



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



|                                  |   |                        |
|----------------------------------|---|------------------------|
| In the matter of:                | ) |                        |
|                                  | ) |                        |
| -----                            | ) | ISCR Case No. 09-04611 |
|                                  | ) |                        |
| Applicant for Security Clearance | ) |                        |

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

April 15, 2011

**Decision**

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

On November 8 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a response dated December 29, 2010, Applicant admitted all allegations and requested a hearing. DOHA assigned the case to me on February 11, 2011. The parties proposed a hearing date of March 31, 2011. A notice setting the hearing date for March 31, 2011, was issued on March 15, 2011. I convened the hearing as scheduled.

Applicant testified, introduced one witness, and offered 10 documents, which were accepted into the record without objection as exhibits (Exs.) A through J. He was given until April 8, 2011, to submit any additional documents. Department Counsel offered five documents, which were admitted as Exs. 1 through 5 without objection. On April 7, 2011, Department Counsel forwarded three additional documents from

Applicant without objection, which were accepted into the record as Exs. K through M. The transcript (Tr.) of the proceeding was received on April 8, 2011, and the record was closed. Based on a thorough review of the testimony, submissions, and exhibits, I find Applicant met his burden of mitigating security concerns related to drug involvement and personal conduct. Clearance is granted.

### Findings of Fact

Applicant is a 31-year-old engineer who has worked in a full-time capacity for the same defense contractor since 2003. He earned a bachelor's degree in electrical engineering in December 2001. He is married and has five minor children.

About two times a week from 1997 to 2001, when he was between the ages of approximately 18 and 21, Applicant used marijuana. He sometimes bought it for personal use. Most of his marijuana use occurred between his senior year in high school and his two years as a college underclassman (1997-1999).<sup>1</sup> He knew it was against the law, but did not appreciate the gravity of his offenses.<sup>2</sup> He also feared it might jeopardize his career.<sup>3</sup> He quit using marijuana at some time in 2001. He graduated from college in December 2001.

After a brief interim position as a production worker and several months of unemployment, Applicant found an engineering position with a contractor in September 2002. That job led to full-time employment with his current employer in April 2003. Before transitioning to his present job, he completed a security clearance application (SCA) on October 10, 2002. In response to Sections 27 and 28, respectively, he denied using illegal drugs since the age of 16 or in the preceding seven years, and denied using illegal drugs while possessing a security clearance.<sup>4</sup> At the time, Applicant did not understand "all the ramifications of being dishonest about using marijuana in [his] youth."<sup>5</sup> He later came to regret that answer.<sup>6</sup> During the subsequent investigation, Applicant submitted a signed, sworn statement to a special agent of the Defense Security Service on June 1, 2003. In that statement, he wrote that he had never used illegal drugs, a representation he similarly came to regret.<sup>7</sup>

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<sup>1</sup> Tr. 37-38.

<sup>2</sup> Tr. 16. Applicant noted that it was "bad decision making" on his part.

<sup>3</sup> Tr. 18.

<sup>4</sup> Ex. 2 (SCA, dated Oct. 10, 2002) at 11.

<sup>5</sup> Tr. 10.

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

<sup>7</sup> Ex. 4 (Statement, signed Jun. 1, 2003) at 2.

Applicant again used the drug a couple of times one night while abroad for his honeymoon in September 2003.<sup>8</sup> The drug was shared with him by some fellow American tourists he met on the trip. His bride, a nurse, does not use drugs. Applicant used it because “we were just away from everything. And I just made a bad decision.”<sup>9</sup> A month later, in November 2003, he was granted a security clearance.

Between December 31, 2007, and January 1, 2008, Applicant used marijuana one final time during a New Year’s Eve party.<sup>10</sup> He had not used illegal drugs since his 2003 honeymoon.<sup>11</sup> He was offered some of the marijuana brought by another party attendee. His use was the result of a “bad decision.”<sup>12</sup>

In February 2009, Applicant completed a SCA. In that application, he admitted that he had used marijuana up to five times between January 2002 and January 2008.<sup>13</sup> Of that time, he stated, “all I [kept] thinking of is that I have five children. I’m married. Like doing this type of stuff is just of no interest to me. I’m just focused on advancing my career and I just want to put all my attention on that.”<sup>14</sup> In disclosing his past drug use, he knew returning to drugs was “just something I have no interest in, at all.”<sup>15</sup> He wanted to come clean about his past drug use, to “just put it out there and . . . deal with whatever came with it.”<sup>16</sup> Increasingly active in his growing children’s lives and with local children’s sports leagues, he wanted to be a genuine role model worthy of his children’s adulation.

