



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



In the matter of:	)	
	)	
-----	)	ISCR Case No. 10-08265
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Eric Borgstrom, Esquire, Department Counsel  
For Applicant: *Pro se*

November 8, 2011

**Decision**

MARSHALL, Jr., Arthur E., Administrative Judge:

On April 11, 2011, the Defense Office of Hearings and Appeals (DOHA) issued to Applicant a Statement of Reasons (SOR) enumerating security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct). The action was taken under Executive Order 10865, *Safeguarding Classified Information within Industry* (February 20, 1960), as amended; Department of Defense (DOD) Directive 5220.6, *Defense Industrial Personnel Security Clearance Review Program* (January 2, 1992), as amended (Directive); and the adjudicative guidelines (AG) effective within the DOD on September 1, 2006.

In a response dated June 20, 2011, Applicant admitted one of two allegations raised under Guideline H and the sole allegation raised under Guideline E. He also requested a hearing before a DOHA administrative judge. The case was assigned to another administrative judge on August 31, 2011, and was transferred to me on September 28, 2011, for caseload considerations. The parties agreed to a hearing date of October 18, 2011, a notice for which was issued on September 29, 2011. I convened the hearing as scheduled.

Applicant gave testimony and offered four documents, which were admitted into the record without objection as exhibits (Exs.) A-D. Department Counsel offered three documents, which were admitted as Exs. 1-3 without objection. The parties were given

until November 1, 2011, to submit any additional materials. The transcript (Tr.) of the proceeding was received on October 26, 2011. On November 1, 2011, Department Counsel forwarded one additional document, which was timely received from Applicant. That documents was accepted into the record as Exs. E and the record was closed. Based on a thorough review of the testimony, submissions, and exhibits, I find Applicant met his burden of mitigating security concerns related to personal conduct and drug involvement. Clearance is granted.

### **Findings of Fact**

Applicant is a 21-year-old college student who is currently working with a defense contractor. He completed one year of rigorous Reserve Officer Training Corps (ROTC) training, where he was a squad leader, and is currently completing a bachelor's degree program in engineering.<sup>1</sup> Applicant is single and has no children. He shares an off-campus apartment with roommates who are also senior college students.

Applicant did not use marijuana or any other illegal drugs when he was a middle school and high school student. He similarly avoided drugs during his first two years of college, including his time in ROTC and his time on the Dean's List. In January 2010, he completed a security clearance application in anticipation of a summer or fall internship<sup>2</sup>. He first tried marijuana in late May 2010, after transferring to his current town and enrolling in a large university. That incident occurred at an off-campus party in a nearby town.<sup>3</sup> Other attendees included friends of his high school friends. Applicant tried the substance twice out of curiosity and decided he did not like it.<sup>4</sup> He has not used marijuana since May 2010.<sup>5</sup>

At the end of May 2010, Applicant began a summer internship at a military installation. In June 2010, he went with some friends to a party. An attendee was looking for a misplaced bag of marijuana. The attendee thought the marijuana might be on or under the couch upon which Applicant was seated. Applicant stood, then lifted the couch. Seeing the bag was on the floor, he "naively picked it up and handed it to the person."<sup>6</sup> A police officer in attendance at the party saw Applicant with the marijuana bag and arrested him. Applicant explained the situation to the officer and pointed out

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<sup>1</sup> Tr. 27.

<sup>2</sup> It is unclear when Applicant was granted a security clearance. The Government asserts that records show it was granted in September 2010, although Applicant stated that he "just under the impression" that it was granted at an earlier date. Tr. 24-26.

<sup>3</sup> Tr. 19 Applicant stated, "once I got out of that semester, basically those two weeks I went to a party and experimented with the drug."

<sup>4</sup> Tr. 18, 31-32. Applicant did not use the drug on two separate occasions. Rather, he used the drug twice at the same party. See Tr. 32; Answer to the SOR. He clarified this by stating, "basically I tried it at one party and it wasn't for me and that was basically that."

