



ISCR Case No. 09-05942

Applicant responded to the SOR on December 14, 2009, and requested a hearing. On January 7, 2010, the case was assigned to me to consider whether it is clearly consistent with the national interest to grant or continue a security clearance for him. On April 13, 2010, I scheduled a hearing for May 11, 2010.

I convened the hearing as scheduled. Two Government exhibits (Ex. 1-2) were admitted into evidence without objection. Applicant testified, as reflected in a transcript (Tr.) received on May 24, 2010. He also submitted 11 exhibits (Ex. A-K). Exhibits A, D, E, and G through K were entered without objection. I withheld ruling on the admissibility of proposed exhibits B, C, and F pending receipt of post-hearing submissions by Applicant to address the Government's concerns about authentication.

Procedural and Evidentiary Rulings

At Applicant's request, the record was held open until May 18, 2010, for him to authenticate proposed exhibits B and C through email correspondence from their respective authors, and proposed exhibit F by author's signature. On May 11, 2010, Applicant submitted the relevant documentation for inclusion in the record. On May 13, 2010, the Government withdrew its objections, and Exhibits B, C, and F, as supplemented, were admitted into the record.

Applicant was also given the opportunity to submit additional exhibits, provided they were received on or before May 18, 2010. Applicant timely forwarded a statement (Ex. L), a character reference from his mother (Ex. M), and excerpts from the Guide for Aviation Medical Examiners (Ex. N), which were admitted without objection.

On May 19, 2010, Applicant requested that the record be reopened (Ex. O) to include a letter of reference from his group leader (Ex. P). On May 24, 2010, Department Counsel indicated the Government had no objections to reopening the record or to the admissibility of proposed exhibits O and P. Accordingly, the documents were accepted into the record.

Findings of Fact

DOHA alleged under Guideline H, Drug Involvement, that Applicant used marijuana, with varying frequency, from about March 2005 to at least April 2009 (SOR 1.a), that he had purchased marijuana (SOR 1.b), and that he used hallucinogenic mushrooms in about March 2007 (SOR 1.c). Applicant admitted the drug use and purchase, which he attributed to a "juvenile mistake." He expressed his regret for using drugs during his last year of high school and in college until April 2009, and his intent to abstain from illegal drug involvement in the future. In September 2009, Applicant passed a drug test for an FAA certification that he needed for his job, not knowing beforehand that he would be tested for illegal drugs.

After considering the pleadings, exhibits, and transcript, I make the following findings of fact.

Applicant is a 23-year-old electrical engineer, who has been a full-time assistant staff member for a defense contractor since June 2009. While he was in college, he had interned for his employer from May 2008 to August 2008, and then during his winter break of his senior year in January 2009. (Ex. 1, E, F.) Applicant seeks his first security clearance. (Ex. 1.)

Applicant smoked marijuana an estimated 50 times, with most of his use occurring from the spring of his senior year of high school in 2005 through the fall of his sophomore year of college. Applicant estimates that on about 20 occasions, he paid \$10 for the marijuana that he smoked. Otherwise, the drug was provided to him by friends. (Ex. 2.) He was introduced to marijuana by a couple of high school friends around March 2005. He smoked marijuana while socializing with them on the weekends about five times. (Ex. 1, 2, Tr. 51, 78.) After he graduated from high school, he attended a university located out of state from September 2005 until May 2009. (Ex. 1, J, K.) Applicant smoked marijuana at off-campus parties while in college. (Ex. 1, 2, Tr. 55, 77, 85-86.) When he went home after freshman year, he did not use any marijuana that summer. (Tr. 55.)

