



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



In the matter of: )  
)  
) ISCR Case No. 10-04971  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: Alison O’Connell, Esquire, Department Counsel  
For Applicant: David P. Price, Esquire

June 10, 2011

**Decision**

MATCHINSKI, Elizabeth M., Administrative Judge:

Applicant abused marijuana about 20 times between March 2007 and February 2010. He smoked the drug while socializing with friends, primarily while in college, but also on five occasions after he began working for a defense contractor. He understands that prohibited drug activity is inconsistent with his responsibilities to the Government and does not intend to use any illicit substance in the future. Clearance granted.

**Statement of the Case**

On September 22, 2010, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant, detailing the security concerns under Guideline H (Drug Involvement), which provided the basis for its preliminary decision to deny him a security clearance. DOHA took action under Executive Order 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 allegations on October 14, 2010, and requested a hearing if his response was not sufficient for a favorable determination. On January 4, 2011, 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 Applicant. On January 6, 2011, I scheduled a hearing for January 26, 2011.

I convened the hearing as scheduled. Two Government exhibits (Ex. 1-2) and six Applicant exhibits (Ex. A-F) were entered into evidence. Applicant and a principal owner of the defense contracting firm testified, as reflected in a transcript (Tr.) received on February 4, 2011.<sup>1</sup>

### **Findings of Fact**

The SOR alleged that Applicant used marijuana from March 2007 to February 2010 (SOR 1.a) and that he purchased marijuana (SOR 1.b). In his answer to the SOR, Applicant admitted the “limited” use and purchase of marijuana during the dates alleged. Applicant’s admissions are incorporated as findings of fact. After considering the pleadings, exhibits, and transcript, I make the following additional findings of fact.

Applicant is a 23-year old research analyst with an environmental consulting firm. (Ex. 1; Tr. 22.) He seeks his first security clearance, which he will require for his duties only until June or July 2011, when he intends to resign from his employment to attend law school. (Ex. 1; Tr. 22.) As of January 2011 he had been accepted by several prestigious law schools, but had yet to choose which institution to attend. (Ex. D; Tr. 39.) His employer hired him in a non-career position with the understanding that he would pursue graduate school in two or three years. (Tr. 45.) Knowing that Applicant intends to pursue a legal education starting in the fall of 2011, Applicant’s employer is covering the cost of his legal representation as Applicant appeals the preliminary decision to deny him a security clearance. (Tr. 50.)

Applicant excelled academically at his local public high school. (Ex. C; Tr. 17-18.) Following graduation, he enrolled in an undergraduate degree program at a very selective university in August 2005. Throughout college, he focused on his academic studies and on his extracurricular involvement as a member of one of the university’s varsity sports teams. (Tr. 19-20.) He resided in the dorms during the academic semesters and lived with family during the summers. Applicant worked as a part-time museum intern and tennis instructor in the summer of 2006 after his freshman year. (Ex. 1, B; Tr. 20.)

During the spring semester of his sophomore year, Applicant tried marijuana at a party in March 2007. He continued to use marijuana while socializing in college at parties or within his smaller circle of close friends. The frequency of his use varied from a few times a month to periods as long as six months with no use. He smoked marijuana around

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<sup>1</sup> On February 16, 2011, Applicant’s counsel submitted a list of corrections to the transcript to be appended to the record. To the extent that his corrections are not substantive and consist of minor textual edits and obvious spelling corrections (such as “principle” to “principal”), they are accepted.

15 times during college. He intentionally abstained when he needed to be at his maximum performance athletically and for an internship in the summer of 2008. (Ex. 1, 2; Tr. 22-23, 34-35.) Most of the marijuana was provided to him at no cost, but on three occasions, he contributed \$25 to cover the cost of the marijuana he smoked. (Ex. 2; Tr. 28-29.) Applicant lived at home and worked as a part-time research assistant for a university professor in the summer of 2007. (Tr. 20.)

