



Material (FORM) on April 19, 2010, and did not respond with any information within the 30 days permitted. The case was assigned to me on July 16, 2010.

### **Summary of Pleadings**

Under Guideline H, Applicant allegedly (a) used marijuana with various frequency from about 1994 (high school) to at least November 2008; (b) used cocaine with varying frequency from about 2003 or 2004 to at least July 2007; (c) used Valium without a prescription in about 2008; (d) used Ecstasy in at least 2009; (e) declined to swear against future drug use (as of September 2009); (f) engaged in the use of illegal drugs with his spouse; and (g) been the recipient of drugs purchased by his spouse for his use. The allegations covered by Guideline H are incorporated under Guideline E.

In his response to the SOR, Applicant admitted the drug-related allegations, but denied his drug admissions reflect questionable judgment and an unwillingness to comply with rules. He claimed he no longer used illegal drugs after September 2009, but acknowledged the possibility he could return to drug use.

### **Findings of Fact**

Applicant is a 34-year-old employee of a defense contractor who seeks a security clearance. The allegations covered in the SOR and admitted to by Applicant are adopted as relevant and material findings. Additional findings follow.

Applicant has been married to his spouse since January 2005. (Item 4) He has no children from this marriage, and has no prior military service. (Item 4)

Applicant was introduced to marijuana in high school. Since high school, he has smoked the drug once or twice a year. When he does smoke, he typically smokes it in a glass bowl and inhales it once or twice at each party he attends with his spouse. (Item 6) Marijuana makes him feel mellow. Although he has no immediate interest in resuming his use in the future, he cannot rule it out in the future.

Applicant turned to snorting cocaine at parties in the 2003 time frame. (Item 6) He attended these parties with his spouse on numerous occasions between 2003 and July 2007. (Item 6) He recollects snorting cocaine in powder form once or twice a year between 2003 or 2004 and July 2007. (Item 6) He last snorted cocaine in his own residence with his spouse in July 2007. All of his contacts at the parties he attended were arranged by his wife, who knew some of the contact persons through her work. (Item 6)

During a flight with his wife in 2008 to visit her parents, Applicant's wife gave him two non-prescribed Valium tablets to calm his anxieties. (Item 6) Applicant split these two tablets into four halves and used them on both his outgoing flight and his return flight. These Valium tablets made him drowsy. Since this round trip flight, he has not used Valium, or any non-prescribed drug.

In January 2009, Applicant used some Ecstasy powder at a band concert that his spouse purchased and gave him. (Item 6) This Ecstasy made him feel “fuzzy” and “gave his body a buzz.” (Item 6) He used the drug on this one occasion, and has no intention of using it again. Albeit, he cannot “swear that the opportunity might not arise again” when he could use it. (Item 6)

To date, Applicant has made no attempt to consciously quit using illegal drugs. He has used them before “when he decides to, and not before.” (Item 6) He has not sought any treatment for drug use, and has never been diagnosed or treated for the use of illegal drugs. (Item 6). Nor has he ever received a positive drug test.

Although he was afforded an opportunity to supplement the record, Applicant provided no endorsements or performance evaluations on his behalf. Nor did he provide any proof of community and civic contributions.

### **Policies**

The AGs list guidelines to be used by administrative judges in the decision-making process covering DOHA cases. These guidelines take into account factors that could create a potential conflict of interest for the individual applicant, as well as considerations that could affect the individual’s reliability, trustworthiness, and ability to protect classified information. These guidelines include “[c]onditions that could raise a security concern and may be disqualifying” (disqualifying conditions), if any, and many of the “[c]onditions that could mitigate security concerns.” These guidelines must be considered before deciding whether or not a security clearance should be granted, continued, or denied. The guidelines do not require administrative judges to place exclusive reliance on the enumerated disqualifying and mitigating conditions in the guidelines in arriving at a decision. Each of the guidelines is to be evaluated in the context of the whole person in accordance with AG ¶ 2(c).

In addition to the relevant AGs, administrative judges must take into account the pertinent considerations for assessing extenuation and mitigation set forth in AG ¶ 2(a) of the revised AGs, which are intended to assist the judges in reaching a fair and impartial commonsense decision based upon a careful consideration of the pertinent guidelines within the context of the whole person. The adjudicative process is designed to examine a sufficient period of an applicant’s life to enable predictive judgments to be made about whether the applicant is an acceptable security risk.

When evaluating an applicant’s conduct, the relevant guidelines are to be considered together with the following AG ¶ 2(a) factors: (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.

Viewing the issues raised and evidence as a whole, the following individual guidelines are pertinent in this case:

### **Drug Involvement**

*The Concern:* 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.

### **Personal Conduct**

*The Concern:* Conduct involving questionable judgment, untrustworthiness, unreliability, 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. AG ¶ 15.