<sup>5</sup> *Id.*

<sup>6</sup> Tr. 41.

the attendee who had been looking for the marijuana and who was wearing a Bob Marley t-shirt. The officer appeared to sympathize with Applicant and later drove him home. Ultimately, however, Applicant was charged with Possession of Marijuana/1st Offense. When the case got to court, the charge was dismissed and Applicant's record was expunged.<sup>7</sup> On his own initiative, Applicant detailed the two marijuana-related incidents to investigators when he was interviewed in September 2010.

Today, Applicant is a 21-year-old senior. Since his experiment with marijuana, he has tried to make up for having transferred to his current university. His best academic semester was in the spring of 2011, after his marijuana experimentation.<sup>8</sup> Applicant attributed his improved grades, which included fives As and two Bs, to maturation.<sup>9</sup> He is now carrying the maximum course load of 18 credits. He will take a similar course load in the spring of 2012, in preparation for a May 2012 graduation. His current courses are the most difficult in his engineering program, but he is still maintaining a solid B grade point average.<sup>10</sup> Applicant completed a competitive internship program. He is serving as project manager for his senior engineering design team comprised of seven academic peers. He resides in a housing unit reserved for seniors. None of his roommates regularly use drugs and, to the best of his knowledge, none of them are involved with marijuana in any manner.<sup>11</sup> When he has time, he visits his mother in a nearby town.

To the best of Applicant's knowledge, none of his friends or associates use marijuana, nor does he knowingly socialize with those who do.<sup>12</sup> Although he has attended social functions where he ultimately discovered marijuana was present, he has not been approached to use the substance, nor has he been tempted to use it.<sup>13</sup> He now feels sufficiently confident and mature to eschew the drug and those who use it.<sup>14</sup> In general, despite his age, Applicant has reduced his participation in the local

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<sup>7</sup> Tr. 41-43; Ex. C (Motion and Order to Expunge, dated April 2011).

<sup>8</sup> Tr. 39. In noting his shift from a B student to one who has earned a number of A's, Applicant stated, "I would like to say my grades have reflected my attitude towards life and my attitude towards success." Tr. 40.

<sup>9</sup> Tr. 40.

<sup>10</sup> Tr. 44-45; Ex. D (College transcripts).

<sup>11</sup> Tr. 21, 46-47.

<sup>12</sup> Tr. 48-49.

<sup>13</sup> Tr. 20-21. Applicant's most recent social outing where marijuana was later discovered to be present was during the summer of 2011, when he accompanied his roommates to a party. He was unaware that marijuana would be present at the party. Once it was noted, he "stayed as far away as possible from it. . . ." Tr. 28. While the marijuana was in use in the home's living room, Applicant was elsewhere with a different group of friends. Tr. 30.

<sup>14</sup> Tr. 20.

“party scene,” preferring instead to socialize and relax in other settings.<sup>15</sup> It is unclear, but it seems Applicant is currently subject to random drug testing.<sup>16</sup>

Applicant is committed to not using drugs in the future.<sup>17</sup> He signed a statement of intent indicating that he will not use drugs in the future and noting that any future drug use will lead to the automatic revocation of any security clearance granted.<sup>18</sup> He is committed to remaining drug free. He is a highly motivating individual who plans “to be very successful” in the engineering field.<sup>19</sup> Noting his maturation over the past year, Applicant also stated that he has no intention of doing anything that might jeopardize his future engineering plans.<sup>20</sup>

### **Policies**

When evaluating an applicant’s suitability for a security clearance, an administrative judge must consider the AG. In addition to brief introductory explanations for each guideline, the AG list potentially disqualifying conditions and mitigating conditions. 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 overarching adjudicative goal is a fair, impartial, and commonsense decision. Under AG ¶ 2(c), this process is a conscientious scrutiny of a number of variables known as the “whole-person concept.” The administrative judge must consider all 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.

The Government must present evidence to establish controverted facts alleged in the SOR. An applicant is responsible for presenting “witnesses and other evidence to rebut, explain, extenuate, or mitigate facts admitted by applicant or proven by

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<sup>15</sup> Tr. 35, 49.

<sup>16</sup> Tr. 21-22.

