



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



In the matter of:	)	
	)	
	)	ISCR Case No. 11-03507
	)	
	)	
Applicant for Security Clearance	)	

**Appearances**

For Government: Daniel F. Crowley, Esquire, Department Counsel  
For Applicant: *Pro se*

January 26, 2012

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**Decision**

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HOGAN, Erin C., Administrative Judge:

On July 21, 2011, the Defense Office of Hearings and Appeals (DOHA) issued a Statement of Reasons (SOR) detailing security concerns under Guideline E, Personal Conduct. 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 on September 1, 2006.

On August 11, 2011, Applicant answered the SOR and requested a hearing based on the administrative record. Department Counsel prepared a File of Relevant Material (FORM) on October 31, 2011. Appellant received the FORM on November 9, 2011. Applicant was given 30 days to submit additional matters in response to the FORM. Applicant did not submit additional documents. On January 6, 2012, the FORM was forwarded to the Hearing Office. The case was assigned to me on January 9, 2012. Based upon a review of the case file, pleadings, and exhibits, eligibility for access to classified information is denied.

## Findings of Fact

In her answer to the SOR, Applicant admits to all the allegations in the SOR. (Item 2)

Applicant is a 26-year-old woman employed by a Department of Defense contractor who is applying for a security clearance. She has worked for her current employer since September 2009. She is a college graduate. She is single and has no children. (Item 4)

From August 2003 to May 2004, Applicant used marijuana, mushrooms (also known as psilocybin), and painkillers on approximately 20 or less occasions when she was a college student. In 2005, she used marijuana with her mother while driving in a car. For as long as she can remember, her mother and step-father have used marijuana. (Item 4; Item 5)

In November 2006, Applicant worked for another defense contractor. She was given a Top Secret security clearance at that time. On Christmas Eve 2007, Applicant was at her mother and step-father's house. She used marijuana with her mother, step-father and a friend. She has not used marijuana since that date. (Item 5) Between July 2008 and December 2009, Applicant used the drug Ativan, an anxiety medication, on two occasions even though it was not prescribed to her. Her mother provided the Ativan. (Item 6)

In May 2010, Applicant's access to sensitive compartmented information was suspended by another government agency after issues about her illegal drug use were raised during a polygraph investigation. (This is based on Applicant's admission. There is no information in the case file from the government agency about the suspension or the basis for the suspension.) (Item 4, section 25; Item 5)

On July 29, 2010, Applicant was interviewed by an investigator conducting her background investigation. She told the investigator that she applied for a position with another government agency. Part of the process included taking a polygraph. She was asked during the polygraph interview whether she had used marijuana or other illegal drugs. She admitted to sharing a marijuana cigarette with her mother on Christmas Eve 2007. The investigator told her that her security clearance would be suspended pending further investigation. Applicant has never sold, grown, or manufactured marijuana. She is not dependent on marijuana or any other drug. She has had no drug treatment. She has not used marijuana since December 2007 and does not intend to use marijuana in the future. (Item 5)

On April 11, 2011, Applicant certified an Electronic Questionnaire for Investigations Processing (e-QIP) related to her current position with a DOD contractor. In response to section 13C(3) she listed that her security clearance was suspended by another government agency on May 27, 2010. (Item 4) In response to section 23, Illegal

Use of Drugs or Drug Activity, Applicant listed that she used marijuana from December 2007 to June 2008. She explained further:

The nature of this activity involves a degree of uncertainty. I was unknowingly in the vicinity of the described substance an estimated 5 times as it was being used by family members. When I was aware that the substance was being used I removed my self from the vicinity when possible. A few times the substance was used while I was in a moving vehicle and I was not able to remove myself from the vicinity. I felt it was necessary to disclose this information because I revealed the information during a polygraph as an applicant for [another government agency]. I have never failed a urinalysis and I have been tested many times during my employment with [Defense Contractor]. I have never been involved with the purchasing, selling, or obtaining of this substance. I am not a user and am only guilty of being in the wrong place at the wrong time.

Applicant also listed her use of marijuana, mushrooms, and painkillers between August 2003 and May 2004 while a college student. (Item 4, section 23)

In response to interrogatories, dated May 5, 2011, Applicant states that choices she made regarding marijuana and prescription drugs were reckless and irresponsible decisions. She will consent to a random drug test and counseling if necessary. (Item 5 at 7; Item 6)

### **Policies**

When evaluating an applicant's suitability for a security clearance, the 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, which must be considered when determining 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 as to obtaining 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 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.” See *also* EO 12968, Section 3.1(b) (listing multiple prerequisites for access to classified or sensitive information).

