



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



In the matter of:)	
)	
-----)	ISCR Case No. 09-05421
SSN: -----)	
)	
Applicant for Security Clearance)	

Appearances

For Government: James F. Duffy, Esquire, Department Counsel
For Applicant: Wayne D. Inge, Esquire

June 23, 2010

Decision

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

Applicant completed a security clearance application (SCA) on March 19, 2009. On January 25, 2010, 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 adjudicative guidelines (AG).

In a February 16, 2010, response, Applicant admitted the two allegations set forth in the SOR and requested a hearing. DOHA assigned the case to me on April 19, 2010. The parties proposed a hearing date of May 20, 2010. DOHA issued a notice setting that date for the hearing on April 30, 2010. I convened the hearing as scheduled. Represented by counsel, Applicant gave testimony, introduced one witness, and presented one document, which was accepted into evidence without objection as exhibit (Ex.) 1. Department Counsel offered three documents, which were admitted as exhibits (Exs.) A-C without objection. On May 27, 2010, Applicant timely submitted two additional documents, which were accepted into the record without objection as Exs. 2-

3. DOHA received the transcript (Tr.) of the proceeding on June 7, 2010, and the record was closed. Based on a full review of the testimony, submissions, and exhibits, I find Applicant met his burden of mitigating security concerns related to the guideline raised. Clearance granted.

Findings of Fact

Applicant is a 20-year-old employee of a defense contractor. He was hired by his present employer in November 2008 as an engineering technician/draftsman. Applicant has earned a high school diploma and is completing an associate's degree in mechanical engineering technology. He is single and has no children.

After completing elementary school, Applicant met two boys. The three became fast friends. They remained best friends through middle and high school. At age 15, in about February 2005, the three boys began using marijuana. Youthful peer pressure was partly to blame for Applicant's initial use of the drug. He used it a couple of times his freshman year in high school. In his junior year, his usage increased until he was using marijuana several times a week in his senior year. His drug use was almost always in the company of his two childhood friends. He never used the drug on school property. After graduation, when the men went their separate ways, Applicant focused on his collegiate studies and rarely used marijuana. He last purchased marijuana in September or October of 2007. He then realized that because he was getting older and needed to comport his behavior to that of a responsible, professional adult, he contemplated giving up marijuana.¹ When he quit using the drug in July 2008, he had only used it three times in 2008. He then focused on his studies and his future.²

During his period of marijuana use, Applicant occasionally purchased or contributed to the purchase of marijuana with his two friends. Since quitting marijuana, he has had no involvement with the man from whom the three purchased marijuana.³

When Applicant quit marijuana in July 2008, it was his intention to "stop for good" and focus on both his academic studies and internship.⁴ He had matured and no longer felt the need for the drug or any pressure to use it. Since that time, he has successfully persevered toward the completion of his college degree, found permanent employment in his field, and discovered more constructive use of his leisure time.

¹ Tr. 44-45. The Government categorized Applicant's drug use at this point in his life as "youthful indiscretion." Tr. 60.

² Tr. 45.

³ Applicant has, however, exchanged "hello"s with the individual when they have encountered each other in public settings. See Tr. 19.

⁴ Tr. 17.

Applicant's best friends from school still use marijuana. Although they have gone their separate ways,⁵ Applicant still sees them on occasion in social situations.⁶ When they interact, the two childhood friends sometimes have used marijuana. When they did, Applicant would often go outside and smoke a tobacco cigarette while his friends used the drug indoors or the friends will use marijuana outdoors while Applicant stays indoors.⁷ Concerned that this does not provide sufficient distance between himself and their drug activity, he now feels his best course of action in such situations will be to avoid socializing with them if marijuana is around.⁸ The two childhood friends are the only individuals with whom he associates who use drugs.⁹ In all other respects, he eschews venues associated with drug use and individuals who use or possess drugs.¹⁰

Applicant lives in the same town in which he was raised. He shares a house with his older brother, a uniformed police officer in his mid 20s who is "very much against" drug use.¹¹ His friends have appeared at Applicant's shared residence with drugs, but he has since explained to them his feelings regarding the presence of drugs in his shared residence. He has informed the two friends that he is no longer interested in drugs, does not want them present in his home, and that his brother will not tolerate them in the house. He similarly has explained to them that the presence of drugs could jeopardize his career. They understand Applicant's position.¹² Should their friendship endure and their drug use further jeopardize his efforts to avoid compromising situations, he is willing to discuss the matter with them in more emphatic detail.¹³ Based on their long friendship, they do not try to compromise Applicant's position or his drug-free lifestyle. They respect his decision to refrain from drug use.¹⁴ Should they ever try

⁵ Tr. 21. One of the friends lives in the same city as Applicant, while the other lives in another city. The two friends visit each other regularly and see each other about twice as much as Applicant sees them. Tr. 22.

⁶ Tr. 19.

⁷ Tr. 20, 24.

⁸ *Id.*

⁹ Tr. 21.