<sup>17</sup> Tr. 22, 48.

<sup>18</sup> Ex. E (Statement of intent, dated Nov. 1, 2011).

<sup>19</sup> Tr. 22.

<sup>20</sup> Tr. 34.

Department Counsel. . . .”<sup>21</sup> The burden of proof is something less than a preponderance of evidence. The ultimate burden of persuasion is on the applicant.<sup>22</sup>

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 about 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). “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>23</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such sensitive information.<sup>24</sup>

Based upon consideration of the evidence, Guideline H (Drug Involvement) and Guideline E (Personal Conduct) are the most pertinent to this case. Conditions pertaining to these AGs that could raise a security concern and may be disqualifying, and those which would mitigate such concerns, are discussed below.

## Analysis

### Guideline H - 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.<sup>25</sup> “Drugs” are defined as mood and behavior altering substances and include 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) and inhalants and other

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<sup>21</sup> See *also* ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>22</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> AG ¶ 24.

substances.<sup>26</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.<sup>27</sup>

Applicant admitted he used marijuana two times at a party in May 2010. Although it was later dismissed, Applicant also admits that he was arrested for possession of marijuana in June 2010. Such facts are sufficient to raise Drug Involvement Disqualifying Conditions AG ¶ 25(a) (*any drug abuse*) and AG ¶ 25(c) (*illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia*). With disqualifying conditions raised, the burden shifts to Applicant to mitigate related security concerns.

Applicant did not use marijuana when he was growing up. He admits that he eventually experimented with marijuana when he used it twice at a party in May 2010. He did so after completing a rigorous ROTC program, excelling in his studies elsewhere, and transferring to a large university, following years of disciplined study. He explained that he did not find the experience pleasurable and decided it was “not for him.” Consequently, he decided not to use it again in the future. The following month, while at a collegiate party, he innocently picked up a bag containing marijuana. A police officer at the party saw him in possession of the drug and arrested him. Although the drug belonged to a party attendee Applicant did not know, Applicant was charged with marijuana possession/1st offense, but the charge was ultimately dismissed and the issue expunged from Applicant’s record.

Applicant is exceptionally contrite over the lapse in judgment he demonstrated at the May 2010 party and for his naivete in physically holding the bag of marijuana the following month. Since that time, he has eschewed drugs and avoided venues where he knows drugs will be present. His grades have improved. He is taking a larger and more difficult course load. He focuses less on social activities and more on his studies and his professional future. Applicant has demonstrated considerable maturation since his May 2010 lapse of judgment. He is committed to never using drugs again. Drug Involvement Mitigating Condition 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*) applies.

Applicant no longer associates with those he knows to be drug users. He does not knowingly attend functions where drugs will be present. When he discovers that drugs are present at a particular venue, he withdraws from the areas in which such drugs are in use. Despite the practical difficulties of isolating himself from all drug use that might take place around him, given his age and his life in a college town, Applicant actively seeks to avoid drugs and has no interest in using them. Such facts are sufficient to give rise to AG ¶ 26(b)(1) (*disassociation from drug-using associates and contacts*) and AG ¶ 26(b)(2) (*changing or avoiding the environment where drugs were used*).

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<sup>26</sup> *Id.* at ¶ 24(a)(1-2).

<sup>27</sup> *Id.* at ¶ 24(b).

Applicant's use of marijuana is limited to one party in May 2010. Although one and a half years is not a lengthy period, it is a significant period in the life of a 21-year-old. Moreover, during that period, Applicant has demonstrated considerable maturation through improving his grades, making adjustments to his social life, successfully completing an internship, undertaking academic leadership positions, and focusing on his professional future. In light of these considerations, AG ¶ 26(b)(3) (*an appropriate period of abstinence*) applies.

Finally, Applicant has expressly articulated his intent not to use drugs again. He credibly gave logical reasons for not revisiting marijuana use. He complemented these expressions by signing a statement of intent with automatic revocation of clearance for any future drug-related violations. Therefore, AG ¶ 26(b)(4) (*a signed statement of intent with automatic revocation of clearance for any violation*) applies. None of the other mitigating conditions are applicable to this case.

