



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



In the matter of:  ----- SSN: -----  Applicant for Security Clearance	) ) ) ) ) ) )	ISCR Case No. 09-01925
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**Appearances**

For Government: Eric Borgstrom, Esq., Department Counsel  
For Applicant: Jeffrey M. Scafaria, Esq.

March 3, 2010

**Decision**

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MARSHALL, Jr., Arthur E., Administrative Judge:

Applicant completed a security clearance application (e-QIP) dated January 6, 2009. On August 24, 2009, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising 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, which are effective for SORs issued after September 1, 2006.

In a March 6, 2009, response, Applicant substantially admitted five of the six allegations set forth in the SOR and requested a hearing on the matter.<sup>1</sup> DOHA assigned the case to me on December 1, 2009. Department Counsel and Applicant agreed to a hearing date of January 21, 2010. A notice of hearing was issued to that effect on December 16, 2009. I convened the hearing as scheduled. Applicant gave

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<sup>1</sup> See also Tr. 21.

testimony and offered five documents, accepted into the record without objection as exhibits (Exs.) A-E. Applicant was given through February 4, 2010, to submit any additional documentation. Department Counsel offered two documents, admitted as exhibits (Exs.) 1-2 without objection. The transcript (Tr.) of the proceeding was received on January 29, 2010. On January 27, 2010, Applicant submitted three additional documents through Department Counsel, who forwarded the materials without objection on February 26, 2010. They were accepted into the record as Exs. F-H and the record was closed. Based on a review of the testimony, submissions, and exhibits, I find Applicant met his burden regarding the drug involvement security concerns raised. Security clearance is granted.

### Findings of Fact

Applicant is a 32-year-old staff mechanical engineer working for a government contractor. He has worked for his present employer since 2001. His performance reviews indicate excellent professional skills. In completing his e-QIP, he completely disclosed his past drug use and reviewed his answers for accuracy prior to its submission. Applicant has a bachelor's degree in mechanical engineering and is working on a graduate degree. He is married and has one young child.

While a college student in 1998, Applicant began using marijuana, an illegal substance, with varying frequency.<sup>2</sup> He obtained marijuana either through purchase from friends or through shared use with friends, but he never sold the substance.<sup>3</sup> He graduated from college in 2000. In January 2001, he twice "experimented" with ecstasy, an illegal psychoactive amphetamine which he was given.<sup>4</sup> A month later, Applicant started his present position. In the summer of 2003, he tried hallucinogenic mushrooms, prohibited substances he was once given by a friend.<sup>5</sup> He describes his experience as "strictly experimental."<sup>6</sup>

Applicant's father suffers from kidney stones, a condition from which Applicant also suffers. Today, Applicant mostly manages pain related to this condition by drinking water and using Ibuprofen.<sup>7</sup> Between 2005 and January 2009, however, he used prescribed and unprescribed Percocet to help manage related pain on about 30

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<sup>2</sup> Applicant used marijuana about 40 times over 10 years, mostly in college. He described his use as "experimental and recreational. . . . None of it ever affected my quality of life, or my home life, or my family, in any way." Tr. 22, 32-33.

<sup>3</sup> Applicant has not purchased marijuana since about 2003.

<sup>4</sup> *Id.*, Tr. 39.

<sup>5</sup> Tr. 39.

<sup>6</sup> *Id.*

<sup>7</sup> Applicant has "sort of an open-ended prescription at this time, and he is being treated [medically for kidney stones]." Tr. 54.

occasions.<sup>8</sup> He did not use the medication for recreational purposes. Applicant was not on a regular dosage regimen and bouts of pain were irregular. While prescribed Percocet, he used pills prescribed to his father about 10 to 15 times to address pain commencing when he visited his parents, and he did not have his own pills with him.<sup>9</sup> In light of his prescription and his medical condition, Applicant never considered whether using his father's Percocet might be illegal.<sup>10</sup> He never used illegal drugs or illegally used Percocet during the work day.

In 2007, Applicant was entertaining some friends. A friend who suffered from migraines asked Applicant if he could have one of the Percocet pills that Applicant kept in his medicine cabinet. Applicant granted the request.

Ultimately, Applicant quit using marijuana in June 2008, after becoming a father in May 2007 and getting married in July 2007.<sup>11</sup> His marijuana use after college was sporadic. During the summer he was married and eventually quit using marijuana, he used marijuana socially with high school friends and his wife a couple of times. Today, he rarely associates with these friends, all of whom are now married.<sup>12</sup> Their contact is minimal, mostly through play dates for their children. He does not know if they still use drugs.

