



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



In the matter of: )  
)  
) ISCR Case No. 10-03635  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Jeff Nagel, Esq., Department Counsel  
For Applicant: *Pro se*

September 20, 2011

**Decision**

GOLDSTEIN, Jennifer I., Administrative Judge:

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

**Statement of the Case**

On February 1, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing security concerns under Guideline H, Drug Involvement. The action was taken 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 after September 1, 2006.

Applicant answered the SOR on February 28, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 17, 2011. DOHA issued a notice of hearing on April 27, 2011, and the hearing was convened as scheduled on May 23, 2011. The Government offered Exhibits (GE) 1 through 5, which

were admitted without objection. The Applicant offered Exhibits (AE) A through F, which were admitted without objection, and testified on his own behalf. The record was left open until June 15, 2011, for receipt of additional documentation. On June 15, 2011, Applicant submitted nine additional documents, marked AE G to AE O. Department Counsel had no objections to AE G to AE O, and they were admitted into the record. DOHA received the transcript of the hearing (Tr.) on June 1, 2011.

### **Findings of Fact**

The Government alleged that Applicant used marijuana, with varying frequency, between 1993 and 1997 (SOR 1.a.); that he used marijuana twice in June 2009 (SOR 1.b.); and that his marijuana use in June 2009 occurred after being granted a security clearance (SOR 1.c.). The Applicant admitted each of the SOR allegations.

Applicant is a 36-year-old employee of a defense contractor since 1998. Applicant's use of illegal substances began in high school. He knew it was illegal to use drugs but chose to use it socially. He used marijuana approximately three times in high school and once his freshman year of undergraduate school. During his sophomore and junior years of undergraduate school, his use of marijuana increased to once-or-twice per month. However, in approximately 1997 during his senior year of undergraduate school, he stopped using marijuana. (GEs 1-5; Tr. 20, 26-30, 46.)

In 1998 Applicant was hired by his current employer. At that time, Applicant applied for his first security clearance. During the application process, he disclosed his past marijuana use on both his security clearance application and in his statement dated February 10, 1999. In his statement, he indicated "I have no intention of using such substances now or in the future." He was granted a clearance and has held it since the background investigation concluded. He was aware that his company and the Federal Government had policies against drug use. (GE 1; GE 2; Tr. 31, 49-50.)

In August 2000 Applicant married. He had three children; a daughter, age 12 and two sons, ages 9 and 8, from his marriage. He also cared for his mother-in-law, who lived with his family. During the course of Applicant's marriage, his wife experienced severe problems, including "alcoholism, bipolar disorder, and borderline personality disorder." She was in rehabilitation six times, which placed a significant amount of stress on Applicant. (GEs 2-5; Tr. 21-23.)

In June 2009, between his wife's fifth and sixth time in rehabilitation, Applicant discovered his wife was having an affair and was out drinking. Applicant's mother-in-law's friend was a medicinal marijuana user. While confiding in his mother-in-law's friend, who was visiting Applicant's home immediately after Applicant learned of the affair, Applicant was offered marijuana. He "smoked the joint while opening up to [the friend] about [Applicant's] situation." Applicant remained in a depressed state, feeling "like [his] world fell apart" and a week later accepted marijuana again from the same individual. Applicant realized his marijuana use was wrong as he began to emerge from his "state of despair," after this second use of marijuana. (GEs 2-5; Tr. 32-35, 46-48.)

In February 2010 Applicant completed an Electronic Questionnaire for Investigations Processing (e-QIP). On his eQIP, he disclosed his marijuana use in June 2009. He also went to his security officer in approximately February 2010, and disclosed his marijuana use to her. A letter from his security officer verifies this disclosure. (AE J; Tr. 35-37.)

At hearing, Applicant indicated:

I take full responsibility for the mistake I made. I understand the severity of it. I find it very hard to dispute that it does raise some concerns as to my trustworthiness, as I honestly put forward the mistake I made. I hold myself accountable and do not make excuses for my behavior. (Tr. 22.)

Applicant separated from his wife in February 2010. His divorce was finalized in March 2011. He has full custody of his children. He has disassociated himself from any contacts that use illegal substances, including his mother-in-law's friend who moved away. Applicant attended family and marital counseling for eight one-hour sessions. The counseling helped him understand his role as a co-dependent person and gave him the tools to take responsibility for his own actions. While the counseling did not focus on his illegal drug use, he did discuss it with his counselor. The counseling gave him the tools to manage stressful situations in the future. Applicant now focuses on exercise, eating right, and the things that he can control in life. He indicated that he will not turn to drugs again in stressful situations and he signed a letter of intent to abstain from future use of illegal substances. He also recognizes that it is a possibility that if he uses marijuana again he could lose custody of his children. (AE L; AE O; Tr. 23-25, 48-53, 55.)

