.

## **Whole Person**

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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. Applicant is a college senior, an honor student, and president of an honor society. Her work supervisor states she is dedicated, intelligent, trustworthy, and does outstanding work all while being on the dean's list at school. Her instructors and faculty members state she is a bright and distinguished student who shows great leadership skills and enthusiasm. She is a motivated young woman held in high esteem, and active in charitable events.

Applicant's drug use was contributed to by her youth, immaturity, and by peer pressure. She is completing her senior year in college, which often has a maturing effect on an individual. College graduation often forms a line of demarcation in a person's life between youth and adulthood. As she stated her illegal drug use were choices made by a young, immature, and foolish teenager.

Applicant asserts she is drug free, intends to remain drug free, and, as she matures, the factors leading to her drug usage, including peer pressure, are no longer as large an influence on her life. Applicant's intentions are good. The recency of her last use makes it difficult to ascertain the veracity of her assertion. Her last marijuana use was eight months ago. She may indeed stay drug free. However, it is simply too soon to find illegal drugs are no longer a part of her life.

The awarding of a security clearance is not a once in a lifetime occurrence, but is based on current disqualifying and mitigating conditions. Although the Applicant's evidence of rehabilitation is insufficient at this time, should she in the future be afforded an opportunity to reapply for a security clearance, with the passage of sufficient additional time, continued rehabilitation, and no future incidents of illegal drug usage or misconduct, she may well demonstrate persuasive evidence of her security worthiness. But that time has not yet arrived.

### **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, Drug Involvement: **AGAINST APPLICANT**

Subparagraph 1.a: Against Applicant

Subparagraph 1.b: For Applicant. This usage is included in SOR ¶ 1.a.

Subparagraph 1.c—1.f: Against Applicant

Paragraph 2, Personal Conduct: AGAINST APPLICANT

Subparagraph 2.a: 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.

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CLAUDE R. HEINY II  
Administrative Judge