



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-07038
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Gregg Cervi, Esq., Department Counsel  
For Applicant: *Pro se*

May 24, 2011

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**Decision**

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LOUGHRAN, Edward W., Administrative Judge:

Applicant has mitigated drug involvement security concerns. Eligibility for access to classified information is granted.

**Statement of the Case**

On January 19, 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) implemented by the Department of Defense on September 1, 2006.

Applicant answered the SOR on January 27, 2011, and requested a hearing before an administrative judge. The case was assigned to me on March 28, 2011. DOHA issued a notice of hearing on April 4, 2011, and the hearing was convened as scheduled on May 4, 2011. The Government offered exhibits (GE) 1 and 2, which were

admitted without objection. Applicant testified and submitted exhibits (AE) A through I, which were admitted without objection. DOHA received the hearing transcript (Tr.) on May 18, 2011.

### **Findings of Fact**

Applicant is a 22-year-old prospective employee of a defense contractor. The contractor is sponsoring her for a security clearance and will hire her if she obtains a security clearance. She has a bachelor's degree. She has never been married and has no children.<sup>1</sup>

Applicant smoked marijuana on several occasions while in college. Her first experience was in her junior year, when one of her roommates brought marijuana home. She next smoked marijuana in Amsterdam, while on a tour with other college students in late December 2008 or early January 2009. Amsterdam has liberal marijuana laws, and Applicant's marijuana use in Amsterdam likely did not violate any laws. Her last marijuana use was in April 2010, just before she graduated from college.<sup>2</sup>

Applicant credibly testified that drugs were never a large part of her life, and she does not intend to use illegal drugs in the future. She had a high grade point average in college, and she was heavily involved in extracurricular activities and working in her community. She was offered a job with a defense contractor after she graduated, and she applied for a security clearance. She fully discussed her marijuana use on her questionnaire for national security positions (SF 86), and she discussed it during her background investigation. Her job was placed on hold while pending her clearance adjudication. She found a job in her local school district working with special needs children. Key people in her life, including her family, are aware of her marijuana use. She does not associate with people who use drugs. She is getting married in June 2011 to a man who does not use drugs. She submitted a signed statement of intent not to use illegal drugs, with automatic revocation of her clearance for any violation.<sup>3</sup>

Applicant submitted a number of letters attesting to her good character. She is praised for her excellent job performance, work ethic, leadership, honesty, reliability, dependability, trustworthiness, maturity, professionalism, responsibility, and integrity.<sup>4</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

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<sup>1</sup> Tr. at 16, 19-20, 24; GE 1; AE A.

<sup>2</sup> Tr. at 15, 20-22; Applicant's response to SOR; GE 1, 2.

<sup>3</sup> Tr. at 15-27, GE 1, 2 ; AE A, B, H, I.

<sup>4</sup> AE A-G.

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 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**

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.

The guideline notes several conditions that could raise security concerns under AG ¶ 25. Two are potentially applicable in this case:

- (a) any drug abuse;<sup>5</sup> and
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia.

Applicant's drug possession and use are sufficient to raise AG ¶¶ 25(a) and 25(c) as disqualifying conditions.

AG ¶ 26 provides conditions that could mitigate security concerns. The following are potentially applicable:

- (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 marijuana on several occasions while she was in college. Marijuana was never a large part of her life; she was heavily involved in other positive activities. She graduated from college in 2010 and joined the workforce. She is working with special needs children while her security clearance is being adjudicated. She does not associate with drug users. She is marrying a man who does not use drugs. She signed a statement of intent with automatic revocation of clearance for any violation. She clearly, unequivocally, and credibly committed to remaining drug-free. I find that she demonstrated an appropriate period of abstinence, and that illegal drug use is unlikely to recur. AG ¶¶ 26(a) and 26(b) are applicable.

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<sup>5</sup> Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

## **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. Some of the factors in AG ¶ 2(a) were addressed under that guideline, but some warrant additional comment.

Like many others, Applicant experimented with marijuana while in college. She graduated last year and has joined the workforce. She realizes that illegal drug use is not acceptable behavior. She will soon marry a man who does not use drugs. She impressed me with her maturity and candor. She credibly testified that she will remain drug-free.

Overall, the record evidence leaves me without questions or doubts about Applicant's eligibility and suitability for a security clearance. I conclude Applicant has mitigated 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

## **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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Edward W. Loughran  
Administrative Judge