



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



In the matter of:	)	
	)	
	)	ISCR Case No. 10-10880
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Tovah Minster, Esq., Department Counsel  
For Applicant: Pro se

July 18, 2011

**Decision**

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LYNCH, Noreen A, Administrative Judge:

On March 17, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) enumerating security concerns arising under Guideline H (Drug Involvement). 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), implemented in September 2006.

Applicant timely answered the SOR and requested a hearing. DOHA assigned the case to me on April 19, 2011. A notice of hearing was issued on May 12, 2011, and the case was heard on June 24, 2011. Department Counsel offered three exhibits, which were admitted without objection as Government Exhibits (GE) 1-3. Applicant testified and submitted exhibits AE A through H at the hearing, which were admitted. I kept the record open at Applicant's request, and he submitted AE I, which was admitted into the record without objection. Based on a review of the pleadings, submissions, testimony, and exhibits, I find Applicant met his burden regarding the security concerns raised. Security clearance is granted.

## Findings of Fact

Applicant is a 23-year-old employee of a defense contractor. He graduated from high school in 2006. He obtained his undergraduate degree in 2010. (GE 1) Applicant is single and has no children. Applicant seeks his first security clearance. He has worked for his current employer since June 2010. (Tr. 30)

Applicant used marijuana in high school in 2005. He also purchased and used marijuana on an intermittent basis from 2006 until 2010 while he was in college. He acknowledged that he used marijuana while living in a fraternity house. (Tr. 10) He believes his living situation contributed heavily to his experimentation with illegal substances. (Tr. 10) Applicant believes he used marijuana approximately 30 to 50 times during the entire period with his fraternity brothers. (Tr. 34)

Applicant used Adderall on approximately five occasions from September 2007 until March 2010. (Tr. 36; GE 3) He purchased the drug during finals to stay awake. He did not have a prescription for the drug.

He also used psilocybin one time in March 2010. (GE 1) Applicant explained that he became ill when he used the psilocybin. He described the experience as unpleasant. (Tr. 35)

Applicant voluntarily disclosed the illegal use of marijuana, Adderall and psilocybin in his June 25, 2010 security clearance application. He was candid and forthright and wrote a very detailed description in the comments section. He stated that the most significant marijuana use consisted of recreational use, one to two times per week from October until Thanksgiving 2009. It was always in a social setting in the fraternity house. He made the unwise decision to use marijuana at the encouragement of his peers. Applicant is embarrassed about his marijuana use. (GE 2)

When he graduated from college, he disassociated himself from his marijuana-using friends. He is living 500 miles away in another state. He believes he is maturing as befits his career. He exercises and has changed his behavior. He asserts that his substance use was not in character for him. He is a conscientious and trustworthy person. He attributes the drug use to lack of judgement as a college student. He regrets the use and has learned a great deal about how easy it is to justify poor behavior when ignoring the big picture. (GE 3)

Applicant signed a notarized statement of intent to abstain from using illegal substances, including marijuana in the future and under any circumstances. He agrees to an immediate revocation of his clearance if he is in violation of his agreement. (AE I)

At the hearing, Applicant was sincere that the illegal drug use was out of character and limited to his college years and that it will not occur in the future. He severed ties with the individuals with whom he used the drugs. (Tr. 10) He moved to another state for his current position. He does not socialize with the same friends. He knows that he made poor choices and has learned his lesson. He recognizes the

concerns that DoD has with any use of illegal drugs. He believes he is a different person now that he has worked for the Government during the past 14 months. He is dedicated to his position and wants to continue his work. His last use of any illegal substance was in April 2010. (Tr. 43)

Applicant submitted several employment appraisals. His 2011 appraisal notes that his work is outstanding, and he far exceeds expectations. (AE C) He has demonstrated an ability to deliver outstanding work product, exceeding expectations in both quantity and quality.

Applicant submitted five references and letters of appreciation. His branch chief, a former military official, describes Applicant as having a strong work ethic and enthusiasm for his work. He is an exceptionally diligent and responsible employee. Applicant is motivated by a sincere desire to serve the public interest. (AE D-H)

### **Policies**

When evaluating an applicant's suitability for a security clearance, an administrative judge must consider the adjudicative guidelines (AG). In addition to brief introductory explanations for each guideline, the adjudicative guidelines list potentially disqualifying conditions and mitigating conditions. These guidelines are not inflexible rules of law. Instead, recognizing the complexities of human behavior, they are applied in conjunction with the factors listed in the adjudicative process. An 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." An 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.