Applicant did not allow marijuana to adversely affect his grades or athletic performance. (Ex. B, C.) In the summer of 2008, following his junior year, Applicant worked full-time as a health and safety intern in a large corporation's environmental programs. (Ex. 1.) He was required to take a drug test for the internship, which was negative for all substances tested, including marijuana. (Tr. 34.) The internship was scheduled to end after 12 weeks, but Applicant's performance and contributions were such that his internship was extended to 12 months, the maximum allowed by the company. Applicant worked as an intern one day a week throughout his senior year of college from August 2008 to May 2009. (Ex. 1, Ex. B; Tr. 20.) Applicant had access to company-sensitive information during the internship, and he gave his supervisor no reason to question his honesty or adherence to company requirements for handling that sensitive information. (Ex. B.)

In February 2009 Applicant received an offer of employment from his current employer. (Tr. 32.) In May 2009 Applicant was awarded his bachelor of arts cum laude and with distinction in his major field of environmental studies. (Ex. C, E; Tr. 24.) He lived at his parents' home until July 2009, when he relocated for his present employer. (Ex. 1.) Applicant was unaware when he started with the company that he would require a security clearance for his job (Tr. 33), and he smoked marijuana with college friends and with a few new friends on five occasions between July 2009 and February 2010. (Tr. 24, 35-37.) Applicant learned in January 2010 that he would need a security clearance to work on a particular project for his employer. (Tr. 33) He did not realize when he smoked marijuana in February 2010 "how big of an issue it would be." (Tr. 36.)

On March 4, 2010, Applicant executed an Electronic Questionnaire for Investigations Processing (e-QIP). He responded affirmatively to question 23.a concerning any illegal drug use in the last seven years, and he disclosed the use of marijuana from March 2007 to February 2010, "Very infrequent recreational use (at most a couple of times per month: went several months at several times during this period without use)." He also answered "Yes" to question 23.c concerning any illegal drug possession, purchase, manufacture, trafficking, production, transfer, shipping, receiving, handling, or sale of any controlled substance in the last seven years. (Ex. 1.) After he completed his e-QIP, Applicant resolved to abstain from illicit substance involvement in the future. (Tr. 37.)

On April 7, 2010, Applicant was interviewed by an authorized investigator for the Department of Defense. Applicant indicated that his recreational abuse of marijuana had ceased in February 2010. He was in the working world and no longer around persons who used the drug. (Ex. 2.)

On January 3, 2011, Applicant executed a statement of intent to refrain from any illegal drug involvement in the future, and he assented to the automatic revocation of his security clearance for any violation. He indicated that he had disassociated himself from any drug-using contacts and had avoided environments in which marijuana is used. (Ex. A.)

As of late January 2011 Applicant had three housemates, two of whom were friends from college. Applicant moved into the house in September 2010. Applicant learned in October or November 2010 that one of them uses marijuana, when he smelled the drug in the house. Applicant told this housemate of the issues with his security clearance, and he asked him to refrain from smoking on the premises. Applicant did not smoke marijuana with him when they attended college together, and this housemate does not use marijuana around Applicant. If Applicant chooses to stay in the area for law school, he does not intend to live with the housemate who smokes marijuana. For now, he feels he has no choice because he signed the lease. The other housemates have never used any marijuana. (Tr. 36-42.) Should Applicant find himself in the presence of someone using illegal drugs, he intends to excuse himself from the situation. (Tr. 31.)

Applicant has informed his family, his coworkers, and his supervisors about his marijuana abuse, and they continue to support him. (Ex. B; Tr. 25, 49-50, 55.) He “deeply” regrets his illegal drug involvement and feels that he let his family down in that they “raised [him] better than for that to happen.” (Tr. 24-25, 31.)

Since July 2009 Applicant has been working with several principals of the environmental consulting company to provide economic, environmental, and policy services to several U.S. Government agencies. Applicant is held in the highest regard throughout the company for his skills and his personal integrity. (Ex. E; Tr. 53-54.) By his mid-year review in June 2010 Applicant had consistently provided his primary supervisor with high-quality work products. At his annual review in December 2010 the company was overall “very pleased” with his work and approach to his duties. (Ex. E.) Applicant received a substantial bonus. (Tr. 21.) A principal owner of the consulting firm testified to his knowledge of Applicant’s marijuana use. (Tr. 49.) He would not hesitate in sharing sensitive information with him. (Tr. 52.)

