



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 09-07112
SSN: -----	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: J. Theodore Hammer, Esquire, Department Counsel  
For Applicant: *Pro se*

November 22, 2010

**Decision**

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

On July 21, 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 (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 an August 2, 2010, response, Applicant admitted all allegations raised under Guideline H and requested a hearing. DOHA assigned the case to me on September 1, 2010. The parties proposed a hearing date of October 1, 2010. A notice setting that date for the hearing was issued on September 9, 2010. I convened the hearing as scheduled. Applicant gave testimony and presented four documents, which were admitted without objection as exhibits (Exs.) A-D. Department Counsel offered two documents, which were admitted as exhibits (Exs.) 1-2 without objection. Applicant was given until October 8, 2010, to submit any additional documents. On October 4, 2010, Applicant submitted one additional document. Department Counsel forwarded that document to me on October 6, 2010. In the absence of objection, it was admitted into

the record as Ex. E. On October 9, 2010, the transcript (Tr.) of the proceeding was received 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. Clearance is granted.

### Findings of Fact

Applicant is a 31-year-old analyst who has worked for the same defense contractor since July 2009. He earned a bachelor of arts degree in economics in 2007. He has been married for four years.

Raised in a remote area of the United States, Applicant started using marijuana in about 1996, when he was a 16-year-old student attending high school. He acquired the habit while working in the local restaurant industry, where “the majority of the adults [he] worked with smoked marijuana.”<sup>1</sup> Marijuana was also prevalent among high school staff, local business owners, and his peers.<sup>2</sup> At the time, he used marijuana a few times a week.<sup>3</sup> At the age of 17 or 18, he and some friends tried to cultivate marijuana.<sup>4</sup> On one or more unspecified times, he sold marijuana. His heaviest involvement with the drug occurred between 1996 and 2003, after which he reduced his use of the drug. While a junior in high school, his parents once took him for a scheduled drug test, which the teenager passed by drinking lots of water and abstaining beforehand.<sup>5</sup>

In September 2001, Applicant relocated to another part of the country to attend college, which he continued until May 2002. During and after that academic year, he again worked as a cook. He found “the same sort of behavior was almost as prevalent in the restaurant industry” there as it had been back home.<sup>6</sup> After taking a break from college in May 2002, he supported himself as a cook.<sup>7</sup> He tried cocaine on two occasions in about October 2003, when his supervisor offered it to him.<sup>8</sup> He tried it to “see what it was all about.”<sup>9</sup> He did not care for the drug and has refrained from further use. Dissatisfied by this milieu and lifestyle, he decided to refocus on school.

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<sup>1</sup> Tr. 14.

<sup>2</sup> Tr. 15.

<sup>3</sup> Tr. 29.

<sup>4</sup> *Id.*

<sup>5</sup> Tr. 58.

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

<sup>7</sup> Tr. 31-32. Applicant noted that he had been supporting himself since the time he was 16 without financial assistance from his parents and wanted a break. He had also become unsatisfied with his academic major.

<sup>8</sup> Tr. 19, 37. Applicant admits that he purchased the drug on at least one occasion in 2003. He credibly testified that he was unsure whether he purchased cocaine both times he used it. See Tr. 20

<sup>9</sup> Tr. 35. Applicant now laments his contribution to the “whole drug industry.”

In 2004 and early 2005, Applicant quit working in kitchens and learned about becoming a private equity broker. After about May 2005, he sought additional student financial aid, took up martial arts, began to disassociate himself from those who used illegal drugs, and returned to college.<sup>10</sup> He also found work at the college that was compatible with his studies. In the summer of 2006, Applicant married. He graduated in June 2007.

