



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



In the matter of: )  
)  
) ISCR Case No. 09-08333  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Ray T. Blank, Esquire, Department Counsel  
For Applicant: *Pro se*

May 20, 2011

**Decision**

Duffy James F., Administrative Judge:

Applicant has mitigated the Drug Involvement and Criminal Conduct security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On November 11, 2010, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H, Drug Involvement, and Guideline J, Criminal Conduct. DOHA acted under Executive Order (EO) 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) effective within the Department of Defense on September 1, 2006.

Applicant answered the SOR on December 15, 2010, and requested a hearing before an administrative judge. The case was assigned to me on March 31, 2011. DOHA issued a notice of hearing on April 13, 2011, and the hearing was convened as scheduled on April 27, 2011. The Government offered exhibits (GE) 1 through 3, which

were admitted into evidence without objection. Department Counsel's exhibit index is marked as Hearing Exhibit (HE) I. Applicant testified and submitted exhibits (AE) A through F that were admitted into evidence without objection. DOHA received the hearing transcript (Tr.) on May 9, 2011.<sup>1</sup>

### **Procedural Ruling**

Department Counsel verbally notified Applicant of the hearing date more than 15 days before the hearing convened. At hearing, I asked Applicant if he was ready to proceed, and he stated that he was ready. Applicant knowingly waived the 15-day notice requirement imposed by ¶ E3.1.8 of the Directive.<sup>2</sup>

### **Findings of Facts**

Applicant is a 26-year-old production technician (hardware integrator), who has been employed by a defense contractor since June 2009. He is a high school graduate and expects to graduate with a bachelor's degree from a major university in December 2011. He has never been married and has no children. He plans to get engaged to his girlfriend in December 2011. He is a first-time applicant for a security clearance.<sup>3</sup>

The SOR contains four allegations under Guideline H. Three of those allegations involve marijuana-related arrests and charges that occurred between August 2005 and September 2008. The fourth alleges the use of marijuana on multiple occasions from approximately 2004 to September 2008. The three marijuana-related offenses were also cross-alleged in one allegation under Guideline J. In his Answer, Applicant admitted all of the SOR allegations. His admissions are incorporated herein as findings of fact.<sup>4</sup>

Applicant graduated from high school in June 2004. He started college in State A in the fall of 2004 and began using marijuana while at college. At that time, he often stayed at his cousin's apartment near the college campus. He estimated that he used marijuana between 20 to 25 times from August 2004 to September 2006.<sup>5</sup>

On August 5, 2005, the police stopped him in his vehicle for running a red light. During a search of the vehicle, marijuana and drug paraphernalia were found. He was later charged with possession of marijuana/hash under 50 grams and possession of drug paraphernalia. He pled guilty to the charges and was sentenced to a one-year

---

<sup>1</sup> AE A-F are attached to Applicant's Answer to the SOR.

<sup>2</sup> Tr. at 12-13.

<sup>3</sup> Tr. at 4, 30-32, 36, 45-46, 57-58; case file, i.e., Questionnaire for National Security Positions (SF 86) dated July 20, 2009.

<sup>4</sup> Applicant's Answer to the SOR.

<sup>5</sup> Tr. at 44-46, 52-54.

diversion program. Approximately two weeks after his arrest, he was given a drug test that he failed. He also received a drug evaluation following this arrest and was found not to need any drug rehabilitation.<sup>6</sup>

On June 5, 2006, Applicant parked his vehicle at his girlfriend's home and was at her front door when the police approached him. According to Applicant, the police officer asked him to return to his vehicle. He did so. The police officer searched his vehicle and found drug paraphernalia and marijuana. According to Applicant, the drug paraphernalia found was a cigar (a Philly blunt). He was eventually charged with possession of marijuana/hash under 50 grams and possession of drug paraphernalia. Applicant was represented by an attorney at the court proceeding and pled guilty to the reduced charge of loitering/prowling in a public place. He was fined for that offense.<sup>7</sup>

