



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| -----, -----                     | ) | ISCR Case No. 09-04560 |
| SSN: -----                       | ) |                        |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Braden M. Murphy, Esquire, Department Counsel  
For Applicant: *Pro se*

October 20, 2010

**Decision**

WHITE, David M., Administrative Judge:

Applicant used marijuana regularly from June 1999 to March 2009, purchasing it about 20 times while in college, when he also experimented with two other drugs. He says he stopped in March 2009 because drug use would hurt his career ambitions. He provided no evidence of counseling or treatment, and minimal other evidence of rehabilitation. No other evidence of good character or reliability was offered in mitigation. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

Applicant submitted a security clearance application (SF 86) on April 6, 2009.<sup>1</sup> On March 24, 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).<sup>2</sup> The action was taken under Executive Order 10865,

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<sup>1</sup>Item 4.

<sup>2</sup>Items 1 and 2.

*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 adjudicative guidelines effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR in writing on May 10, 2010, and requested that his case be decided by an administrative judge on the written record without a hearing.<sup>3</sup> Department Counsel submitted the Government's written case on June 15, 2010. A complete copy of the File of Relevant Material (FORM)<sup>4</sup> was provided to Applicant, and he was afforded an opportunity to file objections and submit material in refutation, extenuation, or mitigation within 30 days of his receipt of the FORM.

Applicant signed the document acknowledging receipt of his copy of the FORM on June 29, 2010, and returned it to DOHA. On July 22, 2010, Applicant submitted his written response to the FORM, and made no objection to consideration of any evidence submitted by Department Counsel. On July 27, 2010, Department Counsel initialed a memorandum to indicate that he had no objection to the admissibility of Applicant's response to the FORM. I received the case assignment on August 6, 2010.

### **Findings of Fact**

Applicant is a 27-year-old employee of a defense contractor, where he was hired in May 2006. He has no military service. This is his first application for a security clearance. He is single, and has no children. He earned a bachelor's degree in International Business Administration in 2005, and has taken some courses toward a master's degree.<sup>5</sup> In his response to the SOR, he admitted all the allegations in the SOR. Applicant's admissions, including his responses to the SOR, and to DOHA interrogatories, are incorporated in the following findings.

Applicant began smoking marijuana with friends in June 1999, while he was 16 years old and in high school. He used the drug habitually during his later high school and college years. While in college, he purchased marijuana approximately 20 times. He also illegally used cocaine three times between April 2002 and June 2004, and hallucinogenic (psilocybin) mushrooms once during October 2003. On May 7, 2009, he told an interviewer from the Office of Personnel Management (OPM) that his marijuana use decreased to about four times per month after he graduated from college in December 2005, and that his last use was on March 17, 2009.<sup>6</sup> There is no evidence of drug use after that date, and Applicant claims that he stopped using drugs after that

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<sup>3</sup>Item 3.

<sup>4</sup>The Government submitted six Items in support of the SOR allegations.

<sup>5</sup>Item 4.

<sup>6</sup>Item 4 at 46; Item 5 at 5.

date because he needed to grow up and realized that drug use could negatively impact his career ambitions.<sup>7</sup>

Applicant has never sought or undergone counseling, treatment, or a chemical-dependency evaluation. He said, in his response to the FORM, that he has partially dissociated from the friends with whom he used “substances” in the past, and now avoids “social functions or public concerts, where drugs are expected to be utilized.” He included a signed statement of intent to abstain from future drug use, although he made no mention of automatic revocation for any violation. He told the OPM investigator that nothing about his past conduct, including drug abuse, could be used to coerce or blackmail him, and that his friends are aware of it. However, he also said that his parents are unaware of his drug abuse.<sup>8</sup>

Applicant submitted no other evidence describing his character, trustworthiness, or work performance. I was unable to evaluate his credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

### **Policies**

When evaluating an applicant’s suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions (DCs) and mitigating conditions (MCs), 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, these guidelines are applied in conjunction with the factors listed in AG ¶ 2 describing the adjudicative process. The administrative judge’s overarching adjudicative goal is a fair, impartial, and commonsense decision. According to AG ¶¶ 2(a) and 2(c), the entire process is a conscientious scrutiny of applicable guidelines in the context 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 the 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.

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<sup>7</sup>Item 3; Item 5 at 5; Response to FORM.

