



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-01671
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Candace Garcia, Esq., Department Counsel  
For Applicant: Alan V. Edmunds, Esquire

03/22/2012

**Decision**

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HEINY, Claude R., Administrative Judge:

From 1990 to July 2010, Applicant used marijuana from once a month to two or three times a week, although there were periods when she refrained from use. There has been insufficient time since her last use to overcome the security concerns posed by the 20-year history of use. Applicant has failed to rebut or mitigate the security concerns due to her drug usage; however, she did rebut the personal conduct security concerns. Clearance is denied.

**Statement of the Case**

Applicant contests the Defense Department's (DoD) intent to deny or revoke her eligibility for an industrial security clearance. Acting under the relevant Executive Order and DoD Directive,<sup>1</sup> the Defense Office of Hearings and Appeals (DOHA) issued a

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<sup>1</sup> 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.

Statement of Reasons (SOR) on May 25, 2011, detailing security concerns under Guideline H (Drug Involvement) and Guideline E (Personal Conduct).

On June 17, 2011 and September 14, 2011, Applicant answered the SOR and requested a hearing. On October 31, 2011, I was assigned the case. On November 22, 2011, DOHA issued a Notice of Hearing for the hearing held on December 8, 2011.

At the hearing, the Government offered exhibits (Ex.) 1 through 3, which were admitted into evidence without objection. Applicant testified on her own behalf and submitted exhibits A through O, which were admitted into evidence without objection. On December 16, 2011, DOHA received the hearing transcript (Tr.).

### **Findings of Fact**

In Applicant's Answer to the SOR, she admitted all of the drug allegations in the SOR with explanation and denied the personal conduct allegation. Her admissions are incorporated herein. After a thorough review of the pleadings and exhibits, I make the following findings of fact.

Applicant is a 40-year-old senior software developer/analyst doing research work for a defense contractor since April 2003. (Tr. 84) Applicant's co-workers, supervisors, and friends spoke highly of her. They state: Applicant has commitment, dedication, integrity, has displayed initiative, is trustworthy, reliable, truthful, honest, and dedicated to job and country. Her duty performance is outstanding, displaying the highest work ethic, and her attitude is exemplary. (Exs. A, B, C, J, M, N, Tr. 39, 49, 67) Her supervisors believe she is a valuable asset and a true professional. (Tr. 42-43) Her work evaluations indicate she exceeded expectations and was exceptional in the performance of her duties. (Exs. E, F, G) She is dedicated to the country. (Ex. B)

A coworker who has known Applicant for five to seven years and sees her daily stated that Applicant is a free spirit in her personal life, but not so at work. (Tr. 58) At work, she follows the rules. Given direction, she follows direction. When she questions something she brings it to his attention, but when the decision is made, she "salutes the flag pole, and moves out." (Tr. 59) Another coworker, who has had daily contact with Applicant for four years, stated,

. . . I've seen her behavior in the workplace. I've seen her be someone who can do what is asked, do what is required, and pull herself forward to something larger. It's what she does. It's how she lives . . . anything she's asked to do, she does. Anything she has put her mind to do, she does. (Tr. 64, 65)

Applicant first used marijuana in late summer between 1990 and 1993. She does not remember the specific year. (Ex. 3) She also used it while at university from 1993 to 1998. (Ex. 3) In 1996, she received a Bachelor of Science degree in mathematics. In May 2002, Applicant obtained a Master of Science degree in science and technology

commercialization. (Ex. K) She has been working at the university since 2002. (Tr. 95) In 1992, at age 22, while working as a university research assistant, she received a confidential security clearance. (Ex. 1, Ex. O, Tr. 86) She held the clearance for two or three years, while she was in school. (Tr. 92) While in college, from 1993 to 1998, she used ecstasy twice and from 1993 to June 1999, she used LSD four or five times. (Ex. 3, Tr. 88, 89)

In 2008, Applicant had applied for a security clearance. That application was withdrawn at the recommendation of her security officer because the clearance was not needed. (Tr. 37, 93) During a September 2008 personal subject interview, she stated her marijuana use would “most likely continue in the future because it makes her feel ‘creative’ and she does not believe it to be harmful.” (Ex. 3)

In Applicant’s August 2008 Electronic Questionnaires for Investigations Processing (e-QIP), she indicated she had used marijuana from August 1990 to the present (August 2008) with a frequency of once a month to a few times a week. (Ex. 2) On her October 2010 e-QIP, she stated she had used marijuana from August 1990 to July 2010 with a frequency of once a month to a few times a week. (Ex. 1) There were periods of a month or two when she did not use marijuana. (Tr. 94) In her September 2008 personal subject interview she indicated there may have been periods when she did not use marijuana, but admitted to being a regular user two or three times a week. (Ex. 3) In a November 2010 personal subject interview, she admitted to the same regularity of use and estimated her use over a year as a quarter ounce of marijuana. (Tr. 3)

