



DEPARTMENT OF DEFENSE  
DEFENSE OFFICE OF HEARINGS AND APPEALS



In the matter of: )  
 )  
----- ) ISCR Case No. 11-00638  
 )  
Applicant for Security Clearance )

**Appearances**

For Government: Raashid S. Williams, Esquire, Department Counsel

For Applicant: *Pro se*

November 30, 2011

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**DECISION**

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ROSS, Wilford H., Administrative Judge:

Applicant submitted his Electronic Questionnaire for Investigations Processing (e-QIP), on September 8, 2010. (Item 5.) On June 15, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) to Applicant detailing the security concerns 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 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.

Applicant submitted an Answer to the SOR on or about June 30, 2011, and requested a decision without a hearing. (Item 4.) Department Counsel submitted a File of Relevant Material (FORM) to Applicant on October 3, 2011. Applicant received the FORM on October 10, 2011, and was given 30 days to submit any additional information. He elected to submit additional information, which was not objected to by Department Counsel. The additional information is admitted into evidence as Applicant

Exhibit A. The case was assigned to me on November 2, 2011. Based upon a review of the pleadings and exhibits, eligibility for access to classified information is granted.

### **Findings of Fact**

Applicant is 27 and single. He has been employed by a defense contractor since October 2009 and seeks to obtain a security clearance in connection with his employment.

#### **Paragraph 1 (Guideline H - Drug Involvement)**

The Government alleges under Guideline H that Applicant is ineligible for clearance because he has used illegal drugs. Applicant denied allegation 1.a. and admitted allegation 1.b. under this paragraph in the SOR. The admission, which concerns his using psilocybin mushrooms in 2006, is a finding of fact.

Applicant denied allegation 1.a. of the SOR, even though Applicant admits he used marijuana beginning in 2003. The reason was that he disagreed with the date his marijuana usage was alleged to have ended, June 2010. In his e-QIP (Item 5) at Section 23, he estimated that he used marijuana from January 2003 through June 2010. This is after the date that he was employed in the defense industry.

Applicant was subsequently interviewed by a government investigator on October 7, 2010. In the written report of investigation, the investigator reported Applicant's unsworn oral statement as follows:

From 01/03 until 06/10, the subject [Applicant] smoked marijuana 2 to 4 times a year. He always smoked in a party setting consisting of passing a cigarette around a group of people. He had 3 to 6 puffs per occasion. He decided to stop smoking marijuana completely in 06/10. He did not want to have any concerns with his current employment. He wanted to be more responsible about his decisions. (Item 6 at 3.)

In his Answer Applicant states, regarding allegation 1.a., "I DENY, due to the fact that the time line was mistakenly conveyed." (Item 4 at 1.) (Emphasis in original.) He goes on to state that the actual end date of his marijuana use was June 2009, and that the error did not come to his attention until after receiving the SOR. He goes on to state that his employer, "administers drug screening prior to employment finalization."

To further bolster the truth and veracity of his statement, he submitted a joint letter from his branch director and his facility manager. (Item 4 at 2.) In the letter, these managers state that their purpose is, "to personally attest to the character of [Applicant]." The letter goes on to state that since he was employed Applicant, "has been nothing more than a fine upstanding employee that we can rely on to get the job done. There is no doubt in our mind that his dates were miscalculated, and that this error should have no effect in the process." The letter states, in conclusion, "We find him

extremely reliable and trustworthy and would have no concerns with his ability to comply with the laws, rules, and regulations that are required for him to hold a security clearance.”

In response to the FORM Applicant submitted Applicant Exhibit A. Page 1 of the Exhibit is a notarized letter from Applicant dated October 10, 2011. He states that the government should, “let this letter serve as my signed statement of intent to never use illegal drugs again. I understand that should I ever do so that I would subject myself to an automatic revocation of any clearance that may be issued to me at that time.” He further states, “I have made great strides in my life and in doing so recently purchased my first home. I have long dissociated myself from any drug-using associates and contacts and have moved on with my life in a positive manner.”

