



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



In the matter of:	)	
	)	
	)	ISCR Case: 10-10794
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: *Pro se*

September 21, 2011

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government’s security concerns raised under Guideline H, Drug Involvement. His eligibility for a security clearance is denied.

On August 19, 2010, Applicant submitted an Electronic Questionnaire for Investigations Processing (e-QIP). On March 11, 2011, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guideline for Drug Involvement. 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 effective within the Department of Defense for SORs issued after September 1, 2006.

On March 21, 2011, Applicant answered the SOR in writing and requested a hearing before an administrative judge. DOHA assigned the case to me on June 6,

2011, and issued a Notice of Hearing on June 28, 2011. I convened the hearing as scheduled on July 27, 2011. Department Counsel offered Government Exhibits (GE) 1 and 2 into evidence, which were admitted without objection. Applicant testified and offered Applicant Exhibits (AE) A through E, which were admitted without objection. DOHA received the hearing transcript (Tr.) on August 3, 2011.

### **Findings of Fact**

In his Answer, Applicant admitted both allegations contained in the SOR. His admissions are incorporated into the findings herein.

Applicant is 24 years old and single. In May 2009 he graduated from college with a bachelor's degree in science. In October 2009 he obtained employment as a technical sales specialist with a private company. In June 2010 he started a position as a junior design engineer with a defense contractor performing work for the military.

Applicant began using marijuana illegally in December 2004 while a senior in high school and continued using it through college. He used it two to four times a month during his sophomore year in college and more frequently throughout the next two years. (Tr. 19-20.) He continued to use it until April 2010 with co-workers at his previous position. He purchased it two to three times a year. (Tr. 23.) He also used mushrooms in the spring of 2009. (Tr. 25.) He has never been arrested for illegal drug use. (Tr. 24.)

Applicant made a personal and professional decision to stop using marijuana in April 2010. He began maturing and becoming engrossed in his work and responsibilities. He also started practicing yoga and realized the negative effect drugs had on his physical well-being. (Tr. 20-21.) After making that decision, he did not participate in any form of drug treatment or random drug screens. (Tr. 21-22.) He no longer associates with friends that use illegal drugs. His family and employer are aware of his drug history. (Tr. 22.)

Applicant submitted four letters of recommendation. His branch manager wrote that Applicant "has been an exemplary employee." (AE B.) He spoke to Applicant about the "Zero Tolerance" policy at work. He believes that Applicant has changed his life. (*Id.*) Applicant's supervisor stated that Applicant "has made great strides to change his circle of friends and lifestyle and has demonstrated exceptional judgment at all times." (AE C.) Applicant's long-term friend recognized the personal changes Applicant has made since working in his present position. (AE D.)

Applicant expressed sincere regret and remorse over his past drug use. He does not intend to use illegal drugs in the future. (AE A.)

### **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 (AG) 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 AG ¶ 2(a), describing 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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, an "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 and has the ultimate burden of persuasion as to obtaining a favorable clearance 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 an 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.

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."

## **Analysis**

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

The security concern pertaining to 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. (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), and; (2) inhalants and other similar substances; (b) drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

This guideline notes several conditions that could raise security concerns. Based on Applicant's admissions that he illegally used marijuana and mushrooms between December 2004 and April 2010, the Government raised a disqualifying condition under AG ¶ 25(a), "any drug abuse (see above definition)."

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut and prove mitigation of the resulting security concerns. AG ¶ 26 includes examples of conditions that could mitigate the security concern arising from illegal drug use:

(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;

(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; and

(4) a signed statement of intent with automatic revocation of clearance for any violation;

(c) abuse of prescription drugs was after a severe or prolonged illness during which these drugs were prescribed, and abuse has since ended; and

(d) satisfactory completion of a prescribed drug treatment program, including but not limited to rehabilitation and aftercare requirements, without recurrence of abuse, and a favorable prognosis by a duly qualified medical professional.

Applicant illegally used marijuana from December 2004 to April 2010, almost six years. During that time he used mushrooms one time in 2009. Based on the length of time he used marijuana, up to 2010, AG ¶ 25(a) does not apply and calls into question

his good judgment. Applicant presented some evidence of his intention not to use illegal drugs in the future, along with a statement that he no longer associates with friends who use illegal drugs, warranting a limited application of AG ¶ 25(b). The record does not contain any evidence to support the application of AG ¶ 25(c) or AG ¶ 25(d) that requires evidence of participation in a substance abuse program.

### **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.

According to 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. Applicant is a 24-year-old man, who has successfully worked for a federal defense contractor since June 2010. He exhibited remorse and embarrassment over his prior illegal drug use. He presented impressive letters of recommendation from his branch manager and supervisor, along with a statement of his intention never to use illegal drugs in the future. However, he did not provide any independent evidence to corroborate his assertions that he has been drug free since April 2010. He has not participated in a drug rehabilitation program nor did he provide any random screenings since then. Given his six years of frequent illegal drug use, such evidence is necessary to mitigate the security concerns and diminish the likelihood of a recurrence.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance at this time. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his drug involvement.

### **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
Subparagraph 1.a:	Against Applicant
Subparagraph 1.b:	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 grant Applicant eligibility for a security clearance. Eligibility for access to classified information is denied.

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SHARI DAM  
Administrative Judge