



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-05111
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: D. Michael Lyles, Esquire, Department Counsel  
For Applicant: *Pro se*

June 29, 2011

**Decision**

CURRY, Marc E., Administrative Judge:

Applicant’s daily use of marijuana generates a security concern that she failed to mitigate. Clearance is denied.

**Statement of the Case**

On February 14, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing a security concern cross-alleged under Guidelines H, drug involvement, J, criminal conduct, and E, personal conduct. The action was taken 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 for SORs issued after September 1, 2006.

On March 7, 2011, Applicant answered the SOR, admitting all of the allegations. The case was assigned to me on March 29, 2011. That day, a notice of hearing was issued scheduling the case for April 13, 2011. The hearing was conducted as

scheduled. I received five Government exhibits, marked and identified as Government's Exhibits (GE) 1 through 5, and two Applicant exhibits, marked and identified as Applicant's Exhibits (AE) A and B. DOHA received the transcript (Tr.) on April 20, 2011.

### **Findings of Fact**

Applicant is a 49-year-old woman with two adult children. A prior marriage ended in divorce approximately 22 years ago. Applicant did not finish high school, but earned a GED in the early 1980s. For the last seven years, she has worked for a defense contractor. Currently, she is a team leader in the field of digital conversion. (Tr. 17)

Applicant has been smoking marijuana since she was approximately 16 years old. She smoked it "casually" during her teen years, then quit for about five years after getting married and having children. (Tr. 24) She resumed using marijuana in 1985. By 1988, she was using it every weekend, and since 1989, she has used it nearly every night. (Tr. 24-25)

Applicant's ex-husband was abusive. She initially increased her marijuana use "as a way to get away" from her marital troubles." (Tr. 24) From 1988 to 1997, Applicant dated a man who was a serious drug abuser. During this period, she smoked marijuana daily. (Tr. 26) After she stopped seeing this man, her use decreased until 2004, when she began to experience chronic pain related to migraines. She then resumed regular use.

Applicant continues to use marijuana daily. In addition to relieving her migraine symptoms, it helps her relieve stress, and numerous other ailments. (Tr. 34) Medical marijuana is not legal in the state where Applicant lives. (Tr. 28) Applicant's physician knows Applicant uses marijuana and does not condone it. (Tr. 28) Applicant does not believe her "use of marijuana to help relieve [her] pain at home in the evening has [anything] to do with [her] honesty in regard to [her] work." (Tr. 34)

In March 1998, Applicant was arrested and charged with possession of paraphernalia. The charge was nolle prossed later that year.

SOR subparagraph 1.d alleges that Applicant received a non-judicial punishment in 1987 for violating Article 112A of the Uniform Code of Military Justice (UCMJ) for wrongful possession, use and distribution of hashish. Applicant admits to being investigated for dealing hashish by the police from the foreign country where her then husband, a military member, was stationed at the time, but does not recall being charged. She has never served in the military. She disclosed to the foreign investigative authorities that she dealt hashish, as they suspected. (GE 4; Tr. 20)

### **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 that are used to evaluate 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. 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."

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 as to obtaining a favorable security decision.

## **Analysis**

### **Guideline H, Drug Involvement**

Under this guideline, "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" (AG ¶ 24). Applicant's longstanding and continued use of marijuana triggers the application of AG ¶¶ 25(a), "any drug abuse," 25(c), "illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia." and 25(c), "expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use."

Applicant's continued use of marijuana, and her assertion that it has no bearing on her security-clearance worthiness renders any of the mitigating conditions inapplicable. Applicant failed to mitigate the drug involvement security concern.

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

Under this guideline, "criminal activity creates doubt about a person's judgment, reliability, and trustworthiness." (AG ¶ 30) Moreover, "by its very nature, it calls into question a person's ability or willingness to comply with laws, rules, and regulations." (*Id.*) Applicant never served in the military. Consequently, subparagraph 1.d, alleging a

non-judicial punishment under the UCMJ, is invalid on its face. I resolve this subparagraph in Applicant's favor.

Nevertheless, Applicant admitted to the foreign investigative authorities in 1987 that she had been dealing hashish. Also, she has used marijuana, an illegal drug, for more than 30 years, and her use prompted a drug-related criminal charge in 1998. She is a current marijuana user. AG ¶ 31(c), "allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted, or convicted," applies. Applicant has failed to mitigate this security concern for the same reason she failed to mitigate the security concern discussed above.

### **Guideline E, Personal Conduct**

Under this guideline, "conduct involving questionable judgment, lack of candor, dishonesty, or unwillingness to comply with rules and regulations can raise questions about an individual's reliability, trustworthiness, and ability to protect classified information" (AG ¶ 15). Applicant's conduct triggers the application of AG ¶ 16(e), "personal conduct . . . that creates a vulnerability to exploitation, manipulation, or duress, such as . . . engaging in activities which, if known, may affect the person's personal, professional, or community standing . . ." For the reasons discussed above, none of the mitigating conditions 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 the 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.

I have considered the whole-person concept in my analysis of the disqualifying and mitigating conditions above, and it does not merit a favorable conclusion. Applicant is an unacceptable candidate for a security clearance.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a-1.c:	Against Applicant
Subparagraph 1.d:	For Applicant
Paragraph 2, Guideline J:	AGAINST APPLICANT
Subparagraph 2.a:	Against Applicant
Paragraph 3, Guideline E:	AGAINST APPLICANT
Subparagraph 3.a:	Against Applicant

### **Conclusion**

In light of all of the circumstances presented by the record in this case, it is not clearly consistent with the national interest to continue Applicant's eligibility for a security clearance. Eligibility for access to classified information is denied.

MARC E. CURRY  
Administrative Judge