



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



In the matter of: )  
)  
) ISCR Case No. 11-01283  
)  
Applicant for Security Clearance )

**Appearances**

For Government: David F. Hayes, Esq., Department Counsel  
For Applicant: David P. Price, Esq.

October 24, 2011

**Decision**

MENDEZ, Francisco, Administrative Judge:

Applicant mitigated the Drug Involvement concern. He established that his use of marijuana in 2005 and 2008 occurred under unusual circumstances and will not recur in the future. Clearance is granted.

**Procedural History**

On July 5, 2011, the Defense Office of Hearings and Appeals (DOHA) made a preliminary determination to deny Applicant access to classified information.<sup>1</sup> The basis for this decision is set forth in a Statement of Reasons (SOR), which alleges the security concern under Guideline H (Drug Involvement). Applicant responded to the SOR on July 27, 2011 (Answer). He requested a hearing and, after coordinating with the parties, I scheduled the hearing for October 5, 2011.

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<sup>1</sup> This action was taken pursuant to 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) implemented by the Department of Defense on September 1, 2006.

At hearing, Department Counsel offered four exhibits, which were marked and admitted into evidence, without objection, as Government Exhibits (GE) 1 through 4. Applicant offered four groups of exhibits, which were marked and admitted into evidence, without objection, as Applicant's Exhibits (AE) A through D. Applicant and his wife testified at the hearing. The transcript was received on October 12, 2011.

### **Findings of Fact**

Applicant is 30 years old. He was a model student and was heavily involved with the Boy Scouts – attaining the rank of Eagle Scout. He excelled at computers and, in his spare time, started an IT company while still in high school. In 2000, he was accepted and attended one of the nation's top colleges for engineering. He graduated with a degree in electrical and computer engineering in 2004. After graduation, he started his engineering career with a government contractor and was granted a security clearance. He has since worked for several government contractors and, in June 2010, began working for his current employer. As part of his current duties, he deployed overseas for a month in support of a critical mission for the United States. Applicant has also continued to pursue his educational goals and, in July 2011, attained an M.B.A. He is up-to-date on his security training and has never mishandled classified information.<sup>2</sup>

Applicant met his future wife during his sophomore year of college. They dated, got engaged, and eventually married. She currently works for a consulting firm as an environmental scientist. They own their own home and plan on having a family in the near future.<sup>3</sup>

Applicant experimented with marijuana when he was a freshman in college. He did not like it and did not use it again while in college. He became one of the responsible members of his fraternity and protected younger members of the fraternity who did not want to drink underage or engage in other sordid activities. During their senior year in college, Applicant's wife recalls seeing Applicant decline a "joint" offered to him by another member of the fraternity.<sup>4</sup>

Applicant used marijuana in 2005 and 2008 with his family. In 2005, he was on a trip to the beach with his brother, sister, and some family friends. A member of the group produced a marijuana cigarette and, when it was passed, Applicant used it. In 2008, while visiting his father's house for Christmas, Applicant again used marijuana. Over the course of dinner, the subject of Applicant's wife never having used marijuana or having gotten "high" while in college came up in casual conversation. Applicant and his family drank quite a substantial amount of alcohol with dinner and, at some point, his father produced one or two marijuana cigarettes. Applicant was shocked, as he had no

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<sup>2</sup> Tr. at 43-45, 59-61, 65-66; GE 1; GE 2; AE A.1 – A.3; AE B.1, B.6, and B.7; AE C.1.

<sup>3</sup> Tr. at 21-24, 38-41, 57-58; GE 2; AE C.3; AE D.3.

<sup>4</sup> Tr. at 45-46; AE C.7; AE D.3.

idea prior to this that his father used marijuana. The entire dinner group then headed outside, so that Applicant's wife could experience the effects of marijuana. Applicant smoked from the marijuana cigarette that was passed around from his father to the rest of the family. Applicant does not believe that his employer at the time had a policy prohibiting employees from using marijuana or other illegal drugs. He has not used marijuana again since December 2008.<sup>5</sup>

Applicant self-reported his marijuana use when applying for a position with his current employer. His current employer has an explicit policy prohibiting employees from using illegal drugs.<sup>6</sup> Applicant disclosed his drug use on his security clearance application and during a background interview with a government agent.<sup>7</sup> He fully answered all questions posed to him by DOHA about his drug involvement.<sup>8</sup>

At hearing, Applicant testified that, even though only he and his family were aware of his limited marijuana use, he decided to reveal this adverse information because he wanted to "do the right thing." He went on to say that: "I'm not going to try to hide anything . . . I have always tried to be as honest as I can."<sup>9</sup> Applicant's supervisor, who has held a security clearance for over 20 years, is aware of Applicant's past drug use and writes:

In the time I've worked with (Applicant), he has displayed nothing but integrity, honesty and determination to do what is right. . . While working and on travel with him, I have never seen him drink in excess or do anything that would lead me to question his choices.<sup>10</sup>

Applicant fully understands that by using marijuana he violated the trust placed in him by the Government when he was granted a security clearance in 2005. He promises not to use illegal drugs in the future. He has discussed this matter fully with his family and is firmly convinced that they will not place him in this type of situation again. His father and brother wrote letters corroborating these conversations, and they are now fully aware of the serious implications for Applicant regarding any illegal drug involvement. Applicant and his wife credibly testified that they will not allow Applicant's family, nor anyone else for that matter, to pressure them into using illegal drugs in the future. Applicant's current friends and associates do not use illegal drugs. He emotionally testified how this process has humbled and humiliated him. He hopes to regain the Government's trust and has been honest and forthright throughout the

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<sup>5</sup> Tr. at 46-54, 60-63, 78-79; GE 2 at 52-53; GE 3; GE 4. *See also*, Tr. at 25-30; AE D.1 – D.3.