Following his second arrest, Applicant attended Narcotics Anonymous (NA) meetings and participated in the NA 12-step program. He did not have a NA sponsor and never sought to obtain drug treatment or counseling. He decided to stop using marijuana after his second arrest. In February 2007, he left the college in State A without obtaining a degree. In May 2008, he resumed his studies at a university in State B and has continued those studies until present. Upon moving to State B, he first lived in an apartment complex near the campus with a roommate. While living there, he began to use marijuana again. While in State B, he indicated that he used marijuana about 5 times.<sup>8</sup>

On September 5, 2008, the police stopped Applicant in his vehicle for making a turn too quickly. A search of his vehicle uncovered drug paraphernalia. He was eventually arrested and charged with possession of cannabis less than 20 grams and possession of drug paraphernalia. He pled nolo contendere to the charges and was fined.<sup>9</sup>

Applicant stated that he has not used marijuana since his arrest in September 2008. He has expressed remorse for his marijuana use. In February 2009, he moved from the apartment building near the campus and now lives with his girlfriend in a single-family home. He no longer has any contact with his prior roommate. Except for his girlfriend, he does not have any contact with individuals with whom he has used marijuana. He stated that his girlfriend last used marijuana in 2006. He has never been evaluated by a medical professional as being either a drug abuser or drug dependent. He has not attended any drug rehabilitation program. Applicant stated he never used any other illegal drugs besides marijuana and never misused prescription drugs.<sup>10</sup>

---

<sup>6</sup> Tr. at 28-30, 54-55; Applicant's Answer to the SOR; GE 1, 2.

<sup>7</sup> Tr. at 30-36, 38, 50-52; Applicant's Answer to the SOR, GE 1, 2.

<sup>8</sup> Tr. at 28, 32, 38-40.

<sup>9</sup> Tr. at 36-38, 55-56; Applicant Answer to the SOR; GE 1, 2.

<sup>10</sup> Tr. at 23-27, 46-50, 52, 56-57; GE 2, 3.

Since June 2009, Applicant has worked for his current employer who has a zero-tolerance drug policy. He has taken two drug tests in his current job. The first was when he started working there. The second was approximately one year ago. He passed both of those tests. His employer's drug tests are random and unannounced. On December 15, 2010, Applicant signed a Statement of Intent that he will abstain from any illegal drug use or the misuse of prescription drugs and acknowledged that failure to do so would result in the revocation of his security clearance.<sup>11</sup>

Applicant provided letters of recommendation from his supervisor, a coworker, a neighbor, and his girlfriend. All attest to his reliability and support him for a security clearance. His supervisor stated that Applicant is hard-working, conscientious, intelligent, and honest. When Applicant was hired, he disclosed his marijuana use and criminal record to his employer and coworkers. In his security clearance application, Applicant also disclosed that he had a number of delinquent debts that were apparently discharged in bankruptcy in 2009. Due to tardiness, he was fired from one job in 2006 and quit another in 2008 after being told he would be fired.<sup>12</sup>

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the adjudicative guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are to be used 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, administrative judges apply the guidelines in conjunction with the 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.

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,

---

<sup>11</sup> Tr. at 23-27, 40-43; AE B.

<sup>12</sup> AE C-F; GE 1.

or mitigate facts admitted by the 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 the applicant may deliberately or inadvertently fail to safeguard classified information. Such decisions entail a certain degree of legally permissible extrapolation of potential, rather than actual, risk of compromise of classified information.

Section 7 of EO 10865 provides that adverse 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**

AG ¶ 24 expresses the security concern pertaining to drug involvement:

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.

I have considered all of the evidence in this case and the disqualifying conditions under Drug Involvement AG ¶ 25 and find the following are potentially applicable:

- (a) any drug abuse;
- (b) testing positive for illegal drug use; and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant tested positive for marijuana use following an August 2005 drug arrest. He admitted that he used, and thereby possessed, marijuana on multiple occasions from approximately 2004 to September 2008. The evidence is sufficient to raise the above disqualifying conditions.