<sup>8</sup>Item 5 at 5.

Under Directive ¶ E3.1.14, the Government must present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, “[t]he 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, and has the ultimate burden of persuasion as to obtaining a favorable clearance decision.” Section 7 of Executive Order 10865 provides: “[a]ny determination under this order adverse to an applicant shall be a determination in terms of the national interest and shall in no sense be a determination as to the loyalty of the applicant concerned.”

A person applying for access to classified information seeks to enter 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.

## **Analysis**

### **Guideline H, Drug Involvement**

AG ¶ 24 expresses the security concern pertaining 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.

(a) Drugs are defined as mood and behavior altering substances, and include:

(1) 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

(2) inhalants and other similar substances;

(b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying. The DCs raised by the evidence in this case include:

(a) any drug abuse (see above definition); and

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

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.

Applicant's use of cocaine and hallucinogenic mushrooms was infrequent and occurred more than six years ago. Standing alone, these incidents could be considered to be mitigated under AG ¶ 26(a). However, they do not stand alone, and must be considered in light of Applicant's frequent and regular abuse of marijuana from June 1999 to March 2009. This behavior continued until only a few weeks before he certified and submitted his security clearance application, and his only explanation for quitting was the potential adverse effect on that clearance and his professional ambitions. He regularly abused marijuana during his first three years of employment by the defense contractor, and failed to persuasively demonstrate that such conduct is unlikely to recur or does not cast doubt on his current trustworthiness or good judgment. His recent abstinence, assuming that his self-serving denial of use since March 2009 is true, forms a foundation for potential future application of this mitigating condition but the weight of evidence does not yet support it.

Applicant said that he has tried to disassociate from drug-using friends and contacts, but has not completely done so. He further said that he has tried to avoid various environments where he formerly used marijuana. The evidence indicates that he has been abstinent since March 17, 2009. He attempted, but failed, to submit a statement of intent with automatic revocation for any violation. These facts, if true, begin to establish mitigation under AG ¶ 26(b). However, when balanced against a ten-year period of regular, even habitual, marijuana use starting at age 16, and only ending in connection with seeking approval of this security clearance, they are insufficient to support a reasonable finding of demonstrated intent not to abuse drugs in the future, once such a clearance was in hand. There is no hard and fast rule concerning how long “an appropriate period of abstinence” is, but Applicant failed to meet his burden of proof that his recent abstinence suffices under all the circumstances.

The drug abuse in this case did not involve prescription drugs, so AG ¶ 26(c) has no bearing on this decision. Applicant has not participated in any drug treatment program, or even been evaluated to determine whether his drug abuse or potential dependence would warrant such treatment. No favorable prognosis by a duly qualified medical professional was provided, so no mitigation was established under AG ¶ 26(d).

### **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 relevant facts and circumstances surrounding this case. Applicant is an educated and experienced adult, who is responsible for his voluntary choices and conduct that underlie the security concerns expressed in the SOR. He spent ten years regularly smoking marijuana with blatant disregard for the law prohibiting such conduct. He demonstrated that he knew this behavior was wrongful by keeping his parents ignorant of it. He continued abusing marijuana after leaving college, and for three years while

working for his current employer. He failed to convincingly demonstrate that he would not return to using marijuana if it would not limit his being granted a clearance. His recent abstinence and lifestyle changes form a good beginning toward demonstrating rehabilitation, but are too recent to sufficiently demonstrate that his drug problems are unlikely to continue or recur. Applicant kept information about his drug use from his parents, and failed to demonstrate that the resulting potential for coercion or exploitation should be of no concern. His abstinence since March 2009 is a good start toward mitigating the concerns arising from his decade of regular drug abuse, but more such lawful behavior, while not under scrutiny for a pending clearance application, is necessary to alleviate those concerns.

Overall, the record evidence creates substantial doubt as to Applicant's present eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not mitigated the security concerns arising from his drug involvement.

### **Formal Findings**

Formal findings for or against Applicant on the allegations set forth in the SOR, as required by ¶ E3.1.25 of Enclosure 3 of the Directive, are:

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|--------------------------------|-------------------|
| Paragraph 1, Guideline H:      | AGAINST APPLICANT |
| Subparagraphs 1.a through 1.d: | Against Applicant |

### **Conclusion**

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

DAVID M. WHITE  
Administrative Judge