¹⁰ *Id.*

¹¹ Tr. 40. Applicant's brother is "adamant" about not having drugs in their home. When asked whether his brother had spoken to him about marijuana use, Applicant stated "Yes, he had. He is a very persuasive person." Tr. 50.

¹² Tr. 25.

¹³ Tr. 24-25, 48-49. Based on past discussions, Applicant and his friends have thus far maintained a wall between their drug use and Applicant's new lifestyle. It is Applicant's intent to have a more thorough discussion with the two men to reemphasize his current situation. Tr. 49.

¹⁴Tr. 46.

to apply peer pressure on Applicant to use marijuana again, Applicant is convinced such a tactic would not work.¹⁵

Applicant has no intention of using or acquiring marijuana or any illegal drugs in the future. He does not possess any marijuana-related paraphernalia or any residual marijuana.¹⁶ He has signed a notarized statement of intent not to abuse or possess any drugs in the future which includes acknowledgment that he unconditionally consents to the automatic revocation of any security clearance granted to him should he again abuse drugs.¹⁷ His employer has a program for testing those employees they suspect of using drugs, but Applicant has never been designated for drug testing.¹⁸ Applicant views his past marijuana use as a youthful mistake and a poor personal decision, noting "I have made my own personal decision not to smoke [marijuana], and I have no desire to smoke [it], or be around the substance."¹⁹ He is aware of the need to avoid second-hand marijuana inhalation, given the possibility of random drug testing.²⁰ With the exception of his occasional visits with his two childhood friends, he generally avoids parties and venues where he knows marijuana will be present.²¹ The last time he was in a social setting where he ultimately discovered marijuana was present, he joined friends in another part of the house, away from the marijuana use.²² Both his parents are nurses. They are aware that he used marijuana and are highly supportive of his choice not to abuse the drug.²³ His employer's security officer is also aware of Applicant's past drug use.²⁴ Applicant has never been diagnosed as drug dependent or a drug abuser.²⁵ He has never tried any other illegal drugs or abused any prescription medications.²⁶

Since giving up marijuana, Applicant has concentrated on his studies and work. Several of his courses are night classes, consuming much of his free time. Otherwise,

¹⁵ Tr. 45-46.

¹⁶ Tr. 35-36.

¹⁷ Ex. 3 (Statement of Intent, dated May 26, 2010).

¹⁸ Tr. 33.

¹⁹ Tr. 37. Applicant further expressed his understanding regarding marijuana's adverse effects and its illegal status.

²⁰ Tr. 47-48.

²¹ Tr. 48.

²² Tr. 39.

²³ Tr. 38.

²⁴ Tr. 51.

²⁵ Tr. 41.

²⁶ Tr. 42-43.

he goes to the gym as often as he can and attends church.²⁷ He fully disclosed his past marijuana drug when completing his SCA. While Applicant remains friends with his two childhood buddies, they are respectful of Applicant's adamant goal of remaining drug-free and the three are now reaching an age when their paths are beginning to diverge.²⁸

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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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. . . ." ²⁹ The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.³⁰

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

²⁷ Tr. 49-50.

²⁸ As noted by the Government, "[I]t is fair to say that it is very difficult for someone [Applicant's age], who has these long-term friends . . . to immediately cut off any association with them. That is a matter of common sense." Tr. 61-62.

²⁹ See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

³⁰ ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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 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.”³¹ Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.³²

Based upon consideration of the evidence, Guideline H (Drug Involvement) is the most pertinent to this case. Conditions pertaining to this AG that could raise a security concern and may be disqualifying, as well as those which would mitigate such concerns, are set forth and discussed below.

Analysis

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.³³ “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.³⁴ “Drug abuse” is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.³⁵

Applicant admitted he used marijuana from about February 2005 until July 2008, when he was 15 to approximately 18 years of age. He also admitted that he purchased marijuana at various times between about February 2005 and late 2007. Consequently, Drug Involvement Disqualifying Condition AG ¶ 25 (a) (any drug abuse) and AG ¶ 25 (c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia) apply.

Applicant first experimented with marijuana during his freshman year in high school, when he was 15 years old. He did so as an impressionable youth in the

³¹ *Id.*

³² *Id.*

³³ AG ¶ 24.

³⁴ *Id.* at ¶ 24(a)(1-2).

³⁵ *Id.* at ¶ 24(b).

company of two equally immature boys whose friendship he valued. Initially, his marijuana use was minor, but by his senior year, it had become a regular habit. As often happens after high school graduation, the three went their separate ways after graduation, although they have remained close friends. Applicant turned his attention to academic studies and an internship. During this time, he ceased purchasing marijuana and his drug use declined significantly. He would only use marijuana three times in 2008 before quitting in July 2008. Since then he has found full time employment. He now responsibly shares a house with his older brother, a policeman adamantly opposed to drugs and drug use. Applicant has assumed a very full schedule, balancing full-time work and night classes. He is now a regular at his local gym, where he concentrates on his health and fitness. Cognizant of the dangers of second-hand smoke, he avoids contact with marijuana and other drugs, an often difficult task for a sociable young man of 20. He has matured considerably since the time he used marijuana between the ages of 15 and 18, a stage appropriately categorized as one of “youthful indiscretion.” Today, he is firm in his personal and professional commitments. Applicant is no longer vulnerable to peer pressure. He has been drug-free for nearly two years and has no intention of using drugs again. Based on these facts, 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.

