



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-04566
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Julie Mendez, Esquire, Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

July 14, 2010

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant's history of drug involvement generates a security concern. Applicant's drug use occurred during his college years. He has not used any illegal drugs in 18 months. Since graduating, he has obtained a job with a defense contractor, where he has excelled, and he no longer associates with his friends with whom he used illegal drugs. Applicant has mitigated the drug involvement security concern. Clearance is granted.

**Statement of the Case**

On January 11, 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. The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; of Defense Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the Department of Defense for SORs issued after September 1, 2006.

Applicant answered the SOR on February 2, 2010, admitting all of the allegations and requesting a hearing. The case was assigned to me on March 12, 2010. On March 24, 2010, a notice of hearing was issued scheduling the case for April 21, 2010. On April 13, 2010, the Applicant retained an attorney who entered his appearance and filed for a continuance. I granted the continuance over Department Counsel's objection and rescheduled the hearing for May 5, 2010. The hearing was held as rescheduled. At the hearing, I received three Government exhibits, seven Applicant exhibits, and Applicant's testimony. The transcript was received on May 12, 2010.

### **Findings of Fact**

Applicant is a 25-year-old single man. He graduated from college in December 2008 with a bachelor of science degree in computer engineering. Since February 2009, he has worked for a defense contractor as a software engineer. (Tr. 22)

Applicant is highly respected on the job. According to Applicant's production lead, he is "the most productive entry-level engineer [that the production lead] has ever seen." (AE A) According to a coworker, he is an "extremely trustworthy, diligent, and efficient worker who is able to solve complex problems with ease." (AE B)

Applicant abused illegal drugs while in college, including marijuana, cocaine, and hallucinogenic mushrooms. He also abused prescription drugs on four occasions. (Tr. 28) Applicant began using marijuana in 2001 as an 18-year-old college freshman. (Tr. 23) He used it once or twice per week. (Tr. 23) He experimented with hallucinogenic mushrooms once in 2003. (Tr. 24)

Applicant characterized his marijuana use as a "social thing," popular with many residents of his college dormitory. (Tr. 15) In 2001, Applicant was issued a citation for underage drinking, and was administered a drug test. (Tr. 33) He tested positive for marijuana and was required to attend outpatient treatment with Narcotics Anonymous (NA). (Tr. 33) Applicant attended counseling sessions approximately twice weekly for eight to twelve weeks. Although he did not use marijuana during the sessions, he resumed it after completing the counseling, using it with the same frequency that he had used before attending the counseling, through 2003. (Tr. 24, 34)

In 2003, Applicant graduated to cocaine use. He used it approximately once per week between January 2003 and May 2005. (Tr. 26) He has not used it on a regular basis since then. However, he did use it once in July 2007 and once in December 2008. (Tr. 28) His last use occurred around the time of his graduation. He wanted to do it "one last time" before finishing college. (Tr. 27)

Applicant has not abused any illegal drugs or prescription drugs since December 2008. Since graduating from college, he no longer associates with his drug-abusing friends. (Tr. 17) In early 2010, Applicant purchased a life insurance policy. (Tr. 19) In March 2010, the insurance company administered to Applicant a drug test. He passed. (AE F)

In April 2010, Applicant executed a notarized statement of intent not to abuse illegal drugs in the future. (AE D) That month, he re-enrolled in NA. As of the date of the hearing, he had attended three counseling sessions between the 18<sup>th</sup> and 27<sup>th</sup> of April 2010. (AE E)

Applicant is active in the community, participating in a program geared toward elementary school children that teaches them how municipalities and businesses operate. (Tr. 35) Also, he volunteers with a charitable organization that strives to reduce infant mortality. (Tr. 35) Specifically, he helps the organization raise money by participating in walk-a-thons. (Tr. 36)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied together with the factors listed in the adjudicative process. 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."

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.

## **Analysis**

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

Under this guideline, "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 ¶ 24). Applicant's history of illegal drug use triggers the application of AG ¶¶ 25(a), "any drug abuse," and 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia." Applicant's failed drug test in 2001 triggers the application of AG ¶ 25(b), "testing positive for illegal use." Although Applicant has attended drug counseling over the years, there is no record evidence that he was ever diagnosed or evaluated as drug dependent. Neither AG ¶ 25(d), "diagnosis

by a duly qualified medical professional . . . of drug abuse or dependence,” nor AG ¶ 25(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,” apply.

Although Applicant’s drug use occurred when he was a college youth, it was significant. His use of cocaine, the most significant of the drugs he abused, occurred during the latter half of his college years, and he used it twice between 2007 and 2008 after stopping regular use in 2005. Under these circumstances, his 18 months of drug abstinence, when considered alone, is not recent enough for 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,” to apply.

Nevertheless, Applicant no longer associates with his drug-using friends and has signed a statement of intent not to abuse drugs in the future. Also, he passed a drug test, has excelled on the job, and participated actively in volunteer activities since finishing college. Under these circumstances, I conclude that 18 months constitutes a sufficient period of abstinence to mitigate the security concern. AG ¶ 26(b), as set forth below, applies:

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.

Most importantly, Applicant has matured into a responsible adult who performs exceptionally well on the job, and spends his spare time mentoring youth. Consequently, under these circumstances, the time that has elapsed since Applicant last used illegal drugs constitutes an appropriate period of abstinence, and his stated intention not to use illegal drugs in the future, as set forth in the affidavit he submitted, is credible.

### **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.

Applicant's drug abuse was serious. I was particularly troubled by his continuation of drug use after undergoing counseling in 2001. Moreover, although Applicant quit smoking marijuana in 2003, he replaced his marijuana use with cocaine use, and used it on a weekly basis for the next two years.

Applicant has only used cocaine twice in the past five years. His last use was 16 months before the date of the hearing. Since finishing college, he has excelled on the job and ended his association with his drug-abusing friends. He now spends his free time volunteering in the community. These factors outweigh the seriousness of his conduct, and render the likelihood of recurrence minimal. Considering this case in the context of the whole-person concept, I conclude Applicant has mitigated the 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.e:	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.

MARC E. CURRY  
Administrative Judge