In February 2008, Applicant started working as an analyst for a staffing entity that provided support for an aero-engine manufacturer. On his assignment for the manufacturer, he performed mostly administrative functions concerning performance contracts and did not need a security clearance.<sup>11</sup> He believes he knew that the company to whom he was assigned had a drug-free workplace.<sup>12</sup> He stated that he signed a document stating he would not “use drugs working” at the company, but its precise terms and contents were not established.<sup>13</sup>

In February 2009, around the time he relocated to his present state of residence, he “totally redesigned [his] comfort zone and [his] expectations and disassociated [himself] from all drug-using contacts and associates.”<sup>14</sup> He quit using marijuana because he “had grown out of it,” did not want “the same life that [he] had,” and wanted to “move on.”<sup>15</sup> He also wanted to seriously pursue a career. He knew future drug use would divert his focus from his work.<sup>16</sup> Once he became committed to the idea of permanently quitting drugs, he experienced no difficulty in quitting them “cold turkey.”<sup>17</sup> About five months later, in July 2009, he was hired directly by his current employer as a full-time employee.

On reflection, Applicant notes that marijuana had a bad effect on his life. It hindered his social life and high school academics.<sup>18</sup> His wife, who used marijuana on

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<sup>10</sup> Tr. 15-16, 22.

<sup>11</sup> Tr. 28.

<sup>12</sup> Tr. 68.

<sup>13</sup> *Id.* The statement was not introduced as evidence.

<sup>14</sup> Tr. 16, 34.

<sup>15</sup> Tr. 17. Applicant surmised that he had worked in “kitchens for ten years and that was a whole lifestyle, and [he] just really - - [he] felt that it in no way benefitted [him] to continue to smoke marijuana.” He found his former associates to be “an unhappy group of people. . . . not just drug use, but alcoholism and really not - - not the best - - not the best experience and [he] didn’t want that to be [his] life. [He] wanted to move on.” See *also* Tr. 56.

<sup>16</sup> Tr. 57.

<sup>17</sup> Tr. 18, 52-53.

<sup>18</sup> Tr. 41-42.

occasion before they were married, wanted him to quit after they wed.<sup>19</sup> He appreciates her patience with him regarding his past marijuana use and is “making up for it now.”<sup>20</sup> Since he quit using marijuana, he has only socialized with those who do not abuse illegal drugs.<sup>21</sup> He no longer maintains relationships with those who do use drugs.<sup>22</sup> Applicant avoids places and events where drugs might be in use, noting that he now finds “happiness in my life as it is.”<sup>23</sup> He feels that drugs are “a waste of time and money,” noting that he is especially opposed to illegal drugs because of the black market and drug wars they have generated.<sup>24</sup> If marijuana were to become legal, he would not start using the drug again because of the way it made him feel unproductive, unchallenged, and unhappy.<sup>25</sup>

Today, Applicant is a valued employee “happy to be able to contribute to the development of technologies that contribute to better national security.”<sup>26</sup> He requested a hearing in this matter because he chose to change his life and “pursue a career that would contribute to the wealth and security of this nation. . . . to be fulfilled, rather than to languish in dead-end jobs.”<sup>27</sup> He fully disclosed his past drug use on his July 2009 security clearance application (SCA), which he completed shortly after starting his current position. He understands that his disclosure could put his career “on line, and [he is] not going to jeopardize [his career].”<sup>28</sup> At work, he has signed a document acknowledging that he can be drug tested at any time and terminated for any positive reading.<sup>29</sup>

Applicant is now a homeowner. He and his wife are presently planning to start a family. He is fully content with his current life, marriage, friends, and profession.<sup>30</sup> He looks forward to coming home after a long day to “keep his house nice and cook for

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<sup>19</sup> Tr. 41, 43. Regarding the two years he occasionally used marijuana while married before he quit, Applicant acknowledged that it took him “a long time to grow up.” Tr. 44.

<sup>20</sup> Tr. 52.

<sup>21</sup> Tr. 45.

<sup>22</sup> Tr. 46, 69.

<sup>23</sup> Tr. 59.

<sup>24</sup> Tr. 49. Applicant finds the drug market to be “destructive.”

<sup>25</sup> Tr. 50-51.

<sup>26</sup> *Id.*

<sup>27</sup> Tr. 17.

<sup>28</sup> Tr. 60.

<sup>29</sup> Tr. 39.

<sup>30</sup> See, e.g., Tr. 59-60.