Applicant's therapist, a licensed marriage and family therapist (M.F.T.) wrote a letter on Applicant's behalf. He opined:

During the course of our therapy, [Applicant] disclosed that he had made the mistake of using marijuana when it was offered to him on the weekend on two occasions in June 2009. This occurred shortly after he has discovered his wife was having an affair, in-between her 5<sup>th</sup> and 6<sup>th</sup> alcoholic rehabilitation treatment programs. It is my professional judgment that [Applicant] made this mistake during a time of extenuating circumstances, when he was going through extra-ordinary challenges. I do not believe [Applicant] has or is susceptible to a drug problem, and believe this was an isolated issue that is unlikely to re-occur. . . As a licensed therapist, who regularly works with individuals who do have drug, alcohol, and mental illness problems, I am qualified to make this observation. (AE I.)

Applicant is well respected by his co-workers, clients, friends, and former mother-in-law. Each was aware of Applicant's marijuana use and the problems he was dealing with when he used the marijuana in June 2010. However, all opined that Applicant has integrity and is trustworthy. His performance reviews show he does exceptional work. He has received a number of certificates of appreciation for his outstanding work. Applicant

is heavily involved in his children's lives despite his challenging career. He coaches his children's baseball and soccer teams. (AEs A-O.)

## **Policies**

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 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, 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 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 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 especially considered the following:

- (a) any drug abuse;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia; and
- (g) any illegal use after being granted a security clearance.

The Government presented sufficient information to support all of the factual allegations under Guideline H (SOR 1.a.-1.c.). Applicant began using illegal substances in 1993-1997 and used marijuana again in June 2009, after being granted a security clearance. The facts established through the Government's information and through Applicant's admissions raise a security concern under all of 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 used illegal drugs from 1993 to 1997 and again in June 2009. He disclosed his prior marijuana use on his first security clearance application in 1998. His use in June 2009 occurred while he was in possession of a security clearance. His 2009 drug use occurred twice within an eight day period, while he was under the unusually stressful circumstance of discovering his alcoholic wife was having an affair.

In this case, Applicant has demonstrated a concrete and substantial change in his life since June 2009. He divorced his wife, obtained counseling, and disassociated himself from all drug-using associates.

Applicant's therapist has indicated Applicant does not have, nor is he susceptible to, a drug problem, and further believes this was an isolated issue that is unlikely to re-occur. Applicant learned tools in therapy to help him deal with future stressful situations in a healthy manner.

Applicant has signed a statement clearly indicating that he will not use drugs in the future. While he signed a similar statement in the past, he has now taken actions to support his promise including learning how to deal with future stressful situations in a healthy manner. His dedication to parenting his children full time is unquestionable. He is sincere in his pledge to not allow drugs to interfere with his job or the care of his children. He has felt the effects of having a wife who is dependent on alcohol, and his renewed commitment to remaining drug free is credible. His circumstances appear to have changed enough to support his current stated intentions to abstain from all future drug use.

Available information is sufficient to mitigate the security concerns about Applicant's past drug use while holding a security clearance. AG ¶¶ 26(a) and 26(b) 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 the facts and circumstances surrounding this case. I have incorporated my comments under Guideline H in my whole-person analysis. Independent of my analysis under

Guideline H, I find that Applicant has mitigated the security concerns under the whole-person concept.

Applicant's life has drastically changed in the past two years. He has been awarded sole custody of his children and has divorced his wife. Applicant attended therapy.

In addition, Applicant is well respected by his colleagues who were aware of his difficulties with his wife and his marijuana use. His co-workers and clients consider him to be trustworthy, despite his confessed past indiscretions.

Further, Applicant displayed a great amount of remorse for his decision to use marijuana in 2009. He has been truthful about his marijuana use with the government and disclosed it on his first security clearance application in 1998, on his recent eQIP, and to his security manager in 2010. There is little potential for pressure, coercion, exploitation, or duress in this instance.

Overall, the record evidence leaves me without questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the Drug Involvement 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
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.

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Jennifer I. Goldstein  
Administrative Judge