## **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. 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 factors listed in the adjudicative process. The administrative judge’s overall 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 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 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**

### **Drug Involvement**

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

Under AG ¶ 24(a), drugs are defined as “mood and behavior altering substances,” and include:

(1) 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),<sup>2</sup> and

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<sup>2</sup>Schedules I, II, III, IV, and V, as referred to in the Controlled Substances Act, are contained in 21 U.S.C. §

(2) inhalants and other similar substances.

Under AG ¶ 24(b), drug abuse is defined as “the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.” As for the potentially disqualifying conditions, AG ¶ 25(a), “any drug abuse,” applies because Applicant abused marijuana up to 20 times between March 2007 and February 2010. AG ¶ 25(c), “illegal drug possession, including cultivation, processing, manufacture, purchase, sale or distribution; or possession of drug paraphernalia,” applies in that he contributed around \$25 to a friend on three occasions to cover the cost of the marijuana he smoked.

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” does not apply to relatively recent substance abuse. Applicant’s abuse of marijuana in February 2010 occurred after he learned that he would need a security clearance for a project and only one month before he applied for his security clearance. Concerning whether AG ¶ 26(b), “a demonstrated intent not to abuse any drugs in the future,” is established, Applicant has not completely terminated his association with drug users in that one of his housemates still uses marijuana, including as recently as November 2010, in the house that they rent. However, Applicant was unaware when he signed the lease in September 2010 that this friend from college was a marijuana abuser. Applicant had not smoked marijuana with him in the past. AG ¶ 26(b)(1), “disassociation from drug-using associates and contacts,” does not apply. However, his socialization no longer involves any drug abuse. He has told his housemate not to smoke marijuana in their house, and he is careful to avoid putting himself in situations where drugs may be present. AG ¶ 26(b)(2), “changing or avoiding the environment where drugs were used,” applies. As of his hearing, Applicant had been free of illegal drugs for only 11 months. As evidence of a demonstrated intent not to abuse drugs in the future, it falls a bit short of “an appropriate period of abstinence” required for mitigation under AG ¶ 26(b)(3), given he had smoked marijuana on five occasions after he left the college environment. However, whereas Applicant has committed himself in writing to abstain from all illegal drugs, AG ¶ 25(b)(4), “a signed statement of intent with automatic revocation of clearance for any violation,” applies.

Although not explicitly addressed in the mitigating factors, the random nature of his abuse, and proven ability to abstain for periods as long as six months, are consistent with his claim that he does not have a substance abuse problem. While Applicant’s involvement with marijuana is not condoned, I am persuaded that he has the ability and willingness to refrain from any illicit drug involvement in the future. The drug involvement concerns are mitigated.

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812(c). Marijuana is a Schedule I controlled substance.

## 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).<sup>3</sup> In making the overall commonsense determination required under AG ¶ 2(c), I have to consider Applicant's poor judgment in using illegal drugs, especially after he learned that his employer wanted him to apply for a security clearance. Yet, Applicant showed good judgment when he disclosed the very recent, if not current, marijuana use when he applied for his security clearance in March 2010, and when he detailed his illegal drug involvement during his subject interview. At his hearing, he candidly admitted that one of his housemates is a marijuana user. At some personal shame, he told his family and his employer about his past drug abuse. These positive indicia of trustworthiness weigh in his favor in determining whether he can now be trusted when he indicates that he has put his illegal drug abuse behind him. Applicant has a bright future ahead of him, and he is not likely to jeopardize it by engaging in prohibited drug activity in the future.

### 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

### 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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Elizabeth M. Matchinski  
Administrative Judge

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<sup>3</sup>The factors under AG ¶ 2(a) are as follows:

(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.