[his] wife sometimes.”<sup>31</sup> He participates in volunteer opportunities through his employer with an initiative to help “bridge the gap” between people of diverse ages.<sup>32</sup> Drugs are no longer part of his life or his environment, and he has no intention of using illegal drugs in the future.<sup>33</sup> He has the resolve to eschew drugs in the future.<sup>34</sup> After the hearing, he submitted a notarized statement in which he expressed his resolve to cease interaction with individuals using drugs, affirming that he has not been using illegal substances, and that he avoids places where drugs might be present.<sup>35</sup> It also included the express acknowledgment that any future drug use would lead to automatic revocation of any security clearance held.<sup>36</sup>

Applicant is a successful and valued employee who loves his work and his career. His program director wrote that he finds Applicant’s “personal traits and skills” include diligence, self-direction, initiative, and written communication skills.<sup>37</sup> The program director noted that Applicant “has done well in every assignment he has undertaken during” the program director’s tenure, and wrote that Applicant is honest and forthright.<sup>38</sup> The business manager of Applicant’s division wrote that Applicant’s work is of “excellent quality and consciously executed,” and that his work products are “consistently accurate and timely executed.”<sup>39</sup> Applicant has “shown excellent reliability with no absences for illness or unexcused absences.”<sup>40</sup> The manager also conveyed that Applicant “has proven his devotion to successful execution of assigned duties by contributing his time and attention by working assigned overtime, as required, as well as being available on-call after hours as dictated by workload demands.”<sup>41</sup> In noting that Applicant is an asset to their organization, a professional colleague wrote that Applicant is organized, efficient, extremely competent, and has an excellent rapport with co-

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<sup>31</sup> Tr. 60.

<sup>32</sup> Tr. 67-68.

<sup>33</sup> Tr. 61.

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

<sup>35</sup> Ex. E (Statement, dated Oct. 1, 2010, signed Oct. 2, 2010).

<sup>36</sup> *Id.* At the hearing, Applicant, a non-attorney proceeding *pro se*, was asked whether he had received a copy of the AG. He was asked if the letter of intent noted at AG ¶ 26(b)(4) might reflect his intentions and feelings, and also be something he would be comfortable in submitting. He testified that it was. He was given one week to do so “should he wish to submit one.” Tr. 61-62, 64, 81.

<sup>37</sup> Ex. A (Reference, dated Sep. 22, 2010).

<sup>38</sup> *Id.*

<sup>39</sup> Ex. D (Reference, dated Sep. 9, 2010).

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

workers of all ages.<sup>42</sup> Another work peer wrote that Applicant is dedicated, conscientious, committed to “getting the job done,” and has a strong work ethic.<sup>43</sup> Applicant’s references are aware that he formerly used marijuana.<sup>44</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>45</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>46</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.

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<sup>42</sup> Ex. B (Reference, dated Sep. 23, 2010).

<sup>43</sup> Ex. C (Reference, undated).

<sup>44</sup> Tr. 47.

<sup>45</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>46</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

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.”<sup>47</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>48</sup>

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, and those which would mitigate such concerns, are 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.<sup>49</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>50</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>51</sup>

Applicant admitted he used marijuana with varying frequency from about 1996 until February 2009. He admitted that he had purchased the drug, had once tried to grow it, and had sold it to others. He also admitted that he twice bought and used cocaine in 2003. Drug Involvement Disqualifying Condition AG ¶ 25(a) (any drug abuse); AG ¶ 25(g) (any illegal drug use after being granted a security clearance) and AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia) are applicable. With disqualifying conditions raised, the burden shifts to Applicant to mitigate related security concerns.

Although Applicant’s admitted use of drugs ceased in February 2009, after he chose to demonstrate maturity and comport his behavior to that of one entering a

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<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> AG ¶ 24.

<sup>50</sup> *Id.* at ¶ 24(a)(1-2).

<sup>51</sup> *Id.* at ¶ 24(b).

professional career, his earlier use of drugs was protracted and sometimes frequent. However, his turnaround in early 2009 demonstrated sound judgment. His consistent candor since completing his SCA has shown reliability. He is committed to his current lifestyle and profession. Moreover, as discussed further below, he is unlikely to undertake illegal drug usage in the future. Therefore, 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 in part.