The SOR at issue was predicated on Applicant’s disclosures. After Applicant received the SOR, he informed his supervisor and manager of his past drug use and his failure to report the drug use to the Government before his February 2009 SCA.<sup>17</sup>

Applicant no longer maintains friendships with the high school peers with whom he used drugs. He avoids illegal drugs. Applicant submitted a statement of intent not to

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<sup>8</sup> Tr. 16-17, 31. Initially, Applicant incorrectly stated that he was married in 2002. He was wed in 2003.

<sup>9</sup> Tr. 38.

<sup>10</sup> Tr. 60.

<sup>11</sup> Tr. 34.

<sup>12</sup> Tr. 39.

<sup>13</sup> Ex. 1 (SCA, dated Feb. 11, 2009) at 37 of 41. In actuality, the drug use was between 2003 and 2008. See Tr. 32-33.

<sup>14</sup> Tr. 20. At the time, Applicant had four young children.

<sup>15</sup> Tr. 23.

<sup>16</sup> Tr. 11-12.

<sup>17</sup> Tr. 40, 43. See also Ex. C (Letter, dated Mar. 29, 2011), Ex. B (Letter, dated Mar. 27, 2011), Ex. L (Letter, dated Apr. 7, 2011), and Ex. M (Letter, dated Apr. 6, 2011).

use drugs, violation of which would lead to the automatic revocation of any security clearance granted.<sup>18</sup> In completing that statement, he acknowledged that subsequent drug use will lead to revocation of his security clearance, and noted that the condition also affirms that he is not associated with drug activity or people who use drugs.<sup>19</sup> He understands that his job is highly dependent on his maintenance of a security clearance.<sup>20</sup> Applicant is devoted to his work and enjoys the camaraderie he maintains with his colleagues. He is a highly valued employee who has received multiple honors for his work performance. He contentedly commutes “about an hour and a half, average, to work every day . . . . And an hour and a half back.”<sup>21</sup> With a growing family with five children, his \$80,000 a year salary is essential to their fiscal well-being.<sup>22</sup> Given the risks of losing his security clearance and job, Applicant affirms that permanently refraining from drug use “will not be a big issue” for him.<sup>23</sup>

At home, Applicant is a “great father, a great husband, a great friend to everybody.”<sup>24</sup> His wife described him as a “great” role model for their children.<sup>25</sup> He is involved in their children’s activities and goes to Boy Scout events with their eldest, who wants to become an engineer like Applicant. His wife’s testimony was blunt and direct. She actively eschews the use of drugs. She noted that neither she nor Applicant smoke cigarettes or drink alcohol.<sup>26</sup> She described how their lives have changed since New Year’s Day of 2008, noting they have become more settled.<sup>27</sup> She confirmed Applicant’s increasing maturity, his commitment to his work, the need for him to maintain his income, and his efforts to balance his profession with his home life.<sup>28</sup> She believes that his chances of remaining drug free are “100%,” noting that “remaining drug free is not a problem. . . . it’s nothing that [she will] worry about. . . . [H]is life and my life are our relationship, our jobs, and our children. We don’t even have time, really, at this point to socialize because since 2008, we’ve had two more children.”<sup>29</sup> Concerning Applicant’s earlier statement that he disclosed his past drug use in 2009 in an effort to come clean

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<sup>18</sup> Ex. K (Statement, dated Apr. 7, 2011).

<sup>19</sup> Tr. 45-46.

<sup>20</sup> Tr. 46-47.

<sup>21</sup> Tr. 47.

<sup>22</sup> Tr. 47, 55-56.

<sup>23</sup> Tr. 48.

<sup>24</sup> Tr. 52.

<sup>25</sup> *Id.*

<sup>26</sup> Tr. 54.

<sup>27</sup> Tr. 57.

<sup>28</sup> Tr. 54-55.

<sup>29</sup> Tr. 56-57.

about his past drug use and serve as a role model for his children, Applicant's wife confirmed that such an effort is consistent with his attempts to "do the right thing."<sup>30</sup>

## Policies

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the "whole-person concept." The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting "witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by Department Counsel. . . ." <sup>31</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant. <sup>32</sup>

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 safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation about 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

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<sup>30</sup> Tr. 58.