When Applicant quit using marijuana, he did so by quitting "cold turkey." He had no difficulty with the process of eliminating his increasingly minimal use. He chose to do so for a variety of reasons. Having reached age 30, he realized he needed to comport his behavior to his level of maturity. The birth of his child and the rush toward marriage two months later had been a "crash course on reality," emphasizing his need to get himself "in line and start being responsible for the other people in [his] life."<sup>13</sup> In light of their situation, and their fast acquisition of a home in a new area, the couple decided to commit themselves to their marriage and child, forego drugs in the future, and make a "fresh start."<sup>14</sup> Both are committed to staying drug-free. Applicant has executed a document indicating his willingness to have a security clearance revoked should he ever again abuse drugs.<sup>15</sup> He has never been referred for drug counseling or felt the

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<sup>8</sup> Tr. 36. Evidence of a post-emergency room visit and Percocet prescription from December 2005 were accepted as Ex. G.

<sup>9</sup> Tr. 37. Because the onset of pain was irregular, one prescription "would last a very long time." See *also* Ex. F (Letter of legal counsel).

<sup>10</sup> Tr. 57-58.

<sup>11</sup> Tr. 27-31.

<sup>12</sup> Tr. 34, *compare* Tr. 41 (Applicant no longer associates with those from whom he bought marijuana).

<sup>13</sup> Tr. 43, 49.

<sup>14</sup> Tr. 44, 49. (The couple jointly agreed to clean "up their acts" and focus on their marriage).

<sup>15</sup> Tr. 47; Ex. H (Statement).

need to seek counseling. He has been drug-free since June 2008, nearly 21 months ago.

At work, Applicant is a trusted and valued employee.<sup>16</sup> He has not had any unexcused absences, and he has not been cited for any violations of company rules or policies.<sup>17</sup> His present employer conducts drug screening. Applicant passed the one drug test he was administered while working for his current employer.<sup>18</sup> He has received “a broad spectrum of [drug] awareness training.”<sup>19</sup>

Applicant’s social life has radically changed since starting a family. He spends most of his time with his wife and daughter. Any available free time is spent working on his house and chaperoning play dates for his child. He plays golf when he can, but “partying” with friends is a social aspect of his life that had diminished by the late 2000s.<sup>20</sup> His current use of alcohol is “almost non-existent.”<sup>21</sup> His current peers are mostly professional colleagues or fellow parents of young children who lead settled lives.<sup>22</sup> Applicant’s wife is a social worker who has worked for the same employer for about three years. She does not have a criminal record or any dependency issues. They socialize about once a month.<sup>23</sup>

### Analysis

Under Guideline H, 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.<sup>24</sup> “Drugs” are defined as mood and behavior altering substances, and include 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

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<sup>16</sup> Exs. A-D (References).

<sup>17</sup> Tr. 45.

<sup>18</sup> Tr. 45-46.

<sup>19</sup> Tr. 62.

<sup>20</sup> Tr. 50.

<sup>21</sup> Tr. 52. Before his marriage, Applicant used to go out on weekends and imbibe alcohol. Today, he has an alcoholic beverage “every few weeks,” usually with dinner or with friends Tr. 52. He partly attributed his minimal drinking of alcoholic beverages on the fact that “everybody has kind of gotten into the parenthood thing. So it is not really, it is not around.” Tr. 53.

<sup>22</sup> Tr. 51.

<sup>23</sup> Tr. 53.

<sup>24</sup> Revised Adjudicative Guideline (AG) ¶ 24.

inhalants and other substances.<sup>25</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.<sup>26</sup>

Applicant admitted using and purchasing marijuana, using ecstasy and hallucinogenic mushrooms, and using Percocet prescribed for someone other than himself. These admissions are sufficient to raise Drug Involvement Disqualifying Condition (DI DC) AG ¶ 25(a) (“any drug abuse”). With a disqualifying condition raised, it is Applicant’s burden to mitigate security concerns.

With regard to Applicant’s relatively isolated use of ecstasy and his experimentation with hallucinogenic mushrooms, those substances were used in 2001 and 2003, respectively, and he has not again abused those drugs. When he “borrowed” Percocet from his father, he did so knowing he had a prescription for the medication of his own at his own home, but the onset of pain occurred when he was visiting his parents. At the time, he did not understand that treating their prescriptions as fungible could have legal consequences. Today, he understands the repercussions. With regard to the ecstasy, mushrooms, and borrowed Percocet, Drug Involvement Mitigating Condition (DI MC) AG ¶ 26(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”) applies. To a lesser degree, it also applies to the 2007 incident when he permitted a friend to have one of his personally prescribed Percocet. The incident was not recent, and, in light of Applicant’s credible testimony, it is clear he did not understand the legal nuance of granting permission to his friend, who had a migraine, to use one of his prescription medications. This mitigating condition does not, however, apply to Applicant’s use of marijuana.