Applicant Exhibit A also contains letters from Applicant’s current supervisors. His deputy lead has worked with Applicant for six years at two different employers. This person states at page 2 of the Exhibit, “[Applicant] is a reliable, self-[sufficient], hard working individual, that is dedicated to the task he is assigned.” The letter also says Applicant is a “team player” who, “is very respected by his co-workers and management for his level of integrity.”

Page 3 of the Exhibit is from Applicant’s supervisor for the past two years. He finds Applicant to be “reliable,” “efficient,” “trustworthy,” and “honest.” “[Applicant] has been nothing short of a phenomenal employee ever since he started and I am more than happy to have him working for me.”

I was unable to evaluate Applicant’s credibility, demeanor, or character in person since he elected to have his case decided without a hearing.

## **Policies**

Security clearance decisions are not made in a vacuum. 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 disqualifying conditions and mitigating conditions, which are to be used as appropriate 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 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. In addition, the administrative judge may also rely on his or her own

common sense, as well as knowledge of the law, human nature, and the ways of the world, in making a reasoned 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.” 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, 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. Security clearance decisions include, by necessity, consideration of the possible risk that 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.

Finally, as emphasized in Section 7 of Executive Order 10865, “Any determination under this order adverse to an applicant shall be a determination 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 relating to the guideline 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. 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; Drug abuse is the illegal use of a drug or use of a legal drug in a manner that deviates from approved medical direction.

I have considered the disqualifying conditions under Drug Involvement AG ¶ 25 and find that the following condition applies given the facts in this case: “(a) any drug abuse.”

Applicant used marijuana on an occasional basis for several years, ending in June 2009. As stated, Applicant’s e-QIP and unsworn statement to the investigator indicate that his last use was in June 2010. Applicant, however, is adamant that this was a mistake as to the end date, which he did not catch until receiving the SOR. Applicant’s truthfulness in making this statement is attested to by two executives of his employer, who submitted a joint statement on this point where they specifically support his statement that the dates were miscalculated. Based on the available evidence, I find that Applicant made a mistake concerning the end date of his drug use, which was June 2009. (See FORM for Government’s position regarding date of Applicant’s last use of marijuana.)

I have considered all of the mitigating conditions under Drug Involvement AG ¶ 26. Two of them apply to the facts in this case concerning Applicant’s occasional marijuana use, and one-time mushroom use. AG ¶ 26(a) states that it may be mitigating where “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.”

Further, under AG ¶ 26(b), it may be mitigating where an applicant has “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’s drug abuse was occasional, two to four times a year. As stated, it ended two years before the record closed, and before he began his current employment. He values his job, and is valued on the job. Applicant did submit a signed statement of intent not to use drugs in the future with automatic revocation of his clearance for any violation, which is mitigating. Finally, his period of abstinence, in this particular case, is sufficient. The written statements from co-workers and managers support his statements that he has changed his environment. This guideline is found for Applicant. (See FORM at page 7 for Government’s position regarding importance of a signed statement of intent not to use drugs in the future.)

### **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 the relevant circumstances. 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. The administrative judge must 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.

I considered the potentially disqualifying and mitigating conditions in light of all the pertinent facts and circumstances surrounding this case. Applicant engaged in occasional marijuana use for several years, ending two years ago. He was young when the use occurred, and the available evidence shows that he has matured and grown. (AG ¶ 2(a)(4).) There is evidence of rehabilitation and other permanent behavioral changes. His employers support Applicant's obtaining a security clearance through strong, supportive letters concerning his character and veracity. Based on the state of the record, I find that there have been permanent behavioral changes under AG ¶ 2(a)(6). Accordingly, at the present time, I find that there is little to no potential for pressure, coercion, exploitation, or duress (AG ¶ 2(a)(8)); and that there is no likelihood of recurrence (AG ¶ 2(a)(9)).

Overall, the record evidence leaves me without questions or doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has mitigated the security concerns arising from his former drug involvement.

On balance, I conclude that Applicant has successfully overcome the Government's case opposing his request for a DoD security clearance. Accordingly, the evidence supports granting his request for a security clearance.

### **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 THE APPLICANT
Subparagraph 1.a.:	For the Applicant
Subparagraph 1.b.:	For the 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.

WILFORD H. ROSS  
Administrative Judge