<sup>31</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>32</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

for access to classified or sensitive information). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>33</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>34</sup>

Based upon consideration of the evidence, Guideline H (Drug Involvement) and Guideline E (Personal Conduct) are the most pertinent to this case. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, and those which would mitigate such concerns, are discussed below.

## Analysis

### Guideline H - 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.<sup>35</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 inhalants and other substances.<sup>36</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>37</sup>

Applicant used marijuana with some frequency in high school and as a college underclassman. During that time he sometimes contributed to its purchase for personal use. He quit using the drug in 2001. Since that time, and after being granted a security clearance, he again used it during his September 2003 honeymoon and on New Year’s Eve in December 2007. Although he has been drug free since January 2008, such facts are sufficient to raise Drug Involvement Disqualifying Conditions AG ¶ 25(a) (any drug abuse), ¶ AG 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia), and AG ¶ 25(g) (any illegal drug use after being granted a security clearance). With disqualifying conditions raised, the burden shifts to Applicant to mitigate related security concerns.

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<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> AG ¶ 24.

<sup>36</sup> *Id.* at ¶ 24(a)(1-2).

<sup>37</sup> *Id.* at ¶ 24(b).

Applicant gave up the regular use of marijuana in 2001, when he was in college. Over the past decade, he lapsed twice, in 2003 and in 2007. He concealed that drug use from the Government until 2009, when he fully disclosed his past use of marijuana. He did so based on his growing maturity and on his concomitant rise in responsibilities as a professional, a husband, and a parent. He credibly and candidly stated that his 2009 disclosure followed the realization that his present responsibilities demanded abstinence and a “clean slate” so he could be a better person, employee, and role model. He has been drug free for nearly three-and-a-half years. Given the professional, financial, and personal risks involved and Applicant’s credible commitment to abstinence, there is no indication that he will again use drugs. Drug Involvement Mitigating Condition 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.

Applicant no longer associates with those who use drugs. Due to family and professional demands, he now seldom socializes apart from his family. He and his wife prefer to spend time with their children. In offering his statement of intent with automatic revocation of clearance for any future drug use, he credibly affirmed that he will abide by its terms and will continue to eschew both those who use drugs and situations where drugs might be present. AG ¶ 26(b)(1) (disassociation from drug-using associates and contacts), AG ¶ 26(b)(2) (changing or avoiding the environment where drugs were used), and AG ¶ 26(b)(4) (a signed statement of intent with automatic revocation of clearance for any violation) apply.

Applicant last used marijuana on New Year’s Eve of 2007. He has been drug free for nearly three-and-a-half years. His last break between drug lapses in 2003 and 2007 constituted nearly four years, which, under regular circumstances, could serve as a benchmark for showing the threshold of an appropriate period of abstinence. However, much has happened in Applicant’s life since his last drug use. Applicant has established himself in his profession. He has had two more children, raising the total number of children in their home to five. Their children are growing older and more impressionable. Their eldest child is now a Boy Scout and views Applicant as a role model, a status Applicant clearly appreciates. He devotes his free time to either a lengthy commute or to his familial obligations. Applicant is now highly dependant on his job as a creative outlet and a financial resource. He came forward and disclosed his past drug use on his volition. He has demonstrably matured and shouldered his responsibilities appropriately. Under these facts, I find that three-and-a-half years of abstinence provides a sufficient demonstration to raise AG ¶ 16(b)(3) (an appropriate period of abstinence).

But for Applicant’s 2009 disclosure of past drug use, it is highly unlikely that the Government would have ever discovered Applicant’s two isolated incidents of marijuana use in 2003 and 2007, or his more regular marijuana use in school over a decade ago. The Government demands honesty from those upon whom they bestow a security clearance. That demand continues after a security clearance is granted. Here, a more mature Applicant initiated his full disclosure in an effort to clean his slate and do the right thing by correcting his record. Now old enough to understand both the significance

of his acts, as both a professional and as a parental role model, he showed that he presently is sufficiently mature to risk candor over the potential of adverse repercussions. In light of the totality of these specific facts, and given his current professional, familial, and financial situation, this took the type of courage, honesty, and judgment that should be encouraged. Moreover, he has been drug free for about three-and-a-half years. He credibly and persuasively explained changes and circumstances in his life that will safeguard him from a return to illegal drug use.