### **Burden of Proof**

By virtue of the principles and policies framed by the AGs, a decision to grant or continue an applicant's security clearance may be made only upon a threshold finding that to do so is clearly consistent with the national interest. Because the Directive requires administrative judges to make a commonsense appraisal of the evidence accumulated in the record, the ultimate determination of an applicant's eligibility for a security clearance depends, in large part, on the relevance and materiality of that evidence. See *Kungys v. United States*, 485 U.S. 759, 792-800 (1988). As with all adversarial proceedings, the judge may draw only those inferences which have a reasonable and logical basis from the evidence of record. Conversely, the judge cannot draw factual inferences that are grounded on speculation or conjecture.

The Government's initial burden is twofold: (1) it must prove by substantial evidence any controverted facts alleged in the SOR, and (2) it must demonstrate that the facts proven have a material bearing to the applicant's eligibility to obtain or maintain a security clearance. The required materiality showing, however, does not require the Government to affirmatively demonstrate that the applicant has actually mishandled or abused classified information before it can deny or revoke a security clearance. Rather, the judge must consider and weigh the cognizable risks that an applicant may deliberately or inadvertently fail to safeguard classified information.

Once the Government meets its initial burden of proof of establishing admitted or controverted facts, the evidentiary burden shifts to the applicant for the purpose of establishing his or her security worthiness through evidence of refutation, extenuation,

or mitigation. Based on the requirement of Exec. Or. 10865 that all security clearances be clearly consistent with the national interest, the applicant has the ultimate burden of demonstrating his or her clearance eligibility. “[S]ecurity-clearance determinations should err, if they must, on the side of denials.” See *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

### **Analysis**

Between 1994 and November 2008, Applicant used marijuana recurrently. Later (between 2002 and July 2007) he turned to using cocaine with his wife at parties. And he tried non-prescribed Valium on one occasion in 2008 to quiet his anxieties in air travel with his wife, and the drug Ecstasy on at least one occasion at a concert in 2009. Applicant’s wife purchased illegal drugs for him from time to time.

Over an extensive period, Applicant used marijuana and other drugs contemporaneously on a virtually continuous basis. While he has not used marijuana since November 2008, or any illegal drugs since 2009, he has declined to commit to never using it in the future. With so much recurrent use of his own, and continuous use of his spouse, too much doubt and uncertainty exist to make safe predictable judgments about his ability to avoid recurrent drug involvement.

On the strength of the evidence presented, several disqualifying conditions of the Adjudicative Guidelines for drug abuse are applicable: DC ¶ 25(a), “any drug abuse,” DC ¶ 25(c), “illegal possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia,” and DC ¶ 25(h), “expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.” Afforded an opportunity to respond to the FORM materials, Applicant did not reply.

Judgment concerns exist over Applicant’s continued drug use reflect both serious judgment lapses and disregard of the DoD’s rules and policies for current and prospective clearance holders. Applicant’s actions are expressly covered by Guideline E, and are entitled to independent cognizance under this Guideline according to the Appeal Board. See ISCR Case No. 06-20964, at 6 (April 10, 2008). Where (as here) there is additional probative adverse information covered by Guideline E that is not covered by Guideline H, and *vice versa*, which reflects a recurring pattern of questionable judgment, irresponsibility, or emotionally unstable behavior, independent grounds do exist for considering questionable judgment and trustworthiness allegations under Guideline E, as well as Guideline H. Authority for considering overlapping conduct under both Guidelines is contained in the guidance provided in Enclosure 2, ¶ 2(d) of the Directive’s August 2006 amendments.

So, under Guideline E, core judgment and trustworthiness concerns covered by D.C. ¶ 16(d), “credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating

that the person may not properly safeguard protected information,” are applicable in this case

From a whole-person perspective, Applicant has established no independent probative evidence in this record to warrant any different conclusions under the whole-person concept in the Directive. He has provided no endorsements from supervisors and coworkers with his employer to soften or mitigate any of the drug and judgment concerns associated with his ongoing use of marijuana.

Taking into account all of the facts and circumstances surrounding Applicant’s drug use and judgment lapses, Applicant does not mitigate security concerns related to his drug use and personal conduct issues. Unfavorable conclusions warrant with respect to the allegations covered by Guidelines H and E.

### **Formal Findings**

In reviewing the allegations of the SOR and ensuing conclusions reached in the context of the findings of fact, conclusions, conditions, and the factors listed above, I make the following formal findings:

GUIDELINE H: (DRUG INVOLVEMENT):	AGAINST APPLICANT
Subparagraphs. 1.a through 1.g:	AGAINST APPLICANT
GUIDELINE E: (PERSONAL CONDUCT):	AGAINST APPLICANT
Subparagraph. 2.a:	AGAINST APPLICANT

### **Conclusions**

In light of all the circumstances presented by the record in this case, it is not clearly consistent with the national interest to grant or continue Applicant’s security clearance. Clearance is denied.

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Roger C. Wesley  
Administrative Judge