During the summer of 2010, Applicant turned age 39, reevaluated her life, and chose to abstain from marijuana use. She came to see the immaturity of her actions and the impact it could have on educational or career advancement. (Ex. O) Her decision to stop was influenced in part by her desire to obtain a security clearance. (Tr. 93) On July 31, 2010, she last used marijuana and has no intention of using again in the future. (Tr. 84, SOR Answer, June 2011) She has disposed of all marijuana related equipment and supplies and no longer associates with people who use marijuana. (Ex. 3, Tr. 84) As of April 2011, she considered her life without drug usage to be a lifestyle. (Ex. 3) In December 2011, she submitted a statement of intent to never use illegal drugs again with automatic revocation of security clearance in the event of illegal drug use. (Ex.1, Tr. 89) She agrees to abide by a zero tolerance or zero use of drugs policy. (Tr. 91)

In November and December 2011, Applicant underwent a psychological evaluation. (Ex. O, Tr. 94) The evaluation involved the Minnesota Multiphasic Personality Inventory -2 (MMPI), the Substance Abuse Subtle Screening Inventory – 3 (SASSI), a Life History Questionnaire, and three and one-half hours of clinical interview. (Ex. O)The psychologist found Applicant does not have a substance dependence disorder, substance abuse disorder, or a psychological/psychiatric disturbance. (Ex. O) Applicant’s drug use constituted overuse, but fell short of dependence or abuse. It was the psychologist’s opinion that Applicant was unlikely to resume use. (Ex. O) Applicant

voluntarily took two drug tests, which were negative for the presence of illegal drugs. (Ex. D, September 30, 2011 and Ex. H, November 9, 2011)

## **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 must be considered 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.

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.

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. . . ." The applicant has the ultimate burden of persuasion to obtain a favorable security 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 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.

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 of 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

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.

AG ¶ 25 describes four conditions that could raise a security concern and may be disqualifying. Those that potentially apply are:

- (a) any drug abuse;
- (c) illegal drug possession, including cultivation, processing, manufacture, purchase, sale, or distribution; or possession of drug paraphernalia;
- (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.

From 1990 to July 2010, Applicant used marijuana. AG ¶ 25(a) and AG ¶ 25(c) apply. In 1992, at age 22 and for two or three years longer, while she was in school, she held a confidential clearance and used marijuana. AG ¶ 25(g) applies. Also during her college years, she experimented with ecstasy twice and LSD four or five times. In 2008, she expressed that she would most likely continue using marijuana in the future. AG ¶ 25(h) applies. However, in December 2010, she provided a written statement of intent indicating she would never use illegal drugs or marijuana again. She listed her marijuana and LSD usage on her 2008 and 2010 E-QIPs. She discussed her drug use during her 2008 and 2010 personal subject interviews.

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;

Applicant's experimentation with ecstasy and LSD ended more than 12 years ago and is no longer of security concern. AG ¶ 26(a) applies to her two uses of ecstasy and four or five uses of LSD in the 1990s. AG ¶ 26(a) also applies to her marijuana use in the early 1990s while a student holding a confidential clearance, which was more than 16 years ago.

AG ¶ 25(g) illegal drug use after have being granted a security clearance, occurred when Applicant was a student in her early 20's. The security significance of this event is mitigated by the passage of more than 16 years since it occurred. AG ¶ 25(h) applied when Applicant made her 2008 statement, but no longer applies. She has expressed the intent to never use illegal drugs again with automatic revocation of security clearance in the event of illegal drug use and provided a signed statement to that effect.

The issue is whether or not Applicant's one-and-a-half year period of abstinence is sufficient to overcome the security concerns posed by a twenty-year history of marijuana use. The period of abstinence must be considered, but it is only one factor among numerous factors to be reviewed to determine Applicant's security worthiness. Her age must also be considered. It would be one thing had the marijuana use been confined to her college days or even her early 20s, but Applicant did not make her decision to stop smoking marijuana until age 39.

Applicant's marijuana use was not infrequent. It ended less than two years ago. However, the decision to cease her marijuana use was not made and her marijuana use continued after her August 2008 e-QIP and after her September 2008 personal subject interview that discussed her prior drug use. There is no "bright line" rule for determining when drug use is "recent." The determination must be based "on a careful evaluation of the totality of the record within the parameters set by the directive." ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). For example, the Appeal Board determined in ISCR Case No. 98-0608 (App. Bd. Aug. 28, 1997), that an applicant's last use of marijuana occurring approximately 17 months before the hearing was not recent. If the evidence shows "a significant period of time has passed without any evidence of misconduct," then an administrative judge must determine whether that period of time demonstrates "changed circumstances or conduct sufficient to warrant a finding of reform or rehabilitation."<sup>2</sup>

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<sup>2</sup> ISCR Case No. 02-24452 at 6 (App. Bd. Aug. 4, 2004). In ISCR Case No. 04-09239 at 5 (App. Bd. Dec. 20, 2006), the Appeal Board reversed the judge's decision denying a clearance, focusing on the absence of drug use for five years prior to the hearing. The Appeal Board determined that the judge excessively emphasized the drug use while holding a security clearance, and the 20 plus years of drug use, and gave too little weight to lifestyle changes and therapy. For the recency analysis the Appeal Board stated:

*Compare* ISCR Case No. 98-0394 at 4 (App. Bd. June 10, 1999) (although the passage of three years since the applicant's last act of misconduct did not, standing alone, compel the administrative judge to apply Criminal Conduct Mitigating Condition 1 as a matter of

In July 2010, Applicant evaluated her life and decided she would not use marijuana in the future. She has separated herself from her associates that use marijuana and signed a statement of intent with automatic revocation of clearance for any future violation. AG ¶ 26(b) partially applies.

