



and entered into evidence without objection. The case was assigned to this Administrative Judge on March 11, 2010.

Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

In his RSOR, Applicant admitted the SOR allegation 1.a. The admitted allegation is incorporated herein as a finding of fact.

After a complete and thorough review of the evidence in the record, including Applicant's RSOR, the admitted additional document, and the FORM, and upon due consideration of that evidence, I make the additional findings of fact:

Applicant is 32 years old. He is employed by a defense contractor, and he seeks a DoD security clearance in connection with his employment in the defense sector.

### **Guideline H - Drug Involvement**

The SOR lists one allegation (1.a.) under Adjudicative Guideline H. The SOR alleges, and Applicant has admitted, in his RSOR (Item 3) that Applicant "used marijuana, with varying frequency, from about 2003 until at least May 2009."

When Applicant completed a Security Clearance Application, he estimated that he had used marijuana about five times (Item 4.) In his RSOR (Item 3), Applicant stated that his actual frequency of marijuana usage "has been on average once a year where it was more frequent at the beginning and then [Applicant] did not use any drugs for a period of years and so usage became more infrequent as time went on." He explained that since he got the "same results" by having a glass of wine or a couple of beers when he was with friends, he asked himself "what was the sense of trying to skirt the law when other items were much more easily accessible, much more acceptable and were perfectly good substitutes." He further indicated that his last usage was in May 2009, and that he planned to continue to abstain from all illegal drugs for the rest of his life "whether or not a clearance is granted to [him]."

Applicant also submitted six Performance Assessments from his current employer for the years 2004 through 2009. (Item 3.) In three of them, he was rated as a "Successful Contributor," and in three he was rated a "High Contributor." He was described as a "can-do, self-starter, who continually seeks ways to improve."

In his post FORM submission (Item A), dated February 1, 2010, Applicant wrote that his career is extremely important to him, so that is "a good enough reason to stop taking marijuana." He also confirmed that he never purchased or sold marijuana or any drug paraphernalia, and that drugs never were a significant part of his life. He continued to affirm that he has no intention to use any drugs in the future.

## Policies

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the revised adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 the adjudicative process. The administrative judge's over-arching adjudicative goal is a fair, impartial and common sense decision. 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." 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.

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.

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 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.

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).

## **Analysis**

### **Guideline H - Drug Involvement**

The security concern relating to the guideline for Drug Involvement is set out in AG ¶ 24:

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 judgement and because it raises questions about a person's ability or willingness to comply with laws, rules and regulations.

With respect to Guideline H, the Government has established its case. Applicant's improper and illegal drug abuse, the use of marijuana for many years, is of great concern, especially in light of his desire to have access to the nation's secrets. Applicant's overall conduct pertaining to his illegal substance abuse clearly falls within Drug Involvement ¶ 25(a) "any drug abuse" and (c) "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution." It also is disturbing that Applicant has used marijuana during the period that he was working for his current employer.

However, the evidence indicates that Applicant's marijuana usage was not frequent, and that he has abstained from any usage for approximately one year. I find credible his statements that he intends to abstain from using marijuana in the future. (Items 3, 4, 5, and A.) I also find that his excellent employment evaluations make his stated intentions more credible and convincing. Therefore, I conclude that ¶ 26(b) "a demonstrated intent not to abuse any drugs in the future" applies and is mitigating, because of (3) "an appropriate period of abstinence", and (4) "a signed statement of intent with automatic revocation of clearance for any violation." (Item A.)

In this case, the Government has met its initial burden of proving that Applicant has used illegal drugs under Guideline H. Applicant, on the other hand, has introduced persuasive evidence in rebuttal, explanation, or mitigation which is sufficient to overcome the Government's case against him. Accordingly, Guideline H of the SOR is concluded for Applicant.

### **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.

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 the facts and circumstances surrounding this case. Based on all of the reasons cited above as to why the mitigating conditions apply, including the limited and infrequent usage of marijuana, together with the positive employment evaluations received by Applicant, I find that the record evidence leaves me with no significant questions or doubts as to Applicant's eligibility and suitability for a security clearance under the whole-person concept. For all these reasons, 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 ¶ E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraph 1.a.: For Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is clearly consistent with national security to grant Applicant eligibility for a security clearance. Eligibility for access to classified information is granted.

Martin H. Mogul  
Administrative Judge