On campus for his sophomore year in September 2006, he again smoked marijuana when it was offered to him at off-campus parties, or while socializing with friends that he knew from his recreational mountain biking ("most of the time it was just around"). (Tr. 56, 85.) Applicant feared being caught with marijuana because of its illegality and potential negative repercussions from the university, so he did not possess the drug. But his concern did not stop him from smoking it, when it was provided to him at parties. (Tr. 58, 85.) Around January 2007, he was informed that he would be drug-tested in conjunction with an upcoming summer internship, so he abstained from marijuana use. (Tr. 78.) But while on a hiking trip with a college friend during spring break of his sophomore year in March 2007, Applicant also tried hallucinogenic mushrooms (psilocybin) on one occasion. (Ex. 1, 2, Tr. 61.) The drug induced feelings of euphoria, but he did not use it again because he did not want it to affect his life. (Ex. 2.)

From May 2007 to August 2007, the summer before his junior year in college, Applicant worked as an electronic integration and software group intern for a motor vehicle manufacturer. (Ex. 1.) For that internship, Applicant submitted a hair sample that was tested for illegal drugs. He passed the test. (Tr. 52, 70.) Applicant's performance as an intern exceeded expectations in several competencies (ability to learn, adaptability, initiative, decision making, professional knowledge, and on-the-job performance). (Ex. 1.) Applicant was away from the college environment, and he did not use any illegal drugs. After he returned to campus in September 2007, he smoked marijuana "maybe once a month" until January 2008. (Tr. 78, 88.) On learning that he had been selected for a summer internship with his present employer, Applicant abstained completely before and during his internship in the summer of 2008. On his return to college for his senior year, he smoked marijuana that fall, five times or so. (Tr. 89.) During winter break in early to mid-January 2009, Applicant spent about eight business days finishing up a project for his current employer. (Tr. 62.) After he returned to the university to finish his senior year, he smoked marijuana twice, once in January 2009 and then in mid-April

2009, when he took a puff of a marijuana cigarette passed to him at a concert by some college students, whom he had met earlier that day tailgating in the parking lot. (Tr. 60, 66-68, 74.) In hindsight, Applicant acknowledges that it was “probably” irresponsible of him to have used marijuana. At the same time, he testified he hadn’t planned beforehand to smoke marijuana, and “there was basically a lot of usage going on there.” (Tr. 76.)

Applicant did not allow his use of marijuana to adversely affect his studies. In May 2005, he graduated Magna Cum Laude with a bachelor of science degree in electrical engineering. (Ex. J.) His cumulative grade-point average was 3.76 out of 4.0 in a demanding curriculum. (Ex. L, M.)

Applicant had been given the highest possible performance ratings in all categories (communication, teamwork, analysis, and persistence) for his contributions to his current employer as a summer intern in 2008. (Ex. G.) While Applicant was interning within the same work group in January 2009, he expressed an interest in a full-time position on his graduation, and his supervisor recommended him for future employment, should there be an opening for someone with his qualifications and background. (Ex. F.) He was given an offer of employment sometime before April 2009 (Tr. 91.), and in June 2009, Applicant began full-time employment with his current employer. (Ex. 1, C.) Applicant was not tested for illegal drugs. (Tr. 69.)

On July 2, 2009, he executed his e-QIP on which he disclosed that he had used “THC” from around March 2005 to April 2009, “several times during high school and the beginning of [his] time in college recreationally, mostly on weekends.” He added that he “seldom” used the drug during his last two years in college. Applicant also listed a one-time use of hallucinogenic mushrooms in March 2007 during his spring break. (Ex. 1.) The forms completed for his employment, including the e-QIP, served as an “eye-opener” for him in that it made him realize the severity of drug use and that it could negatively affect his future. He resolved at that time to be more mature and to not use any illegal drugs in the future. (Tr. 92.)

On August 6, 2009, Applicant confirmed his previously admitted drug use, and stated he had no intent to use any illegal drugs in the future. (Ex. 2.) When Applicant answered the SOR on December 14, 2009, he executed a statement of intent never to use any illegal drug in the future with the realization that any violation of that commitment would result in automatic revocation of security clearance. (Ex. A.)

