



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-01524
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gina L. Marine, Esquire, Department Counsel  
For Applicant: *Pro Se*

January 22, 2010

**Decision**

LYNCH, Noreen, Administrative Judge:

Applicant submitted his Security Clearance Application (SF 86) on October 24, 2008. On November 19, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing the security concerns under Guidelines H and E for Applicant. 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 acknowledged receipt of the SOR, answered the allegations, and requested a decision on the record in lieu of a hearing. Department Counsel submitted the Government's written case on November 23, 2009.<sup>1</sup> Applicant received a complete file of relevant material (FORM) on November 30, 2009, and was provided the

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<sup>1</sup>The government submitted five items in support of its contentions.

opportunity to file objections and submit material to refute, extenuate, or mitigate the Government's case. Applicant submitted a response to the FORM in a timely manner. Based upon a review of the record, pleadings, and exhibits, eligibility for access to classified information is denied.

### **Findings of Fact**

In his Answer, Applicant admitted the factual allegations in ¶¶ 1.a and 1.b in the SOR. He also admitted the allegations in ¶ 2.a. Applicant included a statement of intent with his Answer. In that statement, he promised not to "abuse any drugs in the future" and understood that a violation would result in the revocation of his security clearance (Item 3).

Applicant is a 43-year-old employee of a defense contractor. He graduated from high school and attended a technical college for two years. He obtained a degree in electrical technology in 1987 (Item 1). He is married with one child. He has worked in a professional capacity in the electrical engineering field for his entire career. He has been with his current employer since 1998.

Applicant first used marijuana while attending high school in 1981. Applicant claims he stopped using marijuana after graduating from high school "for a long period of time." He admitted that he last used marijuana in December 2008 on his security clearance application.

In November 2001, Applicant was drinking at home. He proceeded to drive to a store to get something to eat. The police stopped Applicant for driving on the wrong side of the road. Applicant was arrested for driving while intoxicated (DWI). While he was waiting for his court date on his DWI, Applicant was stopped for another incident (Item 5).

In December 2001, Applicant took a demerol tablet to get "high" at home. He then drove to get something to eat. Applicant drove into a tree and left the scene. After driving erratically, Applicant was stopped by the police. He failed a field sobriety test but passed the breathalyzer test. Applicant was found guilty of operating a motor vehicle under the influence of demerol. He served 20 days home confinement, completed community service, and was fined approximately \$1,000. The court ordered Applicant to submit to substance abuse screening for one year (Item 5).

Applicant completed his security clearance application in October 2008. He reported using marijuana illegally from April 2008 until he signed his security clearance application. He estimated his use was 25-30 times. He described his use as twice a week at home when he was alone. Applicant was employed with a defense contractor at the time (Item 4).

Applicant summarized in his answer to the FORM that he was not addicted to marijuana and therefore, he did not seek therapy. He stated that he had no difficulty stopping his marijuana use. He was not a frequent user of marijuana and that he intend not to use it again. He referred to his expertise in the workplace. He also stated that he does not want to put his family in danger by making foolish mistakes. Applicant acknowledged that his marijuana use has been “nothing but trouble.”

In December 2008, Applicant was interviewed by the Office of Personnel Management (OPM) investigator (Item 5). He admitted a history of marijuana use during his employment for a defense contractor. He told the investigator that he used marijuana after completing his October 2008 security clearance application and three days before his interview with the investigator. He claimed that the illegal use of marijuana did not affect his job, but if it would affect his employment status, he would stop and seek drug counseling (Item 5).

In May 2009, Applicant responded to DOHA interrogatories. He stated that he intended to stop using marijuana. He explained that after his December 2008 interview, he had been young and foolish and acted in a reckless manner but is now a responsible person (Item 5).

Applicant is described as an excellent coworker and a mentor in the company. He has the knowledge and experience of a veteran of the trade. He is a dedicated employee and family man. He is dependable and responsible.

Applicant's brother described him as an honest and hard-working individual who has made sacrifices for others throughout his life. He praised Applicant for his honesty in reporting the illegal use of marijuana on his security clearance application. He believes Applicant realizes his mistakes and has moved forward with his life and left his marijuana use behind.

Applicant's employee performance reviews for the past ten years consistently rate him as fully satisfactory. He is an asset to the company, and plays a vital role in the performance of the company mission. His supervisor describes him as a safe and experienced worker. His productivity, knowledge, and cooperation are excellent.