Although Applicant quit using marijuana about 21 months ago, the circumstances under which he foreswore the drug are significant. In short order, Applicant went from a socially active bachelor to father and husband in what he concedes was a rushed arrangement. Within a year, the reality of his new situation became apparent. He recognized that he was older, more mature, and that, even though his use of marijuana had become minimal, it was time for him to comport his behavior to that which was appropriate for a professional adult. Of equal importance was the joint decision by Applicant and his wife to genuinely work on becoming responsible adults, spouses, and parents. Although this decision was made a year after the birth of their child and their marriage, their circumstances were unique and not traditional. They jointly committed to give up all drugs and have stayed drug-free for nearly two years.

During that time, Applicant shifted his focus to his family and his home. He no longer focuses on a bachelor’s lifestyle or the buddies with whom he used to use drugs. In the interim, most of those friends have also matured, married, and become parents. Today, he has little to no contact with those who use drugs or circumstances in which drugs may be present. Moreover, Applicant has signed a statement of intent with

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<sup>25</sup> *Id.* at ¶ 24(a)(1-2).

<sup>26</sup> *Id.* at 24(b).

automatic revocation of clearance for any future drug use. These efforts are significant, as are the facts related to Applicant's minimal use of marijuana at the time he quit drugs, the intervening period since he used other illegal substances, and his understanding of the legalities and responsibilities associated with prescription medication. Such understanding and efforts are further fortified by the interdependent support offered between Applicant and his wife in their attempts to work on building a family and serving as role models for their child. Therefore, DI MC AG ¶ 26(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) apply. There is no evidence that Applicant abused drugs, such as Percocet, prescribed to him, nor is there evidence treatment at a prescribed drug treatment program or facility was warranted. Consequently, none of the remaining mitigating conditions are applicable.

Applicant has been drug-free for approximately 21 months. He quit using drugs "cold turkey" without difficulty. He and his wife maintain a drug-free home and socialize in drug-free venues. Neither drugs, alcohol, or suspect influences remain in their lives as they endeavor to work on their marriage and their roles as responsible, professional parents. Drugs are no longer compatible with their lifestyle. Applicant credibly and unequivocally expressed his intent not to use drugs in the future. As a safeguard, he has signed a statement of intent with automatic revocation of clearance for any violation concerning illegal or improper drug use. His place of employment utilizes drug testing to check for drug abuse. Drug involvement security concerns are mitigated.

### **Whole Person Concept**

Under the whole person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An 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 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, as well as the "whole person" factors. Here, Applicant used illegal drugs and used his father's prescription drugs

illegally in his 20s, slowly phasing out his drug use until he was only a minimal marijuana user in his very early 30s. His drug abuse was social and he knew it was proscribed. As he matured, however, his drug use diminished. When he suddenly found himself a father and husband, the reality of his new situation took about a year to accept. Ultimately, he and his wife made the affirmative decision to quit drugs, eschew their use in the future, and focus on their new family. They have changed their lifestyle and their priorities. Neither has used drugs in nearly 21 months.

In his efforts to stay drug free, Applicant has more than self resolve for support. The decision to quit drugs was jointly made with his wife. His employer utilizes drug screening. Additionally, he has signed a letter of intent with automatic revocation of his security clearance should he waver and return to drugs.

Applicant's past use and abuse of Percocet presents a somewhat distinct subcategory of drug abuse. Here, Applicant was initially prescribed the medication for pain associated from chronic and recurring kidney stones, a condition that apparently runs in his family. For the most part, this condition is now managed through legally available substances. Still, Percocet was prescribed and used. Not having specialized knowledge as to whether prescribed medications were fungible amongst family members and similarly situated patients, he did not think twice about using one of his father's Percocet with his father's permission when kidney stone pain commenced while he visited his parents and his own Percocet supply was unavailable. He similarly did not give thorough thought to permitting a friend suffering from a migraine to take one of his own Percocet for pain. Today, Applicant understands the legality of using medications prescribed for others, regardless of whether one has their own prescription for the same medication. Understanding such legalities, and in light of his current methods for dealing with kidney stone related pain, there is no evidence that such past sharing of prescription medication will be repeated. With security concerns regarding his drug involvement mitigated, I conclude it is clearly consistent with national security to grant Applicant a security clearance. Clearance is granted.

### **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
Subparagraph 1.c:	For Applicant
Subparagraph 1.d:	For Applicant
Subparagraph 1.e:	For Applicant
Subparagraph 1.f:	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 a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.  
Administrative Judge