In September 2009, Applicant volunteered for a program at work that required a third-class (student pilot) medical license. When he went for his medical examination on September 10, 2009, he learned that he would be required to submit to a drug test. The drug test was negative for all substances tested, and Applicant was issued his third class (student pilot) medical certificate. (Ex. A, Tr. 52.)

On May 7, 2010, Applicant consulted a licensed independent clinical social worker (LICSW) through the employee assistance program at work. Applicant disclosed

the full extent of his drug use. (Ex. B.) The LICSW did not include a professional assessment or prognosis about the risk of any future drug use by Applicant.

Applicant has lived with his girlfriend for the past year and a half, and they plan to marry. (Tr. 51.) To Applicant's knowledge, she does not use illegal drugs. (Tr. 72.) They apparently met in college, because Applicant returned to his alma mater for her graduation in December 2009. (Tr. 72.) Applicant's close friend from high school, with whom Applicant smoked marijuana in the past, is pursuing his doctorate degree at a university not far from Applicant's residence. (Tr. 22.) Applicant believes his friend no longer abuses marijuana. (Tr. 22, 73.) Other than this one friend, Applicant no longer associates with the persons with whom he used illegal drugs in the past. (Tr. 61.)

Applicant has abstained from all illegal drug use since April 2009 and he intends no future involvement. He regrets his decision to use illegal drugs and regards his drug use as a mistake. He realizes that use of any kind of illicit drug "is completely unacceptable, especially in [his] type of work and obtaining a security clearance." (Tr. 51.) He does not attend concerts or put himself in situations where illegal drugs are likely to be present. (Tr. 90.)

In his first year as a full-time employee, Applicant made significant contributions as the lead technical person on a program that requires understanding of lengthy and complicated algorithms. Applicant's technical competence and work ethic impressed his group leader (Ex. P.) and his direct supervisor (Ex. C.). He demonstrated a professional approach to his duties, reliability in his attendance, and willingness to work extra hours when needed. (Ex. C, P.) He was given a salary increase in January 2010. (Ex. D.) Applicant does not believe that his supervisors know about his past illegal drug involvement, although his family members are aware.¹ (Tr. 59.) He believes security personnel at work know about his drug use on the basis that he had to turn in his e-QIP (Tr. 81.), and they read his responses to DOHA interrogatories or his Answer or both. (Tr. 81-82.)

Policies

The U.S. Supreme Court has recognized the substantial discretion the Executive Branch has in regulating access to information pertaining to national security, emphasizing that "no one has a 'right' to a security clearance." *Department of the Navy v. Egan*, 484 U.S. 518, 528 (1988). When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are required to be considered 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

¹In her reference letter dated May 17, 2010, Applicant's mother made no reference to Applicant having used illegal drugs. However, she commented, "No young person makes perfect decisions all the time. We grow and learn from our mistakes." (Ex. M.)

factors listed in the adjudicative process. The administrative judge's overarching adjudicative goal is a fair, impartial, and commonsense 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 to obtain 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 that 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 for access to classified or sensitive information).

Analysis

Drug Involvement

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

Applicant smoked marijuana about 50 times, with most of his marijuana use occurring during his freshman year and the first semester of his sophomore year in college. He paid his friends \$10 for the marijuana that he smoked on about 20 of the approximately 50 occasions of his use. He also tried hallucinogenic mushrooms once,

while on spring break in March 2007. AG ¶ 25(a), “any drug abuse,” applies. AG ¶ 25(c), “illegal drug possession, cultivation, processing, manufacture, purchase, sale, or distribution, or possession of drug paraphernalia,” applies because he paid his friends, albeit a nominal amount, for some of the marijuana that he smoked, and he had physical custody or possession of the marijuana when he smoked it. That said, he never bought marijuana for future use, or kept it in his possession intending to use it later.

