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



In the matter of: )  
)  
) ISCR Case No. 10-05976  
)  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esquire, Department Counsel  
For Applicant: *Pro se*

February 16, 2012

**Decision**

CREAN, Thomas M., Administrative Judge:

On April 1, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP) for his employment with a defense contractor. (Item 6) On March 24, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) detailing security concerns under Guideline H (Drug Involvement) and Guideline J (Criminal Conduct) (Item 1). 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.

The SOR was sent to Applicant and he responded on April 21, 2011, admitting all allegations under both guidelines. (Item 4) The response was returned to Applicant because he did not indicate if he requested a hearing or a decision on the record. (Item 3) Applicant requested a decision on the record on October 5, 2011. (Item 5) Department Counsel submitted the government's written case on October 18, 2011. Applicant received a complete file of relevant material (FORM) on November 1, 2011, and was provided the opportunity to file objections and submit material to refute,

extenuate, or mitigate the security concerns. He did not provide additional information. The case was assigned to me on February 6, 2012. Based on a review of the case file, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant admitted the three factual allegations under Guideline H and the factual allegation under Guideline J. I carefully reviewed the case file and the pleadings, and make the following findings of fact.

Applicant is a single 23-year-old pipe fitter in an apprentice program in a Navy shipyard. He never married and has no children. He is a high school graduate with some college credits. His mother died when he was young, and he was raised by his grandparents. (Item 6) Applicant noted in response to questions concerning drug use on his e-QIP that he used marijuana from August 2003 until February 2009. He was arrested for possession of marijuana in July 2007. His driver's license was restricted and he was required to perform 24 hours of community service. He further noted he was arrested for possession of marijuana in February 2008. The charge was dismissed. He listed an arrest in January 2008 for felonious larceny which was dismissed. (Item 6 at 36-38)

Applicant was requested by security investigators to clarify his statements on the security clearance application concerning drug use and criminal conduct. He admitted using marijuana from age 15. He would smoke with friends two or three times a week after school or at parties. He got the marijuana from the friends or his father. He admitted that he was stopped for speeding in July 2007 when he was 19 years old. The police found a small amount of marijuana in his car. He pled guilty and was sentenced to community service which he completed. In January 2008, when he was a 20-year-old college student and a member of the baseball team, his roommate took a campus police golf cart and he and Applicant went for a joy ride on campus. His roommate drove the golf cart, into a nearby river. Applicant spent one night in jail and was ordered by the college to perform community service. He was released from the baseball team and paid for the golf cart. He also admitted that he and his roommate received a marijuana cigarette from his father in February 2008 when they were on the way to a party. He was stopped by police just before he smoked the cigarette. The charge was dismissed. (Items 7 and 8)

Applicant never sold, manufactured or distributed marijuana to others. He stopped using marijuana in February 2009 when he was 21 years old. He applied for the shipyard apprentice program after realizing he wanted a good job and more from life. He never tested positive for marijuana on a urinalysis test, was never treated for drug abuse, or diagnosed as drug dependent. He has no intention to use marijuana again. He wants a career in the shipyard. He plays on the shipyard baseball team and does not want to jeopardize his position or career. (Item 7)

## **Policies**

When evaluating an applicant's suitability for a security clearance, the administrative judge must consider the Administrative Guidelines. In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions, which are useful 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 over-arching 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. Likewise, I have avoided drawing inferences grounded on mere speculation or conjecture.

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 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.

## **Analysis**

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

The 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. Drugs are mood and behavior altering

substances, and include those listed in the Controlled Substances Act of 1970. Marijuana is listed in the act as an illegal drug. Drug abuse is the illegal use of a drug or the use of a legal drug in a manner that deviates from approved medical direction (AG ¶ 24).

Applicant admitted using marijuana in high school and college from age 15 to 21. He received the marijuana from friends or his father. Applicant's marijuana use raises Drug Involvement Disqualifying Conditions AG ¶ 25(a) (any drug use); and AG ¶ 25(c) (illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution).

I considered Drug Involvement Mitigating Conditions AG ¶ 26(a) (the behavior happened so long ago, was so infrequent, or happened under such unusual circumstances that it is unlikely to recur or does not cast doubt on the individual's current reliability, trustworthiness, or good judgment); and AG ¶ 26(b) (a demonstrated intent not to abuse any drugs in the future, such as; (1) dissociation 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). These mitigating conditions apply.

Appellant admits using marijuana about two or three times a week from age 15 to age 21. There were no unusual circumstances leading to the drug use. He was a young person who admits he used the illegal drugs based on peer pressure and opportunity. However, Applicant wanted a better life and career and applied for and was accepted into an apprentice program with an employer that prohibits drug use. While there is no "bright line" rule for determining when conduct is recent or sufficient time has passed since the incidents, a determination whether past conduct affects an individual's present reliability and trustworthiness must be based on a careful evaluation of the totality of the evidence. If the evidence shows a significant period of time has passed without evidence of drug involvement, there must be an evaluation whether that period of time demonstrates changed circumstances or conduct sufficient to indicate a finding of reform or rehabilitation.

Applicant has not used illegal drugs for almost three years since February 2009. He entered an apprentice program where drug use is prohibited. There is no evidence that he associates with drug users. He indicated clearly his intent not to use drugs again. His coming of age and maturing, the abstinence from drug use since February 2009, the entry into the apprentice program, and his intent not to use drugs in the future is sufficient information of a change of circumstance, showing he has reformed and will no longer use illegal drugs. Applicant presented sufficient information to overcome the security concern for his use of illegal drugs. Guideline H is decided for Applicant

### **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 (AG ¶ 30). Appellant was arrested and

charged with larceny for being a passenger in a campus police golf cart his roommate took for a joy ride on campus. The roommate drove the cart into a river. Applicant's actions raise Criminal Conduct Disqualifying Conditions AG ¶ 31(a) (a single serious crime or multiple lesser offenses), and AG ¶ 31(c) (allegation or admission of criminal conduct, regardless of whether the person was formally charged, formally prosecuted or convicted).

Applicant raised in his response to security investigators Criminal Conduct Mitigating Condition AG ¶ 32(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). The offense happened over four years ago when Applicant was a young, immature college student. The golf cart was taken and driven by his roommate. But Applicant went along for the ride. The incident took place long ago under unusual circumstances. It was a minor criminal offense and not likely to happen again. As a minor offense, it does not cast doubt on his reliability, trustworthiness, or good judgment. I find for Applicant under criminal conduct.

### **Whole-Person Analysis**

Under the whole-person concept, the administrative judge evaluates the applicant's conduct and all of the circumstances. An 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 a security clearance must be an overall commonsense judgment based upon careful consideration of the guidelines and the whole-person concept.

Applicant has established that he is trustworthy, reliable, and exercises good judgment. He used marijuana as an immature teenager and his last use was over three years ago before realizing he wanted more out of life. He applied for and was accepted into an apprentice program that prohibits drug use. He is now older and more mature. He no longer associates with those that use drugs, and he stated his intent not to use drugs in the future. He established changed circumstances to show he has reformed and been rehabilitated. His criminal conduct was the result of an immature prank over four years ago and does not now reflect on his reliability and trustworthiness. He provided sufficient evidence to establish that he should be trusted with access to classified information. The record evidence leaves me with no questions about

Applicant's eligibility and suitability for a security clearance. For all these reasons, Applicant has mitigated 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.c:	For Applicant
Paragraph 2, Guideline J:	FOR APPLICANT
Subparagraph 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.

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THOMAS M. CREAN  
Administrative Judge