### **Guideline E – Personal Conduct**

Security concerns arise from matters of personal conduct because “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.”<sup>38</sup> In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.<sup>39</sup>

Applicant admitted that he falsely denied having used marijuana on his SCA in October 2002 and falsely denied having used illegal drugs in a statement submitted to a special agent of the Defense Security Service in 2003. Such facts are sufficient to raise Personal Conduct Disqualifying Conditions AG ¶ 16(a) (deliberate omission, concealment, or falsification of relevant facts from any personnel security questionnaire, personal history statement, or similar form used to conduct investigations, determine employment qualifications, award benefits or status, determine security clearance eligibility or trustworthiness, or award fiduciary responsibilities) and AG ¶ 16(b) (deliberately providing false or misleading information concerning relevant facts to an employer, investigator, security official, competent medical authority, or other official government representative). With disqualifying conditions raised, the burden moves to the Applicant to provide mitigating information.

Applicant falsely denied drug use twice in his early 20s, in October 2002 and June 2003. At those times he was a recent college graduate who feared disclosure would jeopardize his job. He was later granted a security clearance in 2003.

By the time Applicant disclosed his past drug use in February 2009, much in his life had changed. He married in September 2003, eventually becoming a father of five. He had matured considerably, succeeding in a competitive professional career, and becoming a parental role model for his growing children. He had settled down in a domestic role balanced with his professional obligations. He felt compelled to set the record straight about his past. He did so knowing of its potential ramifications and, in doing so, gave the Government notice of the facts now at issue. Since making his disclosure, Applicant has been thoroughly candid, facilitated this process in an effort to “do the right thing,” and demonstrated his ability to comport his behavior maturely and

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<sup>38</sup> AG ¶ 15.

<sup>39</sup> *Id.*



appropriately. While the breach of the trust bestowed on one maintaining a security clearance is highly grievous, such a breach does not require automatic revocation, as evidenced by the availability of mitigating conditions. Here, Personal Conduct Mitigating Conditions AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment) and AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress) apply.

### **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). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on 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. Multiple facts speak in Applicant's favor. He is a credible, candid, and articulate man. He has a college degree in a competitive field. Over the past few years, he has matured considerably. He has maintained a lucrative position, become a valued employee, been active in his community, and married. In becoming the father of five children, the weight and responsibility of being a genuine role model became increasingly important. In 2009, in an earnest and responsible attempt to correct past falsifications from the early 2000s, Applicant voluntarily corrected the record and gave the Government evidence of his past drug use. He has been drug free for nearly three-and-a-half years and he has no intention to use them again. He fully appreciates the professional and personal repercussions that will result if he again uses marijuana. He is genuinely contrite about both his past drug use and his earlier falsifications. Given his intense desire to keep his job and the financial necessity of remaining in his current position, in conjunction with his earnest attempts to keep his growing family's respect, I have no concerns that he will again jeopardize his work or his family's well-being and use illegal drugs or express anything short of candor in his relationships with the Government and his employer.

Of heightened concern in this case is Applicant's 2007 New Year's Eve use of marijuana, which occurred after he was granted a security clearance. Such a breach of the trust between the individual and the Government demands a particularly high degree of scrutiny. The threshold for mitigation is high, but not insurmountable. Here, Applicant admits that his 2007 use was a poor decision, but he ultimately came forward with the truth on his own volition and disclosed facts it is highly unlikely would have ever been discovered. He made this disclosure simply because, through maturation, he had come to fully appreciate that it was the right thing to do, as a professional, as a parental role model, and as an adult. Since making that disclosure, he has been candid and forthright. This change in outlook is supported by the facts and the persuasively blunt

testimony of his wife. He has also provided ample evidence to support his statement that he will not use drugs or be less than candid in the future. In light of the foregoing, and given these unique facts, I find that Applicant mitigated drug involvement and personal conduct 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:

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|---------------------------|---------------|
| Paragraph 1, Guideline H: | FOR APPLICANT |
| Subparagraph 1.a-1.c      | For Applicant |
| Paragraph 2, Guideline E: | FOR APPLICANT |
| Subparagraph 2.a-2b:      | For Applicant |

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national interest to continue Applicant's security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.  
Administrative Judge