Applicant’s marijuana abuse diminished in frequency after January 2007, when he learned that he would have to take a drug test for an internship that summer. He abstained completely until September 2007, when he returned to college for his junior year. His monthly involvement with marijuana at that point was less than his freshman year, and he smoked marijuana only twice during his last semester in college. But his marijuana abuse overall cannot reasonably be characterized as infrequent or as not recent. AG ¶ 26(a), “the behavior happened so long ago, was so infrequent, or happened under such circumstances that it is likely to recur or does not cast doubt on the individual’s current reliability, trustworthiness, or good judgment,” applies only to his one-time experimentation with psilocybin.

Concerning whether Applicant has demonstrated an intent to forego future drug abuse sufficient to satisfy AG ¶ 26(b), “a demonstrated intent not to abuse any drugs in the future,” Applicant has ceased his relations with drug-using associates and contacts. See AG ¶ 26(b)(1) (stating, “disassociation from drug-using associates and contacts”). He continues to share a close friendship with one of his high school friends with whom he smoked marijuana on about five occasions during their senior year of high school. However, Applicant believes this friend, who is in a doctorate degree program, no longer uses any illegal drugs, and five years have passed since they used marijuana together. Applicant’s girlfriend does not use marijuana. While the government has legitimate concerns about Applicant’s use of marijuana at the concert as recently as April 2009, the risk of him relapsing is lessened considerably by the fact that he is out of the college environment and no longer socializes with the friends from college with whom most of his marijuana usage occurred.

Applicant’s employment and residence are located a considerable driving distance from his alma mater. Since moving for his career, he has also consciously avoided situations, like concerts, where illegal drugs are likely to be present. AG ¶ 26(b)(2), “changing or avoiding the environment where drugs were used,” applies.

Applicant’s present 13 months of abstinence alone is not sufficient to mitigate his drug use under AG ¶ 26(b)(3), “an appropriate period of abstinence,” considering he smoked marijuana an estimated 50 times. He smoked marijuana twice after he had expressed an interest in working for his current employer after graduation. He had been offered a position with the defense contractor before his last usage of marijuana in April 2009.

However, I am persuaded that Applicant does not intend to use any illegal drug in the future. The process of applying for a security clearance made it clear to Applicant that any future drug use could adversely affect his employment and future career

prospects. When he was interviewed during his background investigation in August 2009, he indicated that he had no intent to use marijuana or hallucinogenic mushrooms in the future because he wanted to focus on his future employment. Before the SOR was issued, he reiterated that he would gladly sign a statement of intent to abstain from the abuse of any controlled substance with automatic revocation of his clearance for any violation. On December 14, 2009, Applicant executed such a statement. AG ¶ 26(b)(4), “a signed statement of intent with automatic revocation of clearance for any violation,” applies. His expressions of regret at having used illegal drugs appear sincere and his present lifestyle is not conducive to illegal drug use. Based on all the evidence, AG ¶ 26(b) applies to mitigate his illegal drug involvement.

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 his conduct and all relevant circumstances in light of the nine adjudicative process factors listed at AG ¶ 2(a).² 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.

Applicant displayed poor judgment in using marijuana, knowing that it was illegal and that there could be repercussion from the university if he was caught. It is no excuse that his friends used marijuana or that it was prevalent in the college environment. At the same time, his youth and immaturity have to be considered, and he was able to abstain for periods as long as nine months in both 2007 and 2008 to avoid testing positive for illegal drugs and losing valuable internships. He has repeatedly asserted that he will not use any illegal drugs in the future, and he has been candid about his drug history throughout the investigation and adjudication of his security clearance. I do not doubt his commitment or his ability to abstain.

Applicant has proven to be technically competent and dedicated to his work, as evidenced by the favorable references from his supervisor and group leader. He understands that his professional future could be negatively impacted by any resumption of illegal drug use, and to that end, he has taken steps to avoid situations where drugs are likely to be present. He appears to have put his drug use behind him, and he is not likely to jeopardize his employment and future career by abusing any illegal drugs.

²The adjudicative process factors are:

(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.

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
Subparagraph 1.c:	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.

Elizabeth M. Matchinski
Administrative Judge