Regarding his former marijuana use, Applicant has ceased socializing with the man from whom he purchased marijuana. He has, however, thus far maintained friendships with the two childhood friends with whom his former drug use is inextricably linked. Now college age, their paths are beginning to diverge and, as noted by the Government, “it is very difficult for someone [Applicant’s age], who has these long-term friends . . . to immediately cut off any association with them. That is a matter of common sense.”³⁶ Despite his request they not use drugs in his home and despite his best efforts to extract himself from situations where they decide to use marijuana, his friends continue to use marijuana. Consequently, AG ¶ 26 (b)(1) (disassociation from drug-using associates and contacts) does not apply.

To his credit, however, Applicant does remove himself from the presence of drug use, whether it is used by his two childhood friends or others. He no longer socializes with the man from whom he previously purchased marijuana. Applicant generally avoids attending open social functions where he knows drugs will be present. Should he discover drugs are being used at such functions, he removes himself from the vicinity. Today, the majority of Applicant’s waking hours are spent at work, in class, or in the home he shares with his older brother, who will not tolerate the presence of drugs. Given these facts, Applicant has made significant strides sufficient to raise AG ¶ 26 (b)(2) (changing or avoiding the environment where drugs were used).

Applicant began using marijuana when he was 15. He quit using the drugs nearly two years ago. Within the month, Applicant will turn 21. Since quitting marijuana, he has successfully persevered in his studies, found permanent employment, become a

³⁶ See note 28, *supra*; Tr. 61-62.

regular at his gym, and maintained a house with his older brother. In the past two years, he has demonstrated a tremendous degree of maturation. While two years of abstinence may not represent a significant period of time in general terms, it is a significant amount of time in the life of a young man of only 20. This is particularly true given the intervening maturation Applicant demonstrated between the time he gave up marijuana and the present. In light of these factors, as well as the considered and cautious steps he has taken to divorce himself from the presence of drugs and incidental drug inhalation, two years of abstinence is a sufficiently appropriate period to raise AG ¶ 26 (b)(3) (an appropriate period of abstinence).

Moreover, Applicant has not only expressed his intent not to use drugs in the future, he has also demonstrated his ability to both easily rebuff any temptation to use marijuana and to maintain his commitment to refrain from using the drug. To complement these facts, he has also signed a statement of intent with automatic revocation of any security clearance he should be granted should he ever resort to illegal drugs or abuse prescribed medications in the future. Consequently, AG ¶ 26 (b)(4) (a signed statement of intent with automatic revocation of clearance for any violation) applies. Given the mitigating conditions raised and the facts of record concerning Applicant's potential vulnerability for future 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. Applicant is a credible young man whose testimony demonstrated considerable pleasure in both his studies and his work. When completing his SCA, he honestly disclosed his past marijuana use, which began in high school and ceased shortly thereafter. During the hearing, he clearly and credibly articulated why he decided to permanently quit marijuana once he became entrenched in collegiate studies. In the

process, the maturity he displayed provided a sharp contrast to the impressionable youth he was in his teens.

Given Applicant's maturation, intervening accomplishments, and considered efforts to avoid drugs and drug usage, his present self-confidence and understanding of why drug involvement poses a significant security concern demonstrate a young man markedly changed from the marijuana-abusing teen he once was. In comparison, his drug using stage was a youthful indiscretion. His commitments to his career, to his new lifestyle, and to maintaining his brother's respect are now clearly paramount in his life. He is thriving personally and professionally in his current lifestyle. There is little to no likelihood that he will jeopardize those commitments by returning to drugs. Moreover, he has demonstrated sufficient resolve and maturity to withstand any social pressures to return to drugs. In addition, he is fully aware of the adverse personal and professional repercussions that a return to drugs would bring.

Finally, Applicant's continued contact with his two best friends from his childhood could be viewed as an independent concern. As noted, it would be unfair to expect a man of Applicant's age to simply cut off all ties from his youth, especially two men whose friendships he has maintained since middle school. While there is a very real possibility that these friendships will wane as the three men pursue divergent paths and goals, Applicant is currently doing everything in his power to make sure that his friends appreciate his decision to stay drug-free. The evidence clearly indicates that they appreciate and respect his decisions. Consequently, what influence, if any, they might have with regard to any potential return to marijuana use is heavily outweighed by all the other factors enumerated above. Applicant has mitigated drug involvement security concerns. Clearance 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

Conclusion

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

ARTHUR E. MARSHALL, JR.
Administrative Judge