I have considered all of the evidence in this case and the mitigating conditions under Drug Involvement AG ¶ 26 and especially considered the following:

(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; and

(b) a demonstrated intent not to abuse any drugs in the future, such as: (1) disassociation from drug-using associates and contacts; (2) changing or avoiding the environment where drugs were used; (3) an appropriate period of abstinence; (4) a signed statement of intent with automatic revocation of clearance for any violation.

Applicant admitted that he used marijuana approximately 25 to 30 times from 2004 to September 2008. During this period, he was 19 to 23 years old. He has not used marijuana since his last arrest in September 2008. He denied ever using any other types of illegal drugs.

Applicant's drug use occurred while he was attending college. In particular, it primarily occurred while he was living or staying near college campuses. In February 2009, he and his girlfriend moved into a single-family home away from the college campus. He no longer associates with individuals who use illegal drugs. Since June 2009, he has been working for his current employer who has a random urinalysis program. He passed two urinalysis tests given by his employer. He also signed a Statement of Intent that he will abstain from any illegal drug use and acknowledged that failure to do so would result in revocation of his security clearance.

Applicant's use of marijuana was a youthful indiscretion. He is now well aware of its negative consequences. He has made lifestyle changes that have taken him away from the college drug scene. A significant period of abstinence has elapsed that demonstrates he put the illegal use of marijuana behind him. I find that AG ¶ 26(a) and 26(b) apply.

### **Guideline J, Criminal Conduct**

AG ¶ 30 sets out the security concern relating to criminal conduct:

Criminal activity creates doubt about a person's judgment, reliability, and trustworthiness. By its very nature, it calls into question a person's ability or willingness to comply with laws, rules and regulations.

I have considered the disqualifying conditions under Criminal Conduct AG ¶ 31 and especially considered the following:

(a) a single serious crime or multiple lesser offenses; and

(c) allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted.

From August 2005 to September 2008, Applicant had three drug-related arrests. Two of those arrests resulted in possession of marijuana and possession of drug paraphernalia convictions. The other resulted in a plea arrangement in which Applicant pled guilty to a reduced charge of prowling in a public place. The evidence is sufficient to raise the above disqualifying conditions.

I have considered all of the mitigating conditions for Criminal Conduct under AG ¶ 32 and especially considered the following:

(a) so much time has elapsed since the criminal behavior happened, or it happened under such unusual circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment; and

(d) there is evidence of successful rehabilitation; including but not limited to the passage of time without recurrence of criminal activity, remorse or restitution, job training or higher education, good employment record, or constructive community involvement.

The gravamen of Applicant's criminal conduct is his illegal use of marijuana. Although he pled guilty to the reduced charge of prowling in a public place in 2006, he was stopped by the police on that occasion while he was about to knock on his girlfriend's door and was not engaged in any prowling activity. He has been forthcoming about his illegal marijuana use. He disclosed his drug involvement and criminal conduct to his current employer. He has acknowledged that he has made mistakes and is remorseful for his wrongdoing. He has disassociated himself from drug users and has not used marijuana for over two and a half years. He expects to complete college this year and get engaged. He has obtained a steady job that has career potential. In short, he has matured and stopped using marijuana. His criminal conduct is unlikely to recur. I find that AG 32(a) and 32(d) apply.

### **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 relevant 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 relevant facts and circumstances surrounding this case. I have incorporated my comments under Guideline H and Guideline J in my whole-person analysis. Some of the factors in AG ¶ 2(a) were addressed under those guidelines, but some warrant additional comment.

I considered Applicant's age and that his use of marijuana was a youthful indiscretion. At the hearing, Applicant was open and forthcoming about his marijuana use. His last use of marijuana occurred over two and a half years ago. For almost the past two years, he has been employed. He is subject to random urinalysis tests in his new job. He expects to get engaged soon. He no longer associates with drug users. His girlfriend stopped using marijuana before he did. He has matured and realizes the consequences of future use of illegal drugs. He has put his illegal drug use behind him. I find that he has provided sufficient evidence to mitigate the security concerns.

Overall, the record evidence leaves me with no questions and doubts about Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Drug Involvement and Criminal Conduct 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.d:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraphs 2.a:	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.

---

James F. Duffy  
Administrative Judge