Applicant has a number of factors weighting in her favor: abstinence since July 2010, her disassociation from individuals using illegal drugs, her recognition of the adverse impact drug abuse on her life, the psychologist's opinion that Applicant was unlikely to resume use and did not have a substance dependence or abuse disorder, and the strong recommendations of her supervisors and co-workers, specifically the statement that when Applicant puts her mind to something, she does it and when decisions are made at work she "salutes . . . and moves out." Additionally, she did not attempt to hide her illegal usage on her e-QIPs or during personnel subject interviews. However, the period of abstinence is not long enough when balanced against a twenty-year history of use.

### **Guideline E, Personal Conduct**

AG ¶ 15 expresses the security concern pertaining to personal conduct, which is 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.

The Personal Conduct Disqualifying Conditions under AG ¶ 16 that potentially applies is:

(c) credible adverse information in several adjudicative issue areas that is not sufficient for an adverse determination under any other single guideline, but which, when considered as a whole, 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.

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law, the Judge erred by failing to give an explanation why the Judge decided not to apply that mitigating condition in light of the particular record evidence in the case) with ISCR Case No. 01-02860 at 3 (App. Bd. May 7, 2002) ("The administrative judge articulated a rational basis for why she had doubts about the sufficiency of Applicant's efforts at alcohol rehabilitation.") (citation format corrections added).

In ISCR Case No. 05-11392 at 1-3 (App. Bd. Dec. 11, 2006) the Appeal Board, considered the recency analysis of an administrative judge stating:

The administrative judge made sustainable findings as to a lengthy and serious history of improper or illegal drug use by a 57-year-old Applicant who was familiar with the security clearance process. That history included illegal marijuana use two to three times a year from 1974 to 2002 [drug use ended four years before hearing]. It also included the illegal purchase of marijuana and the use of marijuana while holding a security clearance.

Applicant used marijuana while possessing a security clearance and her 2008 statement that she would continue to use marijuana in the future shows poor or questionable judgment. As previously stated, her marijuana use while holding a security clearance occurred when Applicant was a student in her early 20's. The security significance of this event is mitigated by the passage of more than 16 years since it occurred. In 2008, she made a statement that her marijuana use would continue in the future. However, in July 2010, she made a decision not to use in the future and has signed a statement stating she will not use marijuana in the future. The security significance of her prior comment is overcome by her current conduct and her current expressed intent not to use drugs in the future. I find no additional disqualifying or additional security concerns under the personal conduct guideline that are already addressed under Guideline H. I find for Applicant as to SOR ¶ 2.

### **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 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.

I considered the potentially disqualifying and mitigating conditions in light of all the facts and circumstances surrounding this case. In the 1990s, as a college student Applicant smoked marijuana while holding a confidential clearance. She continued to use marijuana on a regular basis until July 2010. She no longer uses marijuana or associates with those that do. Applicant is hard working, diligent, and responsible. Her supervisors, friends, and co-workers praise her character and dedication. She has been truthful and forthright in revealing her past illegal drug usage. However, the favorable factors are insufficient to overcome the security concerns posed by her 20-year history of illegal drug use, her use after her 2008 interview, and the relatively brief period of abstinence.

This decision should not be construed as a determination that Applicant cannot or will not attain the state of true reform and rehabilitation necessary to justify the award



of a security clearance. The awarding of a security clearance is not a once in a lifetime occurrence, but is based on applying the factors, both disqualifying and mitigating, to the evidence presented. Under Applicant's current circumstances, a clearance is not recommended. There is an insufficient period of time since her most recent illegal drug use. Should Applicant be afforded an opportunity to reapply for a security clearance in the future, having continued to abstain from illegal drug usage, she may well demonstrate persuasive evidence of her security worthiness. However, a clearance at this time is not warranted.

Overall, the record evidence leaves me with questions and doubts as to Applicant's eligibility and suitability for a security clearance. For all these reasons, I conclude Applicant has not fully mitigated the security concerns arising from her drug possession and usage.

### **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, Drug Involvement:	AGAINST APPLICANT
Subparagraph 1.a:	Against Applicant
Subparagraphs 1.b – 1.e:	For Applicant
Paragraph 2, Personal Conduct:	FOR APPLICANT
Subparagraph 2.a:	For 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 a security clearance. Eligibility for access to classified information is denied.

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CLAUDE R. HEINY II  
Administrative Judge