



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



In the matter of: )  
)  
) ISCR Case No. 09-00347  
)  
) )  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff A. Nagel, Esq., Department Counsel  
For Applicant: *Pro Se*

December 29, 2009

**Decision**

LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated Drug Involvement security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On June 30, 2009, 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; 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 (DoD) for SORs issued after September 1, 2006.

Applicant answered the SOR on July 24, 2009, and requested a hearing before an administrative judge. The case was assigned to me on September 1, 2009. DOHA issued a notice of hearing on September 30, 2009, scheduling the hearing for

November 4, 2009. The hearing was convened as scheduled. The government offered Exhibits (GE) 1 and 2, which were received without objection. Applicant testified on his own behalf but did not submit any documentary evidence. The record was held open for Applicant to submit additional information. Applicant submitted a letter, which was marked Exhibit (AE) A and admitted without objection. DOHA received the transcript of the hearing (Tr.) on November 12, 2009.

### **Findings of Fact**

Applicant is a 24-year-old employee of a defense contractor. He is seeking to obtain a security clearance. He has worked for his current employer since February 2008. He attended college for a period but did not obtain a degree. He is single with no children. He and his girlfriend live together.<sup>1</sup>

Applicant started smoking marijuana in about December 2003. Between December 2003 and April 2007, he used marijuana about three to four times a week. He purchased small amounts of marijuana for his use. Applicant used psilocybin mushrooms on two occasions in 2004 and 2005. He did not enjoy the experience and has not used them since.<sup>2</sup>

Applicant has not used any illegal drugs since April 2007. His girlfriend is vehemently opposed to illegal drug use, as her brother died of a drug overdose. Applicant plans on proposing to her in several months and would not want to disappoint her. The group he used to use drugs with has essentially disbanded. He occasionally sees several of his old friends, but the friends he still has contact with have either stopped using drugs or keep their drug use to themselves. Applicant recently purchased a home.<sup>3</sup>

Applicant submitted a Questionnaire for National Security Positions (SF 86) on May 21, 2008. He fully listed his illegal drug use. He was questioned by an investigator from the Office of Personnel Management (OPM) on July 16, 2008, and fully discussed his drug use. He stated that he no longer used illegal drugs but could not rule out the possibility of use in the future. He was open, honest, and candid about his drug use at his hearing. He admitted that he exhibited extremely poor judgment when he used illegal drugs. He stated that he was attempting to be completely honest with the OPM investigator. His commitment to being completely drug-free has crystallized since the interview. He credibly testified that he will never use illegal drugs again. He submitted a statement of intent not to abuse any illegal drugs in the future with automatic revocation of clearance for any violation.<sup>4</sup>

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<sup>1</sup> Tr. at 16, 30-31; GE 1.

<sup>2</sup> Tr. at 21-26; Applicant's response to SOR; GE 1, 2.

<sup>3</sup> Tr. at 15-19, 23-25; Applicant's response to SOR.

<sup>4</sup> Tr. at 14-20; Applicant's response to SOR; GE 1, 2; AE A.

## 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 to be 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, administrative judges apply the guidelines 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 the 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 adverse 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* Executive Order 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

## Analysis

### Guideline H, Drug Involvement

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. Two are potentially applicable in this case:

- (a) any drug abuse;<sup>5</sup> and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and

Applicant's drug possession and use are sufficient to raise AG ¶¶ 25(a) and 25(c) as disqualifying conditions.

Two Drug Involvement mitigating conditions under AG ¶ 26 are potentially applicable:

- (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;
  - (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant stopped using illegal drugs in April 2007. He disassociated himself from his drug-using friends and avoided the environment where drugs were used. His girlfriend is adamantly opposed to illegal drug use. He has a good job and has recently

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<sup>5</sup> Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

purchased a home. He is going to propose to his girlfriend. He signed a statement of intent with automatic revocation of clearance for any violation. He clearly, unequivocally, and credibly committed to remaining drug-free. I find an appropriate period of abstinence and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

### **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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment. Applicant is a young man who regularly used illegal drugs, almost exclusively marijuana, for several years. He matured and stopped using illegal drugs in April 2007, before he started work for his current employer in February 2008 and applied for a security clearance in May 2008. He and his girlfriend live in a house he recently purchased. She is vehemently opposed to illegal drug use, having lost her brother to a drug overdose. He enjoys his job. He no longer associates with most of the people he used drugs with. The few he still occasionally sees have either stopped using drugs or keep their drug use hidden from him. Applicant credibly testified to a firm commitment to remaining drug-free.

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 has mitigated 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 eligibility for a security clearance. Eligibility for access to classified information is granted.

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Edward W. Loughran  
Administrative Judge