The U. S. 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 Department Counsel. . . ." <sup>1</sup> The burden of proof is something less than a preponderance of evidence. <sup>2</sup> The ultimate burden of persuasion is on the applicant. <sup>3</sup>

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<sup>1</sup> See also ISCR Case No. 94-1075 at 3-4 (App. Bd. Aug. 10, 1995).

<sup>2</sup> *Department of the Navy v. Egan*, 484 U.S. 518, 531 (1988).

<sup>3</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

A person seeking access to classified information enters into a fiduciary relationship with the Government based on 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 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 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.”<sup>4</sup> “The clearly consistent standard indicates that security clearance determinations should err, if they must, on the side of denials.”<sup>5</sup> Any reasonable doubt about whether an applicant should be allowed access to sensitive information must be resolved in favor of protecting such information.<sup>6</sup> The decision to deny an individual a security clearance does not necessarily reflect badly on an applicant’s character. It is merely an indication that the applicant has not met the strict guidelines the President and the Secretary of Defense established for issuing a clearance.

## **Analysis**

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

AG ¶ 24 expresses the security concern pertaining to 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.

(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

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<sup>4</sup> See also EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information), and EO 10865 § 7.

<sup>5</sup> ISCR Case No. 93-1390 at 7-8 (App. Bd. Jan. 27, 1995).

<sup>6</sup> *Id.*

(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.

AG ¶ 25 describes conditions that could raise a security concern and may be disqualifying:

(a) any drug abuse (see above definition);

(b) testing positive for illegal drug use;

(c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;

(d) diagnosis by a duly qualified medical professional (e.g., physician, clinical psychologist, or psychiatrist) of drug abuse or drug dependence;

(e) evaluation of drug abuse or drug dependence by a licensed clinical social worker who, is a staff member of a recognized drug treatment program;

(f) failure to successfully complete a drug treatment program prescribed by a duly qualified medical professional;

(g) any illegal drug use after being granted a security clearance; and

(h) expressed intent to continue illegal drug use, or failure to clearly and convincingly commit to discontinue drug use.

Applicant admitted using marijuana, Adderal and psilocybin on various occasions while he was in college. He first used marijuana once in high school in 2005. He smoked marijuana with his fraternity brothers in college, most heavily from 2009 until 2010. He experimented once with psilocybin in March 2010. AG ¶ 25(a) and (c) apply.

AG ¶ 26 provides conditions that could mitigate security concerns:

(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's last use of any illegal drug was in April 2010. He signed a notarized statement of intent to abstain from drugs and accept an automatic revocation of clearance for any violation in July 2011. Applicant's use of marijuana and other drugs occurred in high school and college and before he completed a security clearance application. He volunteered all the information on his security clearance application. It is more than one year since his last illegal drug use. Applicant presented as sincere and mature. He has disassociated himself from the drug users. He is working successfully in a position. He accepts responsibility for his actions but attributes his poor choices to the college-fraternity environment. He has been open and honest with the Government. He was quite credible at the hearing that he recognizes the privilege of having a security clearance. His letters of recommendation speak to his character. He has mitigated the concerns under the drug involvement guideline.

### **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 an 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.

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. As noted above, the ultimate burden of persuasion is on the applicant seeking a security clearance.

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. Applicant is 23 years old. He volunteered on his security clearance application that he used marijuana, Adderal and psilocybin while in college. He wrote a detailed explanation on his security clearance application. He has been working in a responsible position for one year. He has matured. He recognizes his poor choices in college. He has great recommendations. He stopped the use of illegal drugs when he graduated from college. I have no doubts as to his current reliability or trustworthiness. He signed a letter of intent and recognizes that having a security clearance is a privilege. He has met his burden in this case.

### **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 through 1.c:	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 a security clearance. Clearance is granted.

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NOREEN A. LYNCH.  
Administrative Judge