Since quitting illegal drugs in February 2009, nearly two years ago, Applicant has actively eschewed environs and individuals associated with drugs. Instead, he devotes his time to his work, his marriage, his house, and his new circle of friends. Consequently, AG ¶ 26(b)(1) (disassociation from drug-using associates and contacts) and AG ¶ 26(b)(2) (changing or avoiding the environment where drugs were used) apply.

Applicant has been drug-free for nearly two years. His explanation as to why he made the decision to finally quit using drugs was credible and consistent with his slow, but steady, maturation over the past few years. He acknowledges that drug use had hindered his personal progress, and he described it as a waste of time and money. He has made notable progress since quitting drugs "cold turkey" in February 2009. He satisfied his wife's desire that he quit using marijuana, and he has refocused his attention on marital harmony and the prospect of starting a family. He accepted his first permanent, direct-hire position in his chosen profession. There, he has found personal fulfillment. He is a flexible, highly motivated, and respected employee. Applicant continues to avoid people and places associated with drugs. He has had sufficient time to reflect and appreciate the positive changes that have occurred in his life since he quit using marijuana. Moreover, he is fully aware that any return to drug use would jeopardize the career and the lifestyle he has struggled to achieve, an awareness that has provided him with more resolve to remain drug-free. I find that AG ¶ 16(b)(3) (an appropriate period of abstinence) applies.

At the hearing, Applicant made several credible statements regarding his reasons for quitting drugs and for refraining from their use in the future. Some of those formed my basis for the above. In addition, Applicant submitted four highly positive recommendations and assessments, two of which were from superiors. The excellent qualities and work ethic attributed to Applicant by all four of those individuals, colleagues who know that Applicant used marijuana in the past, make his stated intentions more credible and convincing. Furthermore, while arguably self-serving, I have given appropriate weight and consideration to the signed statement of intent with automatic revocation of any security clearance granted should he use illegal drugs in the future (Ex. E). Applicant, who is not an attorney, prepared and submitted it after the hearing. He had sufficient time to consider whether it truly reflected his feelings and intentions. His submission goes beyond the statement contained in AG ¶ 26(b)(4), lending additional credibility to its contents. Therefore, I find that AG ¶ 26(b)(4) (a signed statement of intent with automatic revocation of clearance for any violation) applies.



The Government met its initial burden of proving the allegations by submitting Applicant's previous disclosures in his SCA and an interrogatory (Exs. 1-2). Applicant, on the other hand, offered credible testimony and 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, 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 bright and articulate 31-year-old man. Working at menial jobs, he paid for his college education and earned an economics degree. Applicant is married and looking forward to starting a family. He quit using marijuana nearly two years ago. Through self-initiative and diligence, he has risen from restaurant shift worker and temporary worker to valued professional employee.

Applicant's life, however, has not been without adverse incidents. He started using marijuana in 1996, while in high school. He tried to grow marijuana once in high school and he also sold some of the substance. He tried cocaine twice in 2003. To his credit, he eventually tapered his marijuana and, in February 2009, made the commitment to quit using drugs. Since then, he has avoided people and places involved with illegal drugs. He has changed his circle of friends and started a professional career. He has satisfied his wife's request that he become drug-free. In addition, Applicant has no intention of using drugs in the future. At work, where he is extremely content, Applicant is successful and known for his flexibility. His excellent work recommendations from supervisors and colleagues lend credence to his expressed intention not to use marijuana in the future. Further, he understands the adverse domestic and professional repercussions that would result should he use drugs again, and he is clearly not willing to risk them. Now properly acting as a mature man with adult responsibilities, he is committed to his drug-free life. In light of these considerations and the disqualifying conditions noted above, 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 section E3.1.25 of Enclosure 3 of the Directive, are:

Paragraph 1, Guideline H: FOR APPLICANT

Subparagraphs 1.a-1.f: 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