### **Guideline E – Personal Conduct**

Security concerns arise from matters of personal conduct because “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.”<sup>28</sup> In addition, “any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process” is of special interest.<sup>29</sup>

In this case, it is alleged that Applicant used marijuana after completing a security clearance application. Although Applicant admits that fact, there is insufficient evidence showing that Applicant actually possessed a security clearance when he used marijuana. However, such behavior is sufficient to raise Personal Conduct Disqualifying Condition AG ¶ 16(d) (*credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information supports a whole-person assessment of questionable judgment, untrustworthiness, unreliability, lack of candor, unwillingness to comply with rules and regulations, or other characteristics indicating that the person may not properly safeguard protected information*) and AG ¶ 16(e) (*personal conduct, or concealment of information about one’s conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person’s personal, professional, or community standing*).

In executing his January 2010 security clearance application, Applicant denied having used illegal drugs. At the time, this was true. He subsequently demonstrated poor judgment by using marijuana on one evening the following May. Given the totality of the circumstances and facts, this isolated and temporary lapse of judgment was an

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<sup>28</sup> AG ¶ 15.

<sup>29</sup> *Id.*

aberration. Since that time, he has been open about his lapse. Moreover, he has since made tangible and notable strides toward rehabilitation.

As noted above under Guideline H, Applicant has not again used drugs since the May 2010 party. His temporary possession of marijuana was the result of a mistake, not a consciously criminal act. As a result, that charge was dismissed. There is no indication that Applicant will ever repeat such behavior in the future. Moreover, Applicant has since made significant changes in his behavior, excelled academically, and matured. He has been open about the incidents and does not conceal his desire to avoid those who use drugs. In stating that he simply did not care for marijuana, and in expressing his intent not to use it again in the future, Applicant credibly articulated both a reason for not again using marijuana and a commitment to maintaining that position. In doing so, he has demonstrated sound judgment. Given these facts, the isolated nature of the incidents, and Applicant's subsequent behavior, Personal Conduct Mitigating Condition AG ¶ 17(c) (*the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment*) and AG ¶ 16(e) (*the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress*) apply.

### **Whole-Person Concept**

Under the whole-person concept, an administrative judge must evaluate an applicant's eligibility for a security clearance by considering the totality of an applicant's conduct and all the circumstances. An administrative judge should consider the nine adjudicative process factors listed at AG ¶ 2(a). Under AG ¶ 2(c), the ultimate determination of whether to grant a security clearance must be an overall commonsense judgment based on 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, as well as the "whole-person" factors. Multiple facts speak in Applicant's favor. Applicant is a highly credible and straight forward young man. He is a good student who avoided the drug scene throughout middle and high school. In college, he excelled in ROTC. Applicant is currently an excellent student completing a degree in engineering. He was already looking forward to his future career when he completed a security clearance application in January 2010. It was only out of idle curiosity and youthful indiscretion that he tried marijuana in May 2010. His experimentation consisted of two uses of marijuana and resulted in his conclusion that the drug was "not for him." Since that time, he has focused on his studies and his career. His grades have improved markedly, he completed a competitive internship, and he leads a settled life. He is deemed to be an effective employee. Applicant makes no excuses for his temporary lapse of judgment and takes full responsibility for both his marijuana experimentation and his innocent retrieval of a bag that was found to contain marijuana.

Applicant credibly expressed his intention to not use marijuana again in the future. This intention is bolstered by both his dislike of the drug and by his commitment



not to do anything that might jeopardize his future career. It has been over a year and a half since his exposure to marijuana, a significant period in the life of a young man. He is open about his mistakes and clearly contrite about his past naivete. The record shows that he has matured considerably both in actions and outlook since May 2010. I find that drug involvement and personal conduct security concerns have been mitigated. Clearance is granted.

### **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.b:	For Applicant
Paragraph 2, Guideline E:	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 national interest to grant Applicant a security clearance. Clearance is granted.

ARTHUR E. MARSHALL, JR.  
Administrative Judge