### **Analysis**

The security concern relating to the guideline for Personal Conduct is set out in AG ¶ 15:

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. Of special interest is any failure to provide truthful and candid answers during the security clearance process or any other failure to cooperate with the security clearance process.

There is sufficient evidence to conclude that Applicant’s illegal drug use while possessing a security clearance raises security concerns under personal conduct. Applicant has a substantial burden to mitigate these concerns. The following personal conduct security concerns apply:

AG ¶ 16(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);

AG ¶ 16(d) (credible adverse information that is not explicitly covered under any other guideline and may not be sufficient by itself for an adverse determination, but which, when combined with all available information 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. This includes but is not limited to consideration of: (1) untrustworthy or unreliable behavior to include breach of client confidentiality, release of proprietary information, unauthorized release of sensitive corporate or other government protected information; (2) disruptive, violent or other inappropriate behavior in the workplace; (3) a pattern of dishonesty or rule violations; and (4) evidence of significant misuse of Government or other employer's time or resources); and

AG ¶ 16(e) (personal conduct or concealment of information about one's conduct, that creates a vulnerability to exploitation, manipulation, or duress, such as (1) engaging in activities which, if known, may affect the person's personal, professional, or community standing . . .)).

AG ¶ 16(c) applies because her past conduct of using illegal drugs and prescription drugs not prescribed to her while possessing a security clearance indicates questionable judgment, unreliability, and an unwillingness to comply with rules and regulations. Her actions raise an issue as to whether she will properly safeguard classified information.

AG ¶ 16(d) applies because Applicant's illegal drug use is incompatible with the standards expected of individuals entrusted with a security clearance. Applicant should have known this when she decided to use illegal drugs after being granted a security clearance. Her conduct reflects a pattern of rule violations and raises questions about her reliability, trustworthiness and judgment. AG ¶ 16(e) applies because her conduct made Applicant vulnerable to exploitation, manipulation, or duress.

The following personal conduct mitigating conditions potentially apply:

AG ¶ 17(c) (the offense is so minor, or so much time has passed, or the behavior is so infrequent, or it happened under such unique circumstances that it is unlikely to recur and does not cast doubt on the individual's reliability, trustworthiness, or good judgment);

AG ¶ 17(d) (the individual has acknowledged the behavior and obtained counseling to change the behavior or taken other positive steps to alleviate the stressors, circumstances, or factors that caused untrustworthy, unreliable, or other inappropriate behavior, and such behavior is unlikely to recur); and

AG ¶ 17(e) (the individual has taken positive steps to reduce or eliminate vulnerability to exploitation, manipulation, or duress).

AG ¶ 17(c) does not apply because Applicant chose to use illegal drugs on more than one occasion while possessing a security clearance. Using illegal drugs while possessing a security clearance is not a minor offense. Applicant was granted a security clearance in 2006. She used marijuana in December 2007 and used anti-anxiety medication that was not prescribed to her on two occasions between July 2008 and December 2009. Her response to section 13C(3) on her April 11, 2011, e-QIP application tends to indicate that she may have used marijuana or was near people who used marijuana on five occasions between December 2007 and June 2008. Her illegal drug use did not happen under unique circumstances making it unlikely to recur. In fact, Applicant's mother and step-father are regular users of illegal drugs. Applicant has been exposed to casual illegal drug use her whole life. It is likely that she will continue to be exposed to her parents' illegal drug use in the future.

AG ¶ 17(d) does not apply because Applicant has not demonstrated that she is taking steps to change the behavior such as undergoing a drug and alcohol evaluation. She also has not presented a convincing argument to support her statement that she will not use illegal drugs in the future. AG ¶ 17(e) applies because it appears that Applicant fully disclosed her illegal drug use. Her vulnerability to exploitation, manipulation or duress has been reduced.

Overall, Applicant did not meet her burden to mitigate the security concerns raised under personal conduct.

### **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. Applicant did not provide additional information about her duty performance or character. Applicant's pattern of illegal drug use while possessing a security clearance raises security concerns. Applicant has the burden to mitigate the security concerns. She did not present sufficient evidence to mitigate personal conduct security concerns. Questions about Applicant's judgment, reliability, and trustworthiness remain. In cases where there is a doubt, a ruling must be made in favor of national security. I find there is doubt in Applicant's 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 E:	AGAINST APPLICANT
Subparagraphs 1.a – 1.d:	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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ERIN C. HOGAN  
Administrative Judge