



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



In the matter of: )  
)  
) ISCR Case: 11-04934  
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)  
Applicant for Security Clearance )

**Appearances**

For Government: Pamela Benson, Esquire, Department Counsel  
For Applicant: Noel Culbert, Esquire

08/28/2012

**Decision**

DAM, Shari, Administrative Judge:

Applicant failed to rebut or mitigate the Government’s security concerns raised under Guideline H, Drug Involvement. His eligibility for a security clearance is denied.

On December 21, 2010, Applicant submitted an Electronic Questionnaires for Investigations Processing (e-QIP). On February 22, 2012, the Defense Office of Hearings and Appeals (DOHA) issued Applicant a Statement of Reasons (SOR) detailing security concerns under the guideline for 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 implemented by the Department of Defense on September 1, 2006.

On April 4, 2012, Applicant answered the SOR in writing and requested a hearing before an administrative judge. DOHA assigned the case to another administrative

judge on May 3, 2012, and reassigned it to me on June 12, 2012. DOHA issued a Notice of Hearing on June 4, 2012, and issued an Amended Notice of Video Teleconference Hearing on July 23, 2012. I convened the hearing as initially scheduled on August 1, 2012. On the day of the hearing, both parties agreed to conduct the hearing via a telephone conference call because the video equipment where I was located failed to work. (Tr. 5.) Department Counsel offered Government Exhibits (GE) 1 through 3 into evidence, which were admitted without objection. Applicant testified and offered Applicant Exhibits (AE) A through E, which were admitted without objection. The record remained open until August 20, 2012, to give Applicant an opportunity to submit additional information. Applicant timely submitted AE F, which was admitted without objection from Department Counsel. DOHA received the hearing transcript (Tr.) on August 9, 2012.

### **Findings of Fact**

In his answer, Applicant admitted the three allegations contained in the SOR. His admissions are incorporated into the findings herein.

Applicant is 45 years old and has been married since 2007. He has five stepchildren, ages 24 to 35. Two of the children live with him and his wife. (Tr. 47.) In September 2008 he obtained employment as an information specialist with a federal contractor and completed his first e-QIP. (AE A.) He subsequently received an interim security clearance. In August 2010 he earned a bachelor's degree in electronics. In December 2010 he completed a second e-QIP and started a position as a systems administrator for his current employer, another defense contractor performing work for the military. (GE 1.)

Applicant began using marijuana illegally in 1980 at the age of 13 or 14 and continued using it until 1994. (Tr. 38.) Sometimes he used it daily. (Tr. 40.) In 1985 he started illegally using cocaine while working in a factory. After he was laid off from that job in 1990, he stopped using it. In 1994, at the age of 27, he made a personal decision to stop using marijuana. (Tr. 24-26.) After making that decision, he did not participate in any form of drug treatment because he did not believe he needed treatment to maintain abstinence. (Tr. 33.) When he was hired at his current position in January 2011, he underwent a random drug screening. That screening was negative. (Tr. 32.)

Applicant's two oldest stepsons illegally use marijuana. Applicant and his wife regularly visit his stepsons to see their grandchildren. Sometimes his stepsons use marijuana while he visits their homes, but not in his presence. (Tr. 35-36, 47, 52, 53, 56.)

On New Year's Eve of 2009, Applicant attended a party at his 35-year-old stepson's house. (Tr. 45.) Some of the guests were using marijuana. At some point Applicant and his wife decided to smoke a marijuana cigarette. They obtained one from his stepson and took it home, where they smoked it to celebrate the New Year on

January 1, 2010. (Tr. 27-28.) Applicant asserted that he has not used marijuana since then. (Tr. 28.) He admitted that he held a security clearance at the time.

Two weeks prior to the hearing, Applicant visited his 35-year-old stepson and family. While there, his stepson smoked marijuana outside of Applicant's presence and in his garage. (Tr. 57.)

Applicant honestly and candidly disclosed the New Year's marijuana use in his 2010 SF 86. (GE 1.) He expressed sincere regret and remorse over his past drug use and especially the 2010 New Year's incident. He signed a statement of his intention not to use illegal drugs again and agreed to be subject to an automatic revocation of his security clearance if he did use drugs. (Tr. 36; AE B.)

Prior to the hearing, Applicant never told his stepsons that he could not visit them if they used marijuana while he was there. (Tr. 53) After the hearing, Applicant spoke to his eldest stepson about using marijuana when he visits. He told him that he would no longer remain in the house if marijuana was used. (AE F.) There is no evidence that he was arrested for illegal drug use.

During an interview with a government investigator, Applicant admitted that over a weekend in November 2010, he used some of his wife's prescription pain medication, Tylenol with codeine, to mitigate severe tooth pain. He visited his dentist the following Monday. He acknowledged that he made a poor decision to use her medicine.<sup>1</sup> (Tr. 29-31; GE 2.)

Applicant submitted two letters of recommendation. A manager of an information network wrote that he has not observed any behavior by Applicant that would raise concerns regarding Applicant's integrity or trustworthiness. He finds Applicant to be honest and honorable. (AE C.) Applicant's former supervisor wrote that Applicant "has always displayed a high degree of integrity, responsibility, and concern for doing what is right." (AE D.) He has complete trust in Applicant. (AE D.)

## **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 (AG) list potentially disqualifying conditions and mitigating conditions, which are useful 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 AG ¶ 2(a), describing the adjudicative process. The administrative

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<sup>1</sup> The SOR does not contain an allegation related to this incident. Hence, the matter will not be construed to be a potential basis for finding a disqualifying condition, but may be considered under the whole-person analysis.

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 "Any doubt concerning personnel being considered for access to classified information will be resolved in favor of national security."

Directive ¶ E3.1.14 requires the Government to present evidence to establish controverted facts alleged in the SOR. Under Directive ¶ E3.1.15, 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 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. Decisions include, by necessity, consideration of the possible risk an 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."

## **Analysis**

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

AG ¶ 24 sets forth the security concerns 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; (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 two conditions that could raise a security concern and may be disqualifying under the facts of this case:

- (a) any drug abuse (see above definition); and
- (g) any illegal drug use after being granted a security clearance.

Applicant admitted that he used illegal substances from 1980 to 1994, and on New Year's Day 2010 while holding a security clearance. The Government's evidence and Applicant's admissions raised both of the above disqualifying conditions.

After the Government raised a potential disqualifying condition, the burden shifted to Applicant to rebut or prove mitigation of the resulting security concerns. AG ¶ 26 includes examples of conditions that could mitigate the security concern arising from illegal drug use:

- (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 began using marijuana illegally in 1980 while a young teen. He continued his marijuana use for about 14 years, until 1994. From 1985 to 1990, he illegally used cocaine. After a 16-year period of abstinence, Applicant used marijuana

on New Year's Day. He held a security clearance at the time. That incident calls into question his current judgment. AG ¶ 25(a) has no application.

There is insufficient evidence to support the application of AG ¶¶ 25(b) (1) and (2) to the above disqualifying conditions. Applicant continues to associate with two stepsons who use marijuana illegally. Both stepsons smoke it at their homes, while Applicant is present. Within two weeks of this hearing, Applicant visited his eldest stepson. On that date his stepson smoked marijuana, albeit outside of Applicant's immediate presence. Applicant acknowledged that he obtained the marijuana he smoked on New Year's Day 2010 from that stepson.

AG ¶ 25(b)(3) has limited application. Applicant stopped using illegal drugs in 1994. He remained abstinent until New Year's Day in 2010. At that time he and his wife impulsively decided to use marijuana in celebration of the New Year. Since then he has not smoked marijuana. That was about two and a half years ago. He signed a statement of his intention not to use illegal drugs in the future, warranting the application of AG ¶ 25(b)(4). The record does not contain evidence to support the application of AG ¶ 25(c), or AG ¶ 25(d) that requires evidence of participation in a substance abuse treatment program.

### **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 relevant 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.

According to 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 facts and circumstances surrounding this case. Applicant is an intelligent 45-year-old man, who has successfully worked for his current employer since June 2010. He exhibited remorse and embarrassment over his prior regular illegal drug use and his more recent use on January 1, 2010. He presented impressive letters of recommendation from a division manager and former supervisor, along with a signed

statement of his intention never to use illegal drugs in the future. Those facts, along with his candid disclosures of his 2010 New Year's Day use of marijuana and taking his wife's prescribed pain medication in November 2010, weigh in favor of granting him a security clearance.

However, other factors outweigh those facts and support the denial of Applicant's security clearance. Specifically, Applicant's frequent associations with his stepsons, who use marijuana while he visits, pose a substantial and ongoing risk of recurrence, and elevate the potential for pressure, coercion, exploitation, or duress. Understandably, Applicant has strong affection for them and their families. Those feelings have seemingly interfered with his ability to exercise good judgment and avoid people or environments where illegal drugs are present. The fact that he obtained the marijuana he used on New Year's Day 2010 from his stepson, coupled with information that when he visited his stepson two weeks prior to this security clearance hearing, his stepson used marijuana, raises a serious security concern and diminishes the credibility of his assertions that he has no intention to use illegal drugs in the future.

Overall, the record evidence leaves me with questions as to Applicant's eligibility and suitability for a security clearance at this time. For all these reasons, I conclude Applicant did not mitigate the security concerns arising from his drug involvement.

### **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:	AGAINST APPLICANT
Subparagraphs 1.a through 1.c:	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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SHARI DAM  
Administrative Judge