### **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 required 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**

### **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(a), Any drug abuse<sup>o</sup> is potentially disqualifying. Under AG ¶ 25(c) “illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia” is also potentially disqualifying. Applicant admitted his illegal use of marijuana, in varying amounts and frequency, spanning a period from about 1981 until December 2008. He possessed marijuana before he used it. He claimed that he stopped using marijuana for a long period after high school. Under AG ¶ 25(g) “any illegal drug use after being granted a security clearance” is a disqualifying condition. Applicant illegally used marijuana after completing his October 2008 security clearance application. He used marijuana during the time that he was employed by a federal contractor. AG ¶¶ 25(a) and 25(c) apply; however, 25(g) does not apply because his security clearance was not approved at the time he used marijuana.

The guideline also includes examples of conditions that could mitigate security concerns arising from drug involvement. Under AG ¶ 26(a), the disqualifying condition may be mitigated where Athe behavior happened so long ago, was so infrequent, or occurred under such circumstances that it is unlikely to recur and does not cast doubt on the individual-s current reliability, trustworthiness, or good judgment.<sup>o</sup> Applicant-s pattern of illegal drug use (marijuana) continued from a young age to adult maturity. He was a mature adult working for a defense contractor and violating the drug policy when he continued to use illegal drugs. He used marijuana after completing his 2008 security clearance application. This shows poor judgment and lack of trustworthiness. I do not find that this mitigating condition applies.

Under AG ¶ 26(b), it may be mitigating where there is Aa 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 signed a statement of intent in November 2009. He reiterated his promise not to use marijuana in the future. He claimed that his last use was just before his OPM interview in December 2008. Applicant’s most recent use of marijuana included frequencies he described as twice a week. Moreover, he used it during his long employment with a defense contractor and after his arrests which included a year of court-ordered substance abuse screening. I do not find his statement of intent or period of abstinence to be sufficient for mitigation under this condition. None of the other mitigating conditions fully apply.

### **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.

With respect to the personal conduct concerns involving Applicant's illegal use of marijuana from 1981 until December 2008, while holding a position with a defense contractor and after completing his 2008 security clearance application, the pertinent disqualifying conditions are AG ¶ 16(d)(3), "a pattern of rule violations," and AG 16(e)(1), "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 their personal, professional, or community standing." Certainly, Applicant's illegal use of marijuana during his employment violates rules and regulations, and a lengthy history of such problems is conduct a person might want to conceal, as it adversely affects a person's professional and community standing.

The mitigating condition outlined in AG 17(e), "the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress" applies to Applicant's use of marijuana. The government, Applicant's security officials and supervisor are aware of these problems. He disclosed the information on his security clearance application. He has taken positive steps of disclosure, eliminating any vulnerability to exploitation, manipulation, or duress. I do not believe Applicant would compromise national security to avoid public disclosure of these problems. Any personal conduct security concerns, pertaining to illegal drug use, are dealt with more thoroughly under Guideline H in this decision. Applicant deserves credit in the whole person analysis for candidly admitting his recent illegal use of marijuana in his security clearance application. Personal conduct security concerns are mitigated.

### **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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case and conclude that they are not sufficient to overcome the government's case. Applicant is a mature, educated professional. He has a wife and a son to support. He served in a professional capacity for his entire career. He used marijuana during his time with his current employer. He never felt there was a problem. He continued to use marijuana after his court-ordered substance abuse screening for one year in 2001. His last use marijuana was in December 2008.

Applicant completed his 2008 security clearance application and disclosed his use of marijuana and his arrests. He told the interviewer in 2008 that he used marijuana three days prior to the interview. He was candid during the security clearance process and acknowledged his mistakes. He has not obtained any drug counseling and did not believe that the use of marijuana affected his job performance. Indeed, he has a very good record of employment. He has character references who recommend him. He intends to stop using any illegal drug in the future. His most recent marijuana, use given the history of illegal use, despite his statement of intent, does not provide sufficient mitigation to carry his burden of proof under Guideline H or the whole person concept.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility, judgment, and suitability for a security clearance. For all the reasons discussed above, I conclude Applicant has not mitigated the security concerns arising from his drug involvement. He has mitigated the security concerns under personal conduct.

### **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:	Against Applicant
Subparagraph 1.b:	Against 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 not clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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Noreen A. Lynch  
Administrative Judge