<sup>6</sup> AE B.2. *See also*, Tr. at 53-54, 69-70.

<sup>7</sup> GE 2 and 3. *See also*, GE 1.

<sup>8</sup> GE 3.

<sup>9</sup> Tr. at 76-78.

<sup>10</sup> AE C.2.

process as a first step in regaining that trust.<sup>11</sup> With his Answer, Applicant submitted a statement of intent “to never again abuse any illegal substance and accept an automatic revocation of my clearance for any violation of this statement of intent.”<sup>12</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 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 Government must present evidence to establish controverted facts alleged in the SOR. Directive ¶ E3.1.14. On the other hand, 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.” Directive ¶ E3.1.15. An applicant has the ultimate burden of persuasion to obtain a favorable security decision. In resolving this ultimate question, an administrative judge must resolve “[a]ny doubt concerning personnel being considered for access to classified information . . . in favor of national security.” AG ¶ 2(b).

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.

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<sup>11</sup> Tr. at 32-33, 55-58, 72; AE D.1 – D.3.

<sup>12</sup> Answer at 1. See also, Tr. at 69-71.

## Analysis

### Guideline H, Drug Involvement

The security concern regarding illegal drug involvement is set forth at 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.

Applicant's marijuana use while possessing a security clearance raises this concern and establishes the following two disqualifying conditions under AG ¶ 25:

- (a) any drug abuse;<sup>13</sup> and
- (g) any illegal drug use after being granted a security clearance.

AG ¶ 26 sets forth a number of conditions that could mitigate the Guideline H concern. The following mitigating conditions warrant discussion:

- (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's marijuana use in 2005 and 2008 occurred under unusual circumstances that are unlikely to recur. Both uses occurred during family gatherings where Applicant had no warning or expectation that his family would engage in illegal drug use. Applicant's own father was the main instigator behind Applicant's last use of marijuana almost three years ago. This is not the case where Applicant simply was in a group of peers and decided to freely use marijuana. On the contrary, after experimenting with marijuana during his freshman year, Applicant not only turned down marijuana, but was a responsible, stable force in his fraternity. He only used marijuana again due to the unique peer pressure exerted by his family. Applicant's employer is fully aware of his past drug use and continues to support his application for a security clearance. Applicant's voluntary disclosure of his past drug use – after knowing of the

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<sup>13</sup> Pursuant to AG ¶ 24(b), drug abuse is defined as “the illegal use of a drug . . .”

potential adverse consequences – speaks volumes as to his current reliability, trustworthiness, and good judgment. AG ¶ 26(a) applies.

Applicant also demonstrated that he will not use marijuana or any other illegal substance in the future. He fully understands that he violated the Government's trust by using marijuana while possessing a clearance and promises not to engage in such conduct in the future. He recognizes that any future drug use, no matter how minor, will result in automatic revocation of his clearance. I recognize that, under these circumstances, an applicant's promise not to engage in future drug use is to be treated with great caution.<sup>14</sup> However, I had an opportunity to observe Applicant as he was questioned by counsel and I questioned him myself. I found him credible, straightforward, and resolute in his promise not to use marijuana or other illegal drugs in the future. Further, I also found his wife credible and together they have made a commitment that illegal drugs will not be a part of their future. Although Applicant still associates with his family, three years have passed since his last use and he is resolute in his insistence that he will never use marijuana again. Taking all these matters into account, Applicant met his burden and established AG ¶ 26(b). Applicant's past drug involvement no longer raises a security concern.

### **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 relevant circumstances. An administrative judge should consider the nine factors listed at AG ¶ 2(a).<sup>15</sup> I incorporate my Guideline H analysis herein and highlight some additional whole person factors. Applicant has been a hard worker and role model his entire life from boy scouts to college to his current job. In college, he served as a responsible, stable factor in his fraternity. He has continued this responsible attitude and behavior into adulthood. He only faltered when subjected to the unique peer pressure exerted by his family. When faced with the dilemma of revealing his limited drug use and facing potential adverse consequences, Applicant did the right thing. Applicant's honesty demonstrates rehabilitation on his part and the lack of any potential for coercion from his limited marijuana use. These whole-person factors, in conjunction with the favorable matters noted above, fully mitigate the drug involvement concern. Overall, the record evidence leaves me with no questions or doubts about Applicant's eligibility and suitability for a security clearance.

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<sup>14</sup> ISCR Case No. 10-06480 at 3 (App. Bd. Aug. 19, 2011).

<sup>15</sup> (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.

### **Formal Findings**

I make the following formal findings regarding the allegations in the SOR:

Paragraph 1, Guideline H (Drug Involvement):                   FOR APPLICANT

Subparagraphs 1.a and 1.b:   For Applicant

### **Conclusion**

In light of the record evidence and for the foregoing reasons, it is clearly consistent with the national interest to grant Applicant continued access to classified information. Applicant's request for a security clearance is granted.

